AIR 2012 MADHYA PRADESH 87 "Mohd. Fareed v. State of Madhya Pradesh"

MADHYA PRADESH HIGH COURT

Coram : 2 AJIT SINGH AND SANJAY YADAV, JJ. ( Division Bench )

Mohd. Fareed and Anr. v. State of Madhya Pradesh and Ors.

Writ Petition No. 3957 of 2010, D/- 1 -3 -2012.

Constitution of India, Art.14, Art.19 - Madhya Pradesh Krishi Upaj Mandi Adhiniyam (24 of 1973), S.3, S.79 - Madhya Pradesh Krishi Upaj Mandi (Allotment of Land and Structures) Rules (2009), R.3(7) - AGRICULTURAL PRODUCE - Allotment of land in newly established market yard - R. 3(7) of 2009 Rules giving preference to old allottees, traders - Object of Rule is to protect existence of genuine licencee trades - R. 3(7) neither arbitrary nor contrary to Supreme Court decision in AIR 1998 SC 2086.

The traders who possess licence under the Adhiniyam, who are allottees of land or structure in the old premises and are continuously trading for five years prior to the date of auction, are given preference by R. 3(7) of 2009 Rules for allotment of land in the first auction but all licensee traders were allowed to participate in the subsequent action. The object of the sub-rule is to protect the existence of genuine licencee traders by giving due preference and also to prevent favoritism or nepotism to traders in the allotment of lands to them. The sub-rule is, therefore, neither arbitrary nor contrary to the decision of the Supreme Court in AIR 1998 SC 2086.

In the instant case, market yard at Karond for fruit and vegetable trade has been established for the first time. Allotment of lands at the newly established market yard to the fruit and vegetable traders by giving preference in the auction to the traders of the same trade has already been made. The petitioners have not alleged favouritism or nepotism in such allotment to the traders. The petitioners were admittedly carrying the trade of fruit and vegetable in the market area which has not been notified under the Adhiniyam. They have also not denied the contention of the State Government as well as of the Mandi Bhopal that they can continue to sell fruit and vegetable as petty traders from the same Nav Bahar Sabji Mandi. Thus, it cannot be held that their right under Article 19 of the Constitution has been violated. (Paras 12, 13)

Cases Referred Chronological Paras

AIR 1998 SC 2086 6, 7, 10, 11, 12

Vivek Ranjan Pandey, for Petitioners; Naman Nagrath, Additional Advocate General, Atulanand Awasthy with R. P. Singh, Piyush Bhatnagar, for Respondents.

Judgement

AJIT SINGH, J. :- This order shall also dispose of Writ Petition Nos.6322, 6355, 4880, 4890, 10244, 3887 and 612, all of 2010. All these petitions were heard together because they relate to a common issue.

2. There is an old fruit and vegetable market known as "Nav Bahar Sabji Mandi" since last 20/25 years in the city of Bhopal. The Sabji Mandi is, in fact, situated in the heart of city. With the passage of time, the population of the city has increased manifold. This has resulted into huge congestion and lack of space for fruit and vegetable traders in the Sabji Mandi. The State Government therefore, taking note of the difficulties of such traders, by notification dated 9.11.2000 issued under section 3 of the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 (in short, "the Adhiniyam") for the first time established a new market yard for fruit and vegetable traders having 56 acres of land at a place called Karond in Bhopal. On 22.12.2006 the Krishi Upaj Mandi, Bhopal (in short, "the Mandi Bhopal") also for the first time prescribed the rates for different fruits and vegetables. Thereafter, on 27.2.2007 a list of allotment of land and structures, by way of auction, was issued. But the auction, which was scheduled for 6th, 7th and 8th of September 2007, for some reason could not be held.

3. In the year 2007 the land and structures of the market committee, constituted under section 11 of the Adhiniyam, were required to be allotted in accordance with the provisions of the Madhya Pradesh Krishi Upaj Mandi (Allotment of Land and Structures of Marketing Committee/Board) Rules, 2007. The State Government however, in exercise of powers conferred by section 79 of the Adhiniyam, by notification dated 25.5.2009

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repealed the Rules of 2007 and framed new Madhya Pradesh Krishi Upaj Mandi (Allotment of Land and Structures) Rules, 2009 (in short, "the Rules"). Rule 3 of the Rules enumerates the general principles of allotment of land and structures of marketing committee. Its sub-rule (1) states that no land or structure of a market committee shall be allotted except the manner as provided in these rules. According to sub-rule (2) the land or structure shall be allotted only for a purpose which is conducive to marketing of agricultural produce or desirable for the convenience of agriculturists or for a purpose ancillary thereto. Sub-rule (3) states that allotment of land or structures shall be made on 'licence' generally for a period of 30 years and not on lease while sub-rule (4) provides that no person shall be allotted more than one plot or structure. According to sub-rule (5) allotment of land or structure for a shop-cum-godown or a godown shall be made only to a person who holds a licence, as the case may be, as a trader/processor or warehouseman under the Adhiniyam. Sub-rule (6) very clearly states that the system of auction or invitation of offers in sealed covers/envelops shall be followed for allotment of land or structure meaning thereby that the allotment of land or structure can be made only by auction or by invitation of offers in sealed covers/envelopes. Sub-rule (7) is in two parts (a) and (b). The first part 7(a) states that in the event of transfer of market yard to a new market yard, traders, who possess licence under the Adhiniyam, who are allottees of land or structure in the old premises and are continuously trading for five years, prior to the date of auction, shall be given preference for allotment of plot or structure in the first auction and in the event of subsequent auction, all licensee traders shall be allowed to participate. The second part 7(b) provides that in the event of establishment of market yard for the first time after notification or establishment of a section of yard for the purpose of marketing of any specified produce, preference will be given for allotment of plot or structure in the auction to such traders who are licensee under the Adhiniyam and who have been engaged in the previous years for trading of that specified produce.

4. On 5.1.2010 and 18.1.2010 auction for allotment of lands at the newly established market yard Karond was held in which 2771 fruit and vegetable traders, who were licensees, participated and out of them 2027 were allotted the lands. Thus, now 744 such traders have been left without allotment. The offset price of the land in the auction was fixed at Rs. 251/- per square feet and the offers received were from Rs. 280/- to Rs. 1820/- per square ft.

5. The petitioners, who are fruit and vegetable traders in the Nav Bahar Sabji Mandi, were opposed to the auctioning of lands at the market yard Karond from the very beginning. Some of them, therefore, did not participate in the auction proceedings. And some who participated could not succeed in the allotment of lands in their favour. Aggrieved, they have filed the present petitions challenging the validity of the entire auction proceedings held on 5.1.2010 and 18.1.2010 and also the vires of sub-rule (7) of Rule 3 of the Rules.

6. It is argued on behalf of the petitioners that as they have been operating from Nav Bahar Sabji Mandi, they have preferential right over allotment of lands in the newly established market yard and therefore the auctioning of such lands, by merely allowing them to compete with the outsiders in open auction, is illegal, arbitrary and unreasonable. According to the petitioners the auctioning of lands, by keeping the auction open to all licensees without giving preference to the traders from Nav Bahar Sabji Mandi who were being shifted to the market yard Karond, is improper. The petitioners have also argued that action of the State Government and of the Mandi Bhopal amounts to depriving them to carry on their trade which is violative of their right guaranteed under Article 19 of the Constitution of India. The petitioners have further submitted that since, despite of being old traders, they have not been given preferential treatment, there is violation of Article 14 also. The petitioners, in support of their submission, have placed reliance on the decision of the Supreme Court in Labha Ram and Sons v, State of Punjab (1998) 5 SCC 207

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: (AIR 1998 SC 2086) wherein it is held that Government has inherent obligation to provide sufficient accommodation to all the existing licensed dealers having regard to the handicaps they suffer due to creation of new marketing complex and that the obligation is not discharged by merely allowing them to compete with the outsiders in open auction. According to the petitioners, sub-rule (7)(a) and (b) of Rule 3 of the Rules is, therefore, ultra vires the Constitution.

7. The State Government, in reply, has defended the validity of sub-rule (7)(a) and (b) of the Rules and also the allotment of lands by auction to the fruit and vegetable traders having licence at the newly established market yard. The State Government in the return has denied that petitioners will be deprived of their source of livelihood in the event of lands not being allotted to them at the newly established market yard because they can still carry on their present business as petty traders in the same Nav Bahar Sabji Mandi in view of section 6 (iii) of the Adhiniyam. According to the State Government, in the newly established market yard, allottees of land are entitled for doing marketing of bulk agriculture produce from where the petty traders can purchase agriculture produce and thereafter sell the same at other places and therefore the petitioners, who are petty traders, are entitled to carry on their business as before. Interestingly, the State Government has also relied upon the decision of Labha Ram and Sons (AIR 1998 SC 2086) (supra).

8. The Mandi Bhopal has adopted the submissions of the State Government and defended its action of allotment of lands by auction. Pursuant to the direction of the High Court, Secretary of the Mandi Bhopal also filed an affidavit on 9.7.2010 stating therein that the committee has taken a decision to develop 12.30 acre of land of the newly established market yard and allot the same to the remaining 744 licence traders by auction. The Secretary has further stated that for the licencee traders, who could not participate in the auction proceedings due to their weak financial condition and the traders who are below poverty line, the Mandi Bhopal has already constructed three platforms having sheds and 12 similar platforms were under construction which will be allotted to them by auction. The Municipal Corporation, Bhopal, has also adopted the submissions of the State Government.

9. The vires of sub-rule (7) of Rule 3 of the Rules, which has been challenged, reads as under:

"3. General principles of allotment.-

(1) to (6) xxxxxx

(7) (a) In the event of transfer of market yard to a new market yard, traders, who possess licence under Section 32 of the Act, who are allottees of land or structure in the old premises and are continuously trading for five years, prior to the date of auction, shall be given preference for allotment of plot or structure in the first auction. However, all licensee traders shall be allowed to participate in the subsequent auction,

(7)(b) In the event of establishment of market yard for the first time after notification or establishment of a Section of yard for the purpose of marketing of any specified produce, preference will be given for allotment of plot or structure in the auction to such traders who are licensee under Section 32 of the Act and who have been engaged in the previous years for trading of that specified produce."

10. The legislative competence of the State Legislature to make the Rules is not denied by the petitioners. We shall, therefore, examine whether the above quoted sub-rule (7) is so arbitrary that it cannot be said to be in conformity with Article 14 of the Constitution or that it is violative of Article 19 of the Constitution or it is contrary to the decision of the Supreme Court in the case of Labha Ram (AIR 1998 SC 2086) (Supra).

11. In the case of Labha Ram (AIR 1998 SC 2086) the State Government had declared a new Mandi where it allotted plots by auction without providing any concession for the existing traders despite they being badly affected by the establishment of new market. The Supreme Court, without disturbing the power of the State Government to sell plots by auction, remanded the matter with a direction

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to provide preference to the existing traders in the matter of allotment. The Supreme Court, while so directing, also took care by not suggesting that the Government should give preference to such traders by providing free allotment of plots or to fix a rate below the reserved price and left it open to the Government to fix reasonable rate above the reserved price.

12. We have already seen above that for the allotment of land under the Rules, only system of auction or invitation for offers in sealed covers is followed and in both sub-rule (7)(a) and sub-rule (7)(b) of Rule 3 of the Rules care has been taken to give preference in the auction of land to genuine old allottees or traders, as the case may be. Sub-rule (7)(a) of Rule 3 of the Rules deals with a situation when there is a transfer of market yard to a new market yard. In such an event, the sub-rule clearly provides that the traders who possess licence under the Adhiniyam, who are allottees of land or structure in the old premises and are continuously trading for five years prior to the date of auction, shall be given preference for allotment of land in the first auction but all licensee traders shall be allowed to participate in the subsequent auction. Sub-rule (7)(b) deals with a different situation i.e. when there is a establishment of market yard for the first time after notification or establishment of a section of yard for the purpose of marketing of any specified produce. This sub-rule also clearly provides that preference will be given for allotment of land or structure in the auction to such traders who are licensee under the Adhiniyam and who have been engaged in the previous years for trading of that specified produce. The object of the sub-rule is to protect the existence of genuine licencee traders by giving due preference and also to prevent favoritism or nepotism to traders in the allotment of lands to them. The sub-rule is, therefore, neither arbitrary nor contrary to the decision of the Supreme Court in Labha Ram case (AIR 1998 SC 2086).

13. In the present case, market yard at Karond for fruit and vegetable trade has been established for the first time. Allotment of lands at the newly established market yard to the fruit and vegetable traders by giving preference in the auction to the traders of the same trade has already been made. The petitioners have not alleged favoritism or nepotism in such allotment to the traders. The petitioners were admittedly carrying the trade of fruit and vegetable in the market area which has not been notified under the Adhiniyam. They have also not denied the contention of the State Government as well as of the Mandi Bhopal that they can continue to sell fruit and vegetable as petty traders from the same Nav Bahar Sabji Mandi. Thus, it cannot be held that their right under Article 19 of the Constitution has been violated.

14. For these reasons, we also find the allotment of lands by auction at the newly established market yard Karond to the fruit and vegetable traders, who have been engaged in the previous years of trading of that specified produce, is legal and proper.

15. In the result, the petitions fail and are dismissed. However, no order as to costs.

Petition dismissed.

AIR 2012 DELHI 87 "Maharashtra Hybrid Seeds Co. Ltd. v. UOI"

DELHI HIGH COURT

Coram : 1 VIPIN SANGHI, J. ( Single Bench )

Maharashtra Hybrid Seeds Co. Ltd. v. UOI and others.

W. P. (C) No. 8431 of 2011, D/- 30 -11 -2011.

Protection of Plant Varieties and Farmers Rights Act (53 of 2001), S.21, S.84 - Protection of Plant Varieties and Farmers Rights Rules (2003), R.30(3), R.16 - AGRICULTURAL PRODUCE - Registration of plant variety - Application for - Extent of disclosure of information - Complete disclosure of information is mandated so that interested person could challenge claim made by applicant to oppose grant of registration - Also objections could be effectively raised by interested person - Scheme of Act also specifically providing for disclosure of all information in public interest - Opposition by applicant for disclosure of entire information, not proper.

Complete disclosure has to be made by registration seeker/applicant along with application, and any person wishing to raise an objection is entitled to receive complete information, so that he may raise one or more of available objections to registration of claimed plant variety.

Disclosure is made to the Registrar, who then publishes same and invites objections. Objections are made to claims of development/invention made in application and not merely to information which may be published. Advertisement, in most cases, possibly cannot be with respect to entire application and all information furnished along with it, for it may run into hundreds of pages. Therefore, Rule 30 provides salient features that need be published. However, any person from public is entitled to scrutinize application and all information furnished by the applicant, and to challenge claim made by applicant on grounds available in law to oppose grant of registration. For this purpose, and to empower interested person to effectively raise any objection, it is obvious that complete information is required to be provided by the Registrar. There is no scope for any secrecy or confidentiality in the entire process, and it has to be transparent so as to defeat any false claim of invention or new development of a plant variety. As aforesaid, a complete disclosure is mandated also for the reason that, at the expiry of the statutory protection period, any person should be able to exploit the invention/plaint variety developed by the registration applicant, without having to turn to the said applicant for any other information.

As such scheme of protection of Plant Varieties and Farmers Right Act, 2001, and particularly, Section 84 clearly shows that public interest lies in disclosure of application, all information contained therewith and proceedings undertaken under the aforesaid Act. Thus, in instant case opposition by applicant for grant of entire information would not be proper. (Paras 13, 14, 17)

Cases Referred : Chronological Paras

(2006) 12 SCC 276 8, 18

Sanjay Jain, Senior Adv. along with Anil Dutt, Ms. Ruchi Jain, Md. Namisha Gupta and Sudarshan Singh, for Petitioner; Jatan Singh, CGSC, along with Prashant Ghai, Ram Niwas, Abhishek Saket and Amarjeet Kumar, for Respondent.

Judgement

ORDER :- This writ petition under Article 226 of the Constitution of India has been preferred to assail the order dated 17.11.2011 passed by Mr.Manoj Srivastava, Registrar of Plant Varieties Registry, New Delhi.

2. The background facts are that the petitioner made several applications for registration of its plant varieties under the Protection of Plant Varieties and Farmers' Rights Act, 2001 (the Act), in April 2008. According to the petitioner, these applications were accepted by respondent No. 2, i.e. the Protection of Plant Varieties and Farmers' Rights Authority and advertised by him on 01.12.2008 to invite objections. Respondent No. 3, i.e. Nuziveedu Seeds Pvt. Ltd., filed its notice of objections to a couple of these applications on 26.02.2009. Some of these applications were advertised on 01.06.2009, and thereafter respondent No. 3 filed objections to these applications also on 12.08.2008 and 31.08.2009.

3. It appears that between 2009 and

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September 2010, the pleadings were completed and evidence by way of affidavit were filed by the parties. The respondent No. 2 fixed the hearing of the objections of respondent No. 3 in respect of all the applications on 17.11.2011.

4. On the said date, respondent No. 3 stated before respondent No. 2 authority that despite its application in form PV-33 being pending for a long time, respondent No. 3 had not been provided certified copies of the applications and the proceedings. The said application in form PV-33 had been made for obtaining copies of the entire applications form including photographs and correspondence.

5. The petitioner opposed the grant of the entire information, as aforesaid, by contending that Rule 76 of the Protection of Plant Varieties and Farmers' Rights Rules, 2003 (the Rules), provides for providing of extracts of plant variety application and, therefore, the entire application containing plant details, could not be provided. The Registrar, by the impugned order, brushed aside the aforesaid objection of the petitioner and directed the Registry to furnish the certified copies of the petitioners applications in pursuance of PV 33 in the matters before him, within ten days. The matters are now posted for hearing on 17.02.2012 by the Registrar.

6. The submission of Mr. Sanjay Jain, learned senior counsel for the petitioner, is that along with the applications, the petitioner had entrusted confidential information to respondent No. 2. The grievance of the petitioner is that without looking into the petitioner's objections to the release of the entire information furnished by the petitioner along with its registration applications, the Registrar has directed the provision of the registration applications with all the information and correspondence to respondent No. 3, who is a competitor. The petitioner's apprehension is that by obtaining the said information, which is claimed to be of confidential nature, respondent No. 3 could put further defences by resorting to reverse engineering and by falsely claiming prior user. It is argued by Mr. Jain that the objections of the petitioner to the release of the entire application and information submitted with it and the correspondence exchanged with the registrar, should have been considered and a reasoned order passed by respondent No. 2, which has not been done.

7. Mr. Jain submits that the advertisement of the registration application is made in terms of Section 21 of the aforesaid Act read with Rule 30 of the aforesaid Rules. The requirement of disclosure of information contained in the registration application, by advertisement, is limited only to the information mentioned in Rule 30 (3), which reads as follows:

"30. Advertising of application for registration under section 21.-

x x x x x x x x x x

(3) The contents of such advertisement shall include-

(a) name, passport data and source of parental line or initial variety used to develop the variety in respect of which an application for registration has been made;

(b) description of the variety bringing out its character profile as specified under the DUS test Schedule;

(c) essential characteristics conferring distinctiveness to the variety;

(d) important agronomic and commercial attributes of the variety;

(e) photographs or drawings, if any, of the variety submitted by the applicant; and

(f) claim, if any, on the variety."

8. Mr. Jain submits that the entire information is not published as there could be confidential information filed by the applicant with the Registrar, along with the registration application. Mr. Jain submits that even under the Right to Information Act (RTI Act), the information including commercial confidence, trade secrets or intellectual property, the disclosure of which would hurt the competitive position of a third party, need not be disclosed by the public authority, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. Respondent No. 2 has not addressed the issue whether the disclosure

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of the information, which is claimed to be confidential information by the petitioner, was in larger public interest. It is submitted that the impugned order has been passed mindlessly by respondent No. 2. In support of his submissions, he relies upon the Supreme Court judgment in Nagarjuna Construction Co. Ltd. v. Govt. of Andhra Pradesh and Ors., (2006) 12 SCC 276.

9. Respondents have put in appearance on advance notice. Copies of the petition have been supplied in Court to the learned counsel for the respondents. They have made their respective submissions to oppose the petition. Learned counsel for the respondents have drawn my attention to Section 84 of the Act and Rule 76 of the Rules. These provisions being relevant are reproduced hereinbelow:-

Section 84

"84. Document open to public inspection.- Any person may, on an application to the Authority or the Registrar, as the case may be, and on payment of such fees as may be prescribed, obtain a certified copy of any entry in the Register or any other document in any proceedings under this Act pending before such Authority or Registrar or may inspect such entry or document.

Rule 76

76. Manner of issuing certified copy under section 84.- Any interested person may, under section 84, make an application in Form PV-33 of the First Schedule, along with fee specified in the Second Schedule, to the Authority or Registrar for obtaining certified copies of any entry in the Register, certificates or extracts of plant variety application or other records maintained by the Authority and any document required in any proceedings under this Act and pending before such Authority or Registrar; and he may make a request in similar manner and for similar purpose to inspect such entry or document."

10. The submission of the learned counsel for the respondents is that Section 84 vests an absolute right on any person to obtain from the Authority or the Registrar, on payment of such fees as may be prescribed, certified copy of any entry in the Register or any other document in any proceedings under this Act pending before such Authority or Registrar or may inspect such entry or document. It is argued that Rule 76 similarly provides that an application may be made in Form PV-33 of the First Schedule to the said Rules for obtaining certified copies of any entry in the Register, certificates or extracts of plant variety application or other documents maintained by the Authority and any document required in any proceedings under this Act and pending before such Authority or Registrar. It is argued that the registrar was bound to supply the said information in discharge of his statutory obligation and in pursuance of the respondents statutory rights.

11. Having heard learned counsel for the parties, I am of the view that there is no merit in this petition. The same is liable to be dismissed. In my view, there is a fundamental flaw in the submission of the petitioner that while making an application under the Act to seek registration of a plant variety, the applicant furnishes to the Registrar any confidential information, i.e. any information which the Registrar can hold in confidence. The whole concept of the law of patents, as also of the Act, is that the registration applicant, who claims to have developed a new invention or a new plant variety, may get the same registered so as to claim statutory protection for the period provided under the law. Under the Act, this protection is granted for the period prescribed by section 24(6) read with section 28 of the Act. However, this right/protection is coupled with the obligation that the applicant should make a complete disclosure of his claimed invention/development of plant variety in all its detail, so that at the end of the period of statutory protection the invention/developed plant variety may be produced by any person. In this regard, reference may be made to section 18, which prescribes the form of application for registration of a plant variety. The information required to be furnished by the applicant includes, inter alia,:

"(e) contain a complete passport data of the parental lines from which the variety has been derived along with the geographical

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location in India from where the genetic material has been taken and all such information relating to the contribution, if any, of any farmer, village community, institution or organization in breeding, evolving or developing the variety;

(f) be accompanied by a statement containing a brief description of the variety bringing out its characteristics of novelty, distinctiveness, uniformity and stability as required for registration".

12. Reference may also be made to section 34 of the Act, which lays down the grounds on which a registration may be revoked. The grounds for revocation include:

"(a) that the grant of the certificate of registration has been based on incorrect information furnished by the applicant;

x x x x x x x x

(c) that the breeder did not provide the Registrar with such information, documents or material as required for registration under this Act;

13. The complete disclosure has to be made by the registration seeker/applicant along with the application, and any person wishing to raise an objection is entitled to receive complete information, so that he may raise one or more of the available objections to the registration of the claimed plant variety.

14. The disclosure is made to the Registrar, who then publishes the same and invites objections. The objections are made to the claims of development/invention made in the application, and not merely to the information which may be published. The advertisement, in most cases, possibly cannot be with respect to the entire application and all the information furnished along with it, for it may run into hundreds of pages. Therefore, Rule 30 provides the salient features that need be published. However, any person from the public is entitled to scrutinize the application and all the information furnished by the applicant, and to challenge the claim made by the applicant on the grounds available in law to oppose the grant of registration. For this purpose, and to empower the interested person to effectively raise any objection, it is obvious that the complete information is required to be provided by the Registrar. There is no scope for any secrecy or confidentiality in the entire process, and it has to be transparent so as to defeat any false claim of invention or new development of a plant variety. As aforesaid, a complete disclosure is mandated also for the reason that, at the expiry of the statutory protection period, any person should be able to exploit the invention/plant variety developed by the registration applicant, without having to turn to the said applicant for any other information.

15. The argument of Mr. Jain that because the advertisement is not required to be published of the entire application and the information furnished with it, the Registrar gets vested with discretion to decide, whether, or not to part with the complete information on an application being made in form PV-33 is misplaced. Firstly, the words used in Rule 30 is "shall include". Therefore, the list of information that may be published is not exhaustive. Rule 30 merely lays down the minimum information that should be published. Secondly, this submission is not supported by the plain language of Section 84 and Rule 76. As extracted above, Section 84 is absolute in its terms and the authority or the Registrar are bound to provide certified copies and inspection of any entry in the Register or any document or any proceedings under the Act pending before the such authority or Registrar. The objections raised to an application for registration are certainly "proceedings" under the Act. The only exception found in the Act is contained in section 78 of the Act, which entitles the Authority or the Registrar not to disclose information relating to registration of a variety which is considered prejudicial to the interest of the security of India. Even this provision, it appears, comes into play post registration, and not during the consideration of an application for registration or during the consideration of the objections to a registration application. It is not the petitioner's case that the present case is covered by section 78 of the Act.

16. The submission of Mr. Jain that if the

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complete information is disclosed to the respondent competitor, it may resort to misuse of that information by undertaking reverse engineering process to put up a false claim of prior user is also misplaced. Under section 24(5) of the Act, the Registrar is empowered to issue such directions to protect the interests of a breeder against any abusive act committed by any third party during the period between filing of registration application and decision taken by the authority on such application. Moreover, the application is required to be disposed of in a time bound manner. Reference may be made to section 24(3) in this regard.

17. Reliance placed on Section 8(1)(d) of the RTI Act, 2005 is also misplaced for the couple of reasons. Firstly, the Protection of Plant Varieties and Farmers' Rights Act, 2001 and the Rules framed thereunder are a complete Code in themselves and reference to the provisions of the RTI Act to determine what information can be disclosed with regard to an application for registration of a plant variety is, therefore, misplaced. Secondly, even under Section 8(1)(d) the competent authority is obliged to disclose information which is of commercial confidence or a trade secret or intellectual property, if he is satisfied that larger public interest warrants the disclosure of such information. The scheme of the Protection of Plant Varieties and Farmers' Rights Act, 2001, and particularly, Section 84 clearly shows that public interest lies in disclosure of the applications, all information contained therewith and the proceedings undertaken under the aforesaid Act.

18. Reliance placed on Nagarjuna Construction Co. Ltd. (supra) is also misplaced for the reason that there is no right vested in the petitioner to oppose the application made in Form PV-33. Consequently, there is no obligation to give any notice to, or grant any hearing to the registration applicant before providing the information/documents sought under section 84, read with Rule 76, read with Form PV-33. There is no right vested in the petitioner to be heard on the issue whether or not the said application should be allowed and, if so, to what extent.

19. For all the aforesaid reasons, I find no merit in this petition. The same is, accordingly, dismissed.

Petition dismissed.

AIR 2012 DELHI 66 "Union of India v. Competition Commission of India"

DELHI HIGH COURT

Coram : 1 VIPIN SANGHI, J. ( Single Bench )

Union of India v. Competition Commission of India and Ors.

W. P. (C) No. 993 of 2012, D/- 23 -2 -2012.

(A) Competition Act (12 of 2003), S.19(1), S.3, S.4, S.62 - Contract Act (9 of 1872), S.23 - TRADE COMPETITION - AGREEMENT - Proceedings before competition Commission - Not barred by existence of arbitration agreement between parties - Scope of proceedings and scope of enquiry before Arbitral Tribunal are entirely different.

The Commission is not merely concerned with the aspect of breach of contract or with regard to implementation of the contract, its mandate is to ensure compliance of, inter alia, Ss. 3 and 4 of the Act. The provisions of the Act are in addition to, and not in derogation of, the provisions of any other law for the time being in force.

The scope of the proceedings, and the focus of its investigation and consideration is very different from the scope of an enquiry before an Arbitral Tribunal. An Arbitral Tribunal may not go into aspects of abuse of dominant position by one of the contracting parties. Its focus is to examine the disputes in the light of the contractual clauses. A contract may not be invalid or hit by S. 23 of the Contract Act, but the conduct of one of the parties may still fall foul of the provisions of the Act. Therefore, an informant may not get the desired relief before an Arbitral Tribunal, whose mandate is circumscribed by the contractual terms even if he were to raise issues of breach of Ss. 3 and 4 of the Act before the Arbitral Tribunal. Moreover, the Arbitral Tribunal would neither have the mandate, nor the expertise, nor the wherewithal to conduct an investigation to come up with a report, which may be necessary to decide issues of abuse of dominant position by one of the parties to the contract.

Thus, existence of arbitration agreement, between parties would not bar proceedings before Commission.

AIR 1997 SC 533, and AIR 2004 SC 448, Rel. on. (Paras 14, 16)

(B) Competition Act (12 of 2003), S.2(b), S.54 -

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TRADE COMPETITION - 'Enterprise' - "Activities relatable to sovereign functions of Government" - No notification issued by Central Government in relation to services rendered by Indian Railways - Thus, Central Government did not consider its activities as relatable to sovereign functions - Commercial activities of Indian Railways viz., running railway is capable of being carried out by entities other than State - Therefore, it is not inalienable function of State - 'Indian Railways', thus, covered by definition of enterprise.

AIR 1963 SC 1681, AIR 2000 SC 988, and AIR 2000 SC 3116, Rel. on. (Paras 20, 25)

Cases Referred : Chronological Paras

AIR 2004 SC 448 : 2003 AIR SCW 6873 (Rel. on) 16

AIR 2000 SC 988 : 2000 AIR SCW 649 (Rel. on) 11, 22

AIR 2000 SC 3116 : 2000 AIR SCW 3442 (Rel. on) 324

AIR 1999 SC 2979 : 1999 AIR SCW 2899 7, 23

AIR 1997 SC 533 : 1996 AIR SCW 3852 (Rel. on) 15, 16

AIR 1994 SC 2663 : 1994 AIR SCW 3753 7, 23

AIR 1978 SC 548 7, 23

AIR 1963 SC 1681 (Rel. on) 11, 21

Mohan Parasaran, ASG, Zoheb Hossain, Romil Pathak, Ashwani Bhardwaj, for Petitioners; Dr. A. M. Singhvi, Rajeeve Mehra, Sr. Advocates, Amitabh Kumar, Ms. Divya Chaturvedi, Gautam Shahi, for Respondents.

Judgement

ORDER :- The petitioner-Union of India (UOI) through the Chairman, Railway Board, Ministry of Railways assails the order dated 03.05.2011 passed by the Competition Commission of India (Commission) in Case No. 64/2010, whereby the said Commission has rejected the petitioner's challenge to jurisdiction of the Commission to entertain the complaint on the basis of the information of respondent No. 2 under Section 19(1) of the Competition Act, 2002 (the Act). The Commission has rejected the stand of the petitioner that it is not an 'enterprise' within the definition of the said term as contained in Section 2(h) of the Act. The petitioner also raised an objection to the maintainability of proceedings before the Commission by contending that an arbitration agreement existed between respondent No. 2 and the petitioner and, consequently, the proceedings before the Commission could not proceed and were liable to be referred to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996. This objection too has been rejected by the Commission.

2. Respondent No. 2 approached the Commission under Section 19(1) of the Act, complaining against the Ministry of Railways and the Container Corporation of India (CONCOR), inter alia, alleging contravention of Section 4 of the Act. It is the case of respondent No. 2 that as per the Public Private Partnership (PPP) policy of the Indian Railways and the Permission for Operators to Move Container Trains on Indian Railways Rules, 2006 (CTO rules) a Model Concession Agreement was entered into between the Ministry of Railways and the parent company of the informant respondent No. 2 on 09.05.2008 for operating container trains over rail network in India for domestic traffic as well as for export and import traffic. According to the informant, it had invested Rs.550 crores towards the project undertaken by it. It was alleged by the informant that the Ministry of Railways had abused its dominant position through its various acts/conduct, viz, by increasing charges for various services; by not providing access to infrastructure such as rail terminals, etc; by imposing several restrictions on carrying by the respondent No. 2 of certain categories of goods in alleged contravention of provisions of Section 4 of the Act.

3. The Commission, after perusing the information and the material filed in support thereof, and after considering the submissions made by the informant/respondent No. 2 was of the opinion that there existed a prima-facie case to order the Director General to investigate into the matter and, accordingly, the Commission passed an order to this effect under Section 26(1) of the Act

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on 24.01.2011.

4. The Director General in furtherance of the order took up the investigation into the matter and issued notice to the petitioner. The petitioner then preferred a writ petition before this Court to challenge the said notice by raising various jurisdictional pleas. The writ petition was dismissed by the Court on 23.03.2011 by observing that the petitioner may raise all the pleas urged in the writ petition, including the plea that the Commission has no jurisdiction to issue show-cause notice, before the Commission itself and the said issues shall be decided by the Commission.

5. Thereafter the petitioner moved an application dated 30.03.2011 before the Director General praying, inter alia, that the Commission may decide the issue of jurisdiction first, and to consider the case thereafter on merits. Vide the impugned order it is this application of the petitioner, alongwith an application under Section 8 of the Arbitration and Conciliation Act, 1996 which have been rejected by the Commission.

6. The Commission rejected both the objections of the petitioner. It was held that the issues raised in the proceedings before it relate to the alleged abuse of dominant position by the Railways in contravention of the provisions of the Act, whereas the arbitration agreement covers the contractual obligations incurred and assumed by the parties. It was observed that the scope of the proceedings before the Commission was entirely different from the contractual obligations of the parties. The Commission also relied upon Section 60 of the Act which gives overriding effect to the provisions of the Act and over other laws. Section 62 of the Act provides that the provisions of the Act are in addition to, and not in derogation of, the provisions of any other law. The Commission by relying upon the aforesaid provisions of the Act also disposed of the plea raised by the petitioner regarding the exclusion of the jurisdiction of the Commission founded upon the provisions of the Railways Act, 1989.

7. The Commission thereafter considered the petitioner's submissions with regard to the definition of the expression 'enterprise' contained in Section 2(h) of the Act and the submission that the petitioner is not an 'enterprise' as it is performing a sovereign function in running the Railways. While doing so, the Commission has relied upon the Supreme Court decisions in Bangalore Water Supply and Sewerage Board v. A. Rajappa, (1978) 2 SCC 213 : (AIR 1978 SC 548); N. Nagendra Rao and Co. v. State of A.P., (1994) 6 SCC 205 : (AIR 1994 SC 2663); and Common Cause v. Union of India, (1999) 6 SCC 667 : (AIR 1999 SC 2979). It was held that the petitioner cannot be said to be performing a sovereign function. It is a Government Department engaged in an activity relating to rendering of service. It was, therefore, held that it is an 'enterprise' under Section 2(h) of the Act.

8. The first submission of Mr. Parasaran, learned ASG is that before the Commission, respondent No. 2 sought the setting aside of the rate circular No. 30/2010 and rate circular No. 25/2010; the grant of access to sidings (railway sidings as well as private sidings); to seek a direction to the Ministry of Railway group to discontinue abuse of the alleged dominant position, as aforesaid. Mr. Parasaran submits that the fixation of rates by the aforesaid circulars is done by the Railways in accordance with the provisions of the Railways Act and the Rules framed thereunder. The Railways Act and the Rules framed thereunder gives the power to the petitioner to fix the rates. He submits that the grievance of respondent No. 2 is with regard to the Haulage Charges fixed vide circulars dated 11.10.2006 and 29.10.2010. He also submits that under the statutory rules, namely the Indian Railways (Permission for Operators to Move Container Trains on Indian Railways) Rules, 2006, Haulage Charges are notified and fixed by the Railways from time to time, which the operator is obliged to pay. Consequently, the Haulage Charges are statutorily determined. He submits that these are purely contractual disputes which the respondent No. 2 ought to raise before the arbitrator in terms of the arbitration agreement contained between the parties. It is further submitted that the industrial policy dated 24.07.1991 specifically reserves

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the railway transport industry for the public sector which shows that the railway transport is being undertaken by the petitioner as a sovereign function.

9. Mr. Parasaran also refers to Clause 3.2 of the Concession Agreement dated 09.05.2008 to submit that the Government has the right to specify certain commodities, which ordinarily would be transported by Railway wagons in train load as notified commodities. Article 10.1 of the agreement is also relied upon to submit that the Railway Administration may, from time to time, uniformly on a non-discriminatory basis prescribe the Haulage Charges. It is, therefore, submitted that respondent No. 2 cannot have any grievance in respect of any of the aforesaid aspects and even if respondent No. 2 wishes to agitate any of its claims, the same are clearly referable to arbitration under the arbitration agreement.

10. On the other hand, Dr. Singhvi, learned senior counsel for the respondent No. 2, who appears on caveat, firstly, submits that the present petition is an abuse of the process of this Court inasmuch, as, the impugned order was passed as early as 03.05.2011. Thereafter the Director General was called upon to make a report. The petitioner participated in the investigation proceedings conducted by the Director General till November 2011, when the Director General came up with a detailed investigation report running into about 9,000 pages on 01.11.2011. On 13.12.2011, the hearing took place before the Commission. On 24.01.2012, the petitioner sought time to put in a reply. The Commission has now fixed the dates for final hearing on 28.02.2012 and 29.02.2012. It is at this stage that the petitioner has filed the present petition to stall the hearing before the Commission. He submits that the petitioner could have approached this Court soon after passing of the order dated 03.05.2011, but it has chosen not to do the same. He argues that the petitioner cannot, at this stage, seek to stall the final hearing before the Commission.

11. He further submits that the decision of the Commission is appealable before the Competition Appellate Tribunal under Section 53B of the Act. He also placed reliance on the following decisions in support of his submission that in relation to the Railways itself, the Supreme Court has taken the view that it is not discharging a sovereign function in the running of the Railways:

(i) Union of India and Another v. Sri Ladulal Jain, AIR 1963 SC 1681;

(ii) Chairman, Railway Board and Others v. Chandrima Das (Mrs.) and Others, (2000) 2 SCC 465 : (AIR 2000 SC 988).

12. Having heard learned counsel for the parties, perused the impugned order and the decisions cited before me, I am of the view that there is no merit in this petition. The only issues which need consideration before this Court are, firstly, whether the existence of an arbitration agreement between the parties is a bar to the maintainability of the information and the proceedings arising therefrom before the Commission; and, secondly, whether the petitioner is an 'enterprise' within the meaning of the expression as defined in Section 2(h) of the Act.

13. The Commission has been set up with special focus "to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto". (See the Preamble of the Act)

14. The Commission is not merely concerned with the aspect of breach of contract or with regard to implementation of the contract, its mandate is to ensure compliance of, inter alia, Sections 3 and 4 of the Act. The provisions of the Act are in addition to, and not in derogation of, the provisions of any other law for the time being in force (Section 62). This provision is para materia with Section 3 of the Consumer Protection Act, which also states that the provisions of the Consumer Protection Act shall be in addition to, and not in derogation of any other provisions of law for the time being in force.

15. A similar objection was raised to maintainability of the consumer claim under the Consumer Protection Act on the ground that

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an arbitration agreement existed between the parties, and that the disputes arising out of a contract were referable to arbitration. The Supreme Court rejected the said argument in the face of Section 3 of the Consumer Protection Act in Fair Air Engineers (P) Ltd. v. N.K. Modi, (1996) 6 SCC 385 : (AIR 1997 SC533), by observing as follows:

"It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words 'in derogation of the provisions of any other law for the time being in force' would be given proper meaning and effect and if the compliant is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the Contract Act, 1872 and the consequential remedy available under Section 9 of the Code of Civil Procedure i.e. to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy."

16. Fair Air Engineers (AIR 1997 SC 533) (supra) has also been referred to and relied upon by the Supreme Court in its later decision in Secretary, Thirumurugan Co-operative Agricultural Credit Society v. M. Lalitha (Dead) through LRs and others, (2004) 1 SCC 305 : (AIR 2004 SC 448). The scope of the proceedings, and the focus of its investigation and consideration is very different from the scope of an enquiry before an Arbitral Tribunal. An Arbitral Tribunal may not go into aspects of abuse of dominant position by one of the contracting parties. Its focus is to examine the disputes in the light of the contractual clauses. A contract may not be invalid or hit by Section 23 of the Contract Act, but the conduct of one of the parties may still fall foul of the provisions of the Act. Therefore, an informant may not get the desired relief before an Arbitral Tribunal, whose mandate is circumscribed by the contractual terms even if he were to raise issues of breach of Sections 3 and 4 of the Act before the Arbitral Tribunal. Moreover, the Arbitral Tribunal would neither have the mandate, nor the expertise, nor the wherewithal to conduct an investigation to come up with a report, which may be necessary to decide issues of abuse of dominant position by one of the parties to the contract. Therefore, the submission of learned ASG that the proceedings before the Commission are not maintainable, founded upon the arbitration agreement has no merit and is rejected as the said observations of the Supreme Court apply with equal force in relation to the provisions of the Competition Act.

17. Before I consider the submissions of the learned ASG in relation to the meaning of the expression 'enterprise' contained in Section 2(h) of the Act, I may note that by referring to the various reliefs sought by respondent No. 2 before the Commission; the clauses of the agreement between the parties and by reference to the statutory rules aforesaid, the petitioner is confusing the issue arising for determination, i.e., whether the petitioner is an 'enterprise' under Sec. 2(h) of the Act. These submissions of Mr. Parasaran, really, touch upon the merit of the complaint and proceedings before the Commission. They do not have a bearing on the issue of jurisdiction of the Commission to conduct an investigation and deal with the information furnished by respondent No. 2. These are all defences that the petitioner may raise before the Commission in support of its defence that it is not abusing its position of dominance or that its agreement with respondent No. 2 is not in contravention of the provisions of Section 3(1) of the Act.

18. Section 2(h) of the Act defines the expression 'enterprise' in the following manner:

"2(h) "enterprise" means a person or a department of the Government who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of

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acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space."

19. It is not the petitioner's contention that it is not a department of the Government. It is also not the petitioner's contention that it is not engaged in an activity relating to provision of services, inter alia, of transportation of goods by rail road. Therefore, unless the petitioner's aforesaid activity can be classified as "relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space", it cannot avoid being classified as an 'enterprise' under Section 2(h) of the Act. If it is an 'enterprise' under Section 2(h) of the Act, the Commission gets jurisdiction under Chapter IV of the Act.

20. The Commission has taken note of Section 54 of the Act, which provides that the Central Government may, by notification, exempt from the application of the Act, or any provision thereof, and for such period as it may specify in such notification, inter alia, "any enterprise which performs a sovereign function on behalf of the Central Government or a State Government" (See Section 54(c)). Pertinently, no notification has been issued by the Central Government in relation to the services rendered by the Indian Railways. Even in relation to an enterprise which is engaged in activity, including an activity relatable to the sovereign function of the Government, the Central Government may grant exemption only in respect of activity relatable to sovereign functions. Therefore, an enterprise may perform some sovereign functions, while other functions performed by it, and the activities undertaken by it, may not refer to sovereign functions. The exemption under Section 54 could be granted in relation to the activities relatable to sovereign functions of the Government, and not in relation to all the activities of such an enterprise. Pertinently, there is no notification issued under Section 54 either under Clause (c), or under the proviso. This clearly shows that the Central Government does not consider any of the activities of the petitioner as relatable to sovereign functions.

21. Dr. Singhvi has pointed out and, in my view, rightly so that the Supreme Court has clearly held in Sri Ladulal Jain (AIR 1963 SC 1681) (supra) that when the Government runs the Railways for providing quick and cheap transport for people and goods and for strategic reasons, it cannot be said that it is engaged in an activity of the State as a sovereign body. Paragraphs 10 and 11 from this decision read as follows:

"10. The fact that the Government runs the railways for providing quick and cheap transport for the people and goods and for strategic reasons will not convert what amounts to carrying on of a business into an activity of the State as a sovereign body.

11. Article 298 of the Constitution provides that the executive power of the Union and of each State shall extend to the carrying on of any trade or business and Cl. (6) of Art. 19 provides that nothing in sub-clause (g) of clause (1) of that Article shall prevent the State from making any law relating to the carrying on by the State or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise. These provisions clearly indicate that the State can carry on business and can even exclude citizens completely or partially from carrying on that business. Running of railways is a business. That is not denied. Private companies and individuals carried on the business of running railways, prior to the State taking them over. The only question then is whether the running of railways, ceases to be a business when they are run by Government. There appears to be no good reason to hold that it is so. It is the nature

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of the activity which defines its character. Running of railways is such an activity which comes within the expression 'business'. The fact as to who runs it and with what motive cannot affect it."

22. In Chandrima Das : (AIR 2000 SC 988) (supra), the Supreme Court held that the theory of sovereign power, which was propounded in Kasturi Lal Ralia Ram Jain v. State of U.P., AIR 1965 SC 1039, has yielded to new theories and is no longer available in a welfare State. Functions of the Government in a welfare State are manifold, all of which cannot be said to be the activities relating to exercise of sovereign power. The functions of the State not only relate to the functions of the country or the administration of justice (which are recognized as sovereign functions), but they extend to many other spheres as, for example, education, commerce, social, economic and political activities. These activities cannot be said to be related to sovereign power. The running of Railways was held to be a commercial activity. The Supreme Court expressly rejected the reliance placed on the decision in Kasturi Lal (supra).

23. The decisions relied upon by the Commission are also germane. I also consider it appropriate to quote paras 26 to 30 of the impugned order, which, in my view, correctly analyse the legal position. The same read as follows:

"26. In Bangalore Water Supply and Sewerage Board v. A. Rajappa, (1978) 2 SCC 213 : (AIR 1978 SC 548), a seven Judges Bench of the Supreme Court while interpreting the term 'industry' as defined in Section 2(j) of the Industrial Disputes Act, 1947 exempted the sovereign functions from the ambit of industrial law. However, the Court confined only such sovereign functions outside the purview of law which can be termed strictly as constitutional functions of the three wings of the State, viz., executive, legislative and judiciary and not the welfare activities or economic adventures undertaken by Government or statutory bodies.

27. In N. Nagendra Rao and Co. v. State of A.P., (1994) 6 SCC 205 : (AIR 1994 SC 2663) the Supreme Court also approached the issue in the similar manner by observing that in welfare State, functions of the State are not only defence of the country or administration of justice or maintenance of law and order but it extends to regulating and controlling the activities of people in almost every sphere - educational, commercial, social, economic and political etc. It further observed that demarcating line between sovereign and non-sovereign powers for which no rational basis survives has largely disappeared. And thus, the court observed that barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a constitutional government, the State cannot claim any immunity.

28. Recently, the Supreme Court in Common Cause v. Union of India, (1999) 6 SCC 667 : (AIR 1999 SC 2979) also quoted with approval its aforesaid view on the issue.

29. From the analysis of case law on the question as to what constitutes 'sovereign' or 'non-sovereign' function, it appears that the courts have taken a very narrow view of the term 'sovereign function' by confining the same to strict constitutional functions of the three wings of the State. Welfare activities, commercial activities and economic adventures have been kept outside the purview of the term 'sovereign functions'.

30. In the premises, it is held that only primary, inalienable and non-delegable functions of a constitutional Government should qualify for exemption within the meaning of 'sovereign functions. of the Government under section 2(h) of the Competition Act, 2002. Welfare, commercial and economic activities, therefore, are not covered within the meaning of 'sovereign functions' and the State while discharging such functions is as much amenable to the jurisdiction of competition regulator as any other private entity discharging such functions."

24. I may also refer to the decision of the Supreme Court in Agricultural Produce Market Committee v. Ashok Harikuni and another, (2000) 8 SCC 61 : (AIR 2000 SC 3116). The Supreme Court held that sovereign functions in the new sense may have very wide ramifications, but essentially sovereign functions are primarily inalienable functions which only the State could exercise. In para 32, the

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Supreme Court held as follows:

"So, sovereign function in the new sense may have very wide ramification but essentially sovereign functions are primary inalienable functions which only State could exercise. Thus, various functions of the State, may be ramifications of `sovereignty' but they all cannot be construed as primary inalienable functions. Broadly it is taxation, eminent domain and police power which covers its field. It may cover its legislative functions, administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon. So, the dichotomy between sovereign and non-sovereign function could be found by finding which of the functions of the State could be undertaken by any private person or body. The one which could be undertaken cannot be sovereign function. In a given case even in subject on which the State has the monopoly may also be non-sovereign in nature. Mere dealing in subject of monopoly of the State would not make any such enterprise sovereign in nature. Absence of profit making or mere quid pro would also not make such enterprise to be outside the ambit of "industry" as also in State of Bombay and Ors. case (supra)."

25. The petitioner has entered into a Concession Agreement under its PPP policy. It is, therefore, clear that respondent No. 2 is performing a commercial activity and rendering services for a charge, which, prior to the entering into the aforesaid agreement with the petitioner, was being performed by the petitioner. The petitioner is also carrying out an activity, viz. running the railways, which also has a commercial angle and is capable of being carried out by entities other than the State, as is the case in various other developed countries. It is, therefore, not an inalienable function of the State. Therefore, the submission of the petitioner that it is not covered by the definition of 'enterprise', has no merit and is rejected.

26. Accordingly, the present petition is dismissed leaving the parties to bear their respective costs.

Petition dismissed.

AIR 2012 PATNA 55 "Lallan Prasad Singh v. State of Bihar"

PATNA HIGH COURT

Coram : 1 AHSANUDDIN AMANULLAH, J. ( Single Bench )

Lallan Prasad Singh v. State of Bihar and Ors.

Civil Writ Jurisdiction Case No. 12960 of 2006, D/- 8 -11 -2011.

Electricity Act (36 of 2003), S.146 - Constitution of India, Art.226 - ELECTRICITY - DOCTRINES - Electrocution - Compensation - Entitlement to - Death caused due to snapping of electric wire - Wire which fell was of high tension 11 K.V. and height being 36 feet from ground - Hence, no question of contributory negligence of deceased - Doctrine of res ipsa loquitor applicable - Claimant cannot be relegated to forum where he has to strictly prove case on facts in proper proceeding after adducing evidence - Claimant held entitled to grant of compensation under Art. 226.

Doctrines - Doctrine of res ipsa loquitur - Applicability.

AIR 2005 SC 3971, AIR 2005 SC 3180, Disting.

2004 (4) BBCJ 230, Rel. on. (Paras 10, 11, 16)

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Cases Referred : Chronological Paras

2011 (3) Pat LJR 408 5

2010 (1) Pat LJR 986 5

2006 (3) BBCJ 192 5

AIR 2005 SC 3180 : 2005 AIR SCW 3685 (Distg.) 8, 15

AIR 2005 SC 3971 : 2005 AIR SCW 3715 (Distg.) 8

2004 (4) BBCJ 230 (Rel. on) 5, 13

2004 (4) Pat LJR 307 5

2004 (2) Pat LJR 525 5

AIR 2002 SC 551 : 2002 AIR SCW 129 5

AIR 1999 SC 3412 : 1999 AIR SCW 3383 8, 14, 15

Bindhyachal Singh, Prashant Sinha, Umesh Kumar, Sushil Kumar Singh, for Petitioner; (GP 18), Vinay Kirti Singh, for Respondent.

Judgement

ORDER :- Heard Mr. Bindhyachal Singh, learned counsel for the petitioner and Mr. Vinay Kirti Singh learned counsel appearing for the Bihar State Electricity Board (hereinafter referred to as the 'Board') i.e., respondents No. 4, 5 and 6 as well as learned A.C. to G.P. 20 for respondents No. 1 to 3.

2. The present writ application has been filed for seeking compensation of Rs. 5 lacs along with 18% interest to the petitioner on account of Electrocution of the father of the petitioner resulting in death due to snapping of electric wire.

3. The brief facts relevant for the disposal of the present writ petition are as under.

4. The petitioner along with his father were returning with agricultural produce on their bicycle and on their way, it is alleged that high tension electric wire running overhead fell down upon the petitioner as a result of which the bundle of dried maize plants being carried by the petitioner's father got burnt, he fell down on the ground and was electrocuted on 7.10.2003. This was also reported in the daily newspaper. The F.I.R. was lodged to this effect and it was clearly stated that the death was due to electrocution and upon the villagers informing the local officials of the electric sub-station, the line was cut before the body could be removed. U.D. case was registered and final form was submitted in which it was stated that death had been due to electrocution as a result of high wire tension snapping and falling on the father of the petitioner. The inquest report as well as post mortem report also states death due to electrocution and the body and skin being burnt substantially. Learned counsel for the petitioner submits that the petitioner, who is the son of the deceased, is entitled to compensation since the high tension wire of the respondent Board fell upon his father causing his death and the law being well settled in these matters. According to him, the respondent Board cannot deny the liability of compensation to the petitioner for such an incident. He emphasized the fact that death due to electrocution has not been denied and also the fact that it is nobody's case that death resulted from the negligence on the part of the deceased or that there was no negligence on the part of the respondent Board. He has submitted that as per the various decisions of the Courts it has been held that where the facts speak for themselves, the strict requirement of proof by leading evidence etc. is not required and the Courts can proceed to pass order on the basis of such apparent facts as emanating from the facts and the records. In fact the doctrine of 'res ipsa loquitur' is applicable in the facts and circumstances of the present case.

5. Learned counsel for the petitioner has relied on various decisions including that in the case of -

(i) Ramawati Kuer v. The State of Bihar and Ors. reported in 2004 (4) BBCJ 230 especially paragraphs No. 10, 11, 12 and 13 of the same. (Also reported in 2004 (4) PLJR 307)

(ii) Ram Swaroop Yadav v. The Bihar State Electricity Board and Ors. reported in 2004 (2) PLJR 525 the relevant being at paragraphs No. 6, 7 and 8. The said decision has been affirmed by the decision reported in 2006 (3) BBCJ 192 (Bihar State Electricity Board v. Ramswarup Yadav).

(iii) Dr. Vishwanath Prasad v. The State of Bihar and Ors. reported in 2010(1) PLJR 986.

(iv) Md. Kashim Sah and Ors. v. The State of Bihar and Ors. reported in 2011 (3) PLJR 408.

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(v) M. P. Electricity Board v. Shail Kumari and Ors. reported in (2002) 2 SCC 162 : (AIR 2002 SC 551), relevant being at paragraph No. 7 (Also reported in AIR 2002 SC 551) : (2002 AIR SCW 129).

6. Learned counsel submits that in view of the aforesaid decision as well as the present facts of the case the respondent Board cannot shirk its responsibility from paying compensation on account of the death of the father of the petitioner due to electrocution.

7. Learned counsel for the respondents on the other hand has resisted the claim. According to him the writ petition is not maintainable since it has been filed after much delay and thus there are laches on the part of the petitioner in approaching the Court and on this ground alone the writ petition ought to be dismissed. Secondly, he submits that negligence on the part of the respondent Board has not been proved and this being the major factor for deciding such cases, this Court ought not to pass any order in favour of the petitioner. He also submits that the income of the deceased has not been proved and thus it is difficult for this Court to quantify any amount which can be payable to the petitioner if otherwise proved and found payable in accordance with law. Learned counsel has drawn the attention of this Court to Section 166 of the Motor Vehicles Act (hereinafter referred to as the 'M.V. Act') which provides that any person who is either himself aggrieved by any accident or loss can move for compensation or it can be filed by the legal representative or any one of them provided the other legal representatives are also made parties in the proceedings. He states that only one major son of the deceased has filed the writ petition and thus, due to lack of compliance of the statutory requirement under the M.V. Act which is relevant for the purposes for deciding compensation, the writ petition is not maintainable.

8. Learned counsel for the respondents has also drawn the attention of this Court to Section 161 of the Electricity Act, 2003 (hereinafter referred to as the 'Act') which in fact says that in any such incident or accident a person has to inform the Electrical Inspector who shall conduct an enquiry and then give a report including the issue as to whether proper care was taken for maintaining the safety of transmission line which affects the general public at large. According to him, in view of the non compliance of any of this provisions on the part of the petitioner, the writ petition should not be entertained and should be rejected outright. He has drawn attention of this Court to various orders/judgments which are noted hereinbelow.

(i) Chairman, Grid Corporation of Orissa Ltd (GRIDCO) and Ors. v. Sukamani Das and Ors., reported in (1999) 7 SCC 298 the relevant being at paragraph No. 6. (Also reported in AIR 1999 SC 3412) : (1999 AIR SCW 3383).

(ii) SDO, Grid Corporation of Orissa Ltd. and Ors. v. Timudu Oram reported in (2005) 6 SCC 156 : (AIR 2005 SC 3971), the relevant being at paragraph No. 6.

(iii) Jacob Mathew v. State of Punjab and Anr. reported in 2005 (4) PLJR (SC) 213 : (AIR 2005 SC 3180), the relevant being at paragraphs No. 10 and 28.

(iv) Sheet Basant Pashwan v. The State of Bihar and Ors., order dated 15.5.2008. In the said case the facts were that there was a complaint by the local people that the wire was old and damaged and also that the deceased had come in contact with the line/wire and died. The Court felt that because it was in dispute whether there was negligence on the part of the Board in not maintaining the line, which was even admitted by the petitioner, in as much as that the local people had made a complaint, therefore in the absence of appropriate adjudication proving negligence on the part of the Electricity Board, no order for compensation should be passed. The facts being materially different from the present case, the said decision does not come to the aid of the respondents. This decision not being reported, learned counsel for the respondents has placed on record a photo copy of the same. Let it be kept on record.

9. The case was filed on 30.10.2006 and was taken up on 6-7-2011, 7-7-2011, 26-7-2011, 18-8-2011, 22-9-2011 and 13-10-2011. In spite of several indulgence no counter affidavit has been filed. The case was heard at

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length on 4.11.2011 and was posted today for orders. However, this Court had given indulgence that learned counsel may assist if there was anything relevant before the Court passed order on 8.11.2011, that is, today. During the course of argument learned counsel for the respondent Board sought permission to file counter affidavit stating that he has already served a copy on the learned counsel for the petitioner. This Court, in view of the past indulgence and the matter having been finally heard on 4.11.2011 and being posted only for pronouncement of order today, was not inclined to accept the show cause. However, in view of the fact that it has already been affidavited and copy served, this Court for the ends of justice deems it proper to take into consideration such counter affidavit filed on behalf of the respondent Board. The counter affidavit in substance only reiterates the submissions made by learned counsel for the Bihar State Electricity Board in as much as it has tried to put the onus on the petitioner that certain formalities as required under law had not been done and specific findings of negligence was not there and also that all legal representatives of the deceased were not on record, and that the language of the F.I.R. and the final form also did not prove that death was due to negligence on the part of the respondent Board.

10. Considering the facts and circumstances of this case, this Court deems it proper to deal with the counter affidavit first. Though the counter affidavit has tried to put the onus on the petitioner but in the pleadings and the statements made in the counter affidavit, the fact of petitioner's father dying due to snapping of high tension electric wire resulting in electrocution has not been denied. It has only been stated that negligence on the part of the respondent Board has not been proved, but there is not even a whisper that in fact there was no negligence on their part or the death was due to the own negligent act on the part of the deceased. Minor technical points are sought to be scored by pointing out certain infirmities and inference which are sought to be drawn out of the language of the F.I.R. as well as the final form submitted by the police.

11. Learned counsel for the petitioner, by way of reply, has submitted that the point of all legal representatives not being on record is a very fine technical objection not worth even considering in the present case, since petitioner is the eldest major son of the deceased and as per Hindu Law, he is karta of the family and in this capacity has filed the writ petition and thus no fault can be attributed on this account affecting the maintainability of the writ petition. However, he submits that in view of the nature of the objection raised, this Court can take care of the right of all the legal representatives or heirs of the deceased who may be entitled to any amount awarded by way of compensation which the Court may direct which can be distributed as per the share among the claimants in accordance with law. He submits that it is not the case of the respondents that the petitioner's deceased father was responsible for his death as well as the fact that the records or the investigation neither suggests nor proves any such act either on the part of the deceased or the petitioner that would disentitle them from their right to compensation in the present case. He submits that as per the arguments advanced, it is common ground between the parties that the wire which fell was of high tension 11. K.V. and the height of such wire is 36 feet from the ground. Thus there cannot be any contributory negligence on the part of the deceased or the petitioner which could have resulted in the snapping of the wire like hitting it with the bundle of maize plants being carried by the petitioner and his father on the fateful day.

12. Considering the facts and circumstances of the case, this Court feels that at least the fact of the deceased having died of electrocution as a result of snapping of high voltage electric wire has not been controverted or proved otherwise. Coming to the aspect whether in view of this admitted position the petitioner would be entitled to any compensation by the writ Court under Article 226 of the Constitution, this Court is inclined to follow the judgment/order rendered by the Courts which support the case of the petitioner.

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13. By a judgment referred to and relied upon by the petitioner, specially with regard to the position that where the facts are so apparent and speak for themselves, there cannot be any question of the petitioner being relegated to the forum where he has to strictly prove the case on facts in a proper proceeding after adducing evidence. This Court is also inclined to accept the ratio of the decision in the case of Ramawati Kuer (supra) for the reason that the facts of the said case are quite similar to the facts of the present case which is apparent from paragraph 11 which is quoted hereinbelow :-

"11. I have already observed that the fact of the death and snapping of the wire have not been denied. The respondents have admitted that after receiving the information they stopped the supply. They have not informed the Court that as to what led to snapping of the wire. They have submitted that in a routing course the wire would not ordinary snap or fall. If that be so then they were required to give the cause which led to fall of the wire. In the opinion of this Court principles of res ipsa loquitur would apply to the facts of this case and I must hold that because of the negligence on the part of the Board the wire snapped, it fell on Shri Ram Awadh Singh and as a result of fall of wire Shri Ram Awadh Singh died of electrocution".

14. In view of the fact that the Court is inclined to accept the proposition of law as propounded in the decisions relied upon by learned counsel for the petitioner, it is obligatory on the part of this Court to state the reasons why the decisions relied upon by the learned counsel for the respondents are being distinguished. The first decision cited by learned counsel for the respondents in the case of Chairman, Grid Corporation of Orissa Ltd., (AIR 1999 SC 3412) (supra), the facts were basically different in as much as the Corporation had denied its liability on the ground that death had not occurred as a result of its negligence but due to an act of God or of acts of some other persons. There was a specific case that because of thunderbolts and lightning the line had snapped even though there was proper guarding and thus there was no negligence on the part of the Corporation and compensation ought not to have been allowed by the High Court in exercise of its power under Article 226 of the Constitution without the factual aspects being decided by the Civil Court. Thus, the order of that case would not apply to the present case since it has to be seen in context of the admitted position as well as in the facts and circumstances of the individual case.

15. The facts in the other decision in the case of SDO, Grid Corporation of Orissa Ltd., (AIR 1999 SC 3412) (supra) are more or less similar in the sense that liability was denied on the ground that the death has not occurred as a result of negligence on the part of the Corporation but because of the negligence of the respondents themselves or of a act of God or because of an act of some other persons. In the present case there is neither such counter attack holding that the deceased himself is responsible for his death nor is there in clear terms denial of any liability arising out of any Act of omission or commission on the part of the Board. The last decision relied upon by learned counsel for the respondents in the case of Jacob Mathew, (AIR 2005 SC 3180) (supra), the facts are materially different as it relates to the case of a medical practitioner being at the receiving end for having committed negligence in discharge of his professional duty. Further, in the said case the decision was with regard to holding the respondents liable for criminal negligence as well as the negligence under civil law by professionals under the law of tort and upon contest it was ordered that no liability can be fastened without there being proper adjudication with the parties being given an opportunity to prove their cases. The negligence in such cases has to be more strictly proved. Learned counsel has relied on paragraph Nos. 10, 11 and 28 which deals with the components of negligence which have been clearly expounded in paragraph No. 11 having three components. He has tried to emphasis that since the parameters for deciding negligence having been laid down, the ratio of that decision would

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apply in the present case also. This Court is not inclined to accept such submission of learned counsel for the respondents for the reason that the Court is not deciding the factum of negligence on the part of the Board especially in a case like the present when there has been no specific denial that there was no negligence on the part of the Board or there was negligence on the part of the deceased. The only stand in the counter affidavit is that the petitioner has not been able to prove that there was negligence on the part of the Board. Even otherwise, it is not in dispute that in matters where the facts are seriously contested or there may be grey areas like the one before the Hon'ble Apex Court where a medical practitioner was alleged to have been negligent in treatment, the Hon'ble Apex Court held that mere fact that the patient did not respond or sometime the unfortunate happened, would not by itself give cause to the affected party or the victim against the said medical practitioner unless it is strictly proved. In the present case this not being the position, the Judgment of the Hon'ble Apex Court is not of any help to the respondents.

16. In view of the discussions made hereinabove and also taking cue from the decisions relied upon by learned counsel for the petitioner where compensation has been awarded and quantified, a direction is issued to the respondents to pay a sum of Rs. 3,00,000/- (Rupees three lakhs) to the petitioner. However, in view of the objection raised by learned counsel for the respondents and also in view of the stand taken by learned counsel for the petitioner, the said amount would be released after the Board satisfies itself that the formalities with regard to all the legal representatives coming before the Board and either agreeing to payment to the petitioner or any other person or with a formula as to how the said amount should be distributed, which the Board shall take into account and make payment accordingly.

17. However, the Board may take a bond from the person/persons receiving the amounts that if any dispute arises in future they shall be liable to make good the amount which the Electricity Board may have to pay to any other person or persons on account of such compensation for the deceased.

18. This Court also grants liberty to the petitioner to move before the Court of competent jurisdiction for any enhancement of compensation which according to him would be more appropriate in the present case. Since the award of compensation has been decided by this Court today, the limitation for deciding any compensation would start from today and the said Court would only decide whether the amount should be enhanced and not whether it is payable. In that view of the matter, the Court concerned shall proceed on the merits with regard to the quantification of compensation amount, if the petitioner or any of the legal representatives feel that it is not in accordance with the amount which is legally due to them.

19. The writ petition is accordingly allowed to the extent indicated above. The said exercise should be taken to its logical conclusion by making payment within three months from the date of receipt/production of a copy of this order upon the Secretary of the Bihar State Electricity Board.

Order accordingly.

AIR 2012 PUNJAB AND HARYANA 30 "Balak Gases Oxygen Gas Plant, M/s. v. State of Punjab"

PUNJAB & HARYANA HIGH COURT

Coram : 1 MEHINDER SINGH SULLAR, J. ( Single Bench )

M/s. Balak Gases Oxygen Gas Plant and Anr. v. State of Punjab and Ors.

C. W. P. No. 19007 of 2002, 13452, 15756 of 2006, 3119, 11332, 14024 of 2007, 15822 of 2008 and etc.etc., D/- 20 -5 -2011.

Evidence Act (1 of 1872), S.115 - Constitution of India, Art.14 - PROMISSORY ESTOPPEL -

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Doctrine of promissory estoppel - Promissory estoppel against Government Order - Huge investments were made by industrialists based on promises made through industrial policy - Later retracting back from promises made and changing scheme, that would result in heavy loss to industrialist who made huge investments because of Government's promise, improper.

In the instant case deeply believing the promises of the State to be true and sincere and in pursuance of the indicated Industrial Policies coupled with the relevant rules announced by the Government of Punjab, the industrialists set up their industrial units, strictly in consonance with the Indsutrial Policies and spent huge amounts for establishing the industry of undertaking modernization and up-gradation. The State of Punjab did not fulfill and has back tracked from the promise to give the pointed concessions/incentives on one reason or the other and did not release the amounts of benefits despite letter/representations.

The offer of subsidy is a manner of providing incentives for such investment and an entrepreneur that assumes a business risk in investment, is entitled to believe that the scheme is not an empty promise but rooted on a sound Government policy and is squarely covered under the regime of promissory estoppel of the industrial units. The State could not legally be permitted to completely defeat the rights of petitioner-industries by constant re-appraisal of the scheme retrospectively, that too by issuing administrative instructions of any kind and by its officers by passing the impugned orders. Even in case of those industries, which after several years of operation has perforce to close its business by the only reason that assured subsidy did not reach him or any other valid ground beyond their control. A businessman, who makes investment and obtains loans from the market or financial institution for establishment of the industry, is at least entitled to assume that a portion of debt could be redressed from the amount of subsidy/incentive and benefits as promised by the State emanating from the Industrial Policies and relevant rules framed thereunder.

State authorities cannot be pemitted to keep on changing the eligibility criteria for the benefit emitting from the scheme, which was primarily intended to promote the industrial growth in the specified category of area and industry in general and production and employment in border area in particular. The entitlement of petitioner-industries to claim the incentives and subsidies under the scheme has not been denied and was sanctioned, but the respondents did not released the amount for one or the other untenable grounds in the garb of impugned orders, which are entirely beyond the scope and jurisdiction of the original Industrial Policies and relevant rules framed thereunder. In the same manner, a welfare State cannot possibly be heard to say that the amount was not released on account of paucity of funds with it.

Hence any subsequent administrative instructions/guidelines issued by the State or any orders passed by its officers, which have no sancity of law and legal force, are illegal, contrary to the Industrial Policies and indicated relevant rules, without jurisdiction and inoperative on the rights of the petitioner-Industries. The State cannot deny the release of the amount of incentive/subsidies to them (petitioner-Industries) in this relevant connection.

Hence it can be concluded that State and its instrumentality/officers are legally duty- bound to fulfil their promises and are liable to release the indicated benefits to the petitioner-Industries on the principle of promissory estoppel, which is deeply applicable to the facts and in the special circumstances. (Paras 10, 39, 41, 42, 44)

Cases Referred : Chronological Paras

AIR 2008 SC 693 : 2007 AIR SCW 7814 17, 29

AIR 1988 SC 1247 17

AIR 1982 P and H 439 (FB) 38

AIR 1980 SC 768 37

AIR 1979 SC 621 18, 23, 24, 29

AIR 1968 SC 718 28

J. S. Toor, Vikas Bahl, N. K. Jain, Rajesh Kumar Girdhar, Sanjiv Gupta, Sudhir Mittal, P. S. Khurana, Harish Chhabra, Vibhav Jain, Ms. Manmeet Kaur, for Petitioners; Rupinder

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Khosla, Addl. Advocate General, Palwinder Singh, Sr. DAG, Inderjeet Sharma, for Respondents.

Judgement

ORDER :- What cannot possibly be disputed that all the States, including the State of Punjab, are presumed to be the welfare States, by the people, of the people and for the people, in the regime and democratic set up, as enshrined in the Constitution of India. Article 154 postulates that the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution. Article 162 further posits that the executive power of a State shall extend to the matters with respect to which the Legislature of the State has the power to make laws.

2. Perhaps, in exercise of these powers, conferred by the Constitution, the Governor of Punjab was pleased to formulate the new Industrial Policies from time to time, inter alia, in order to, strengthen the economy, attract fresh investment, further boost the growth of industry, increase annual present industrial growth rate from 8% to 12% in the next two years, to increase the present share of industry in Gross Domestic Product (GDP) from 17% to 25% in the next five years and to divert 15% of the present rural population to manufacturing and related occupations through rapid industrialization in the State of Punjab.

3. Not only that, the object of the publication of Industrial Policies was also to diminish the stress of agricultural sector, which predominates the State of Punjab being predominantly an agricultural State, occupying once a pride place in India. Subsequently, the agriculture sector witnessed the heavy losses, debt and stress on the farmers. So, with an eye to meet the hopes of the people and to engage them in a variety of larger, medium and small scale industrial units, based on agricultural produce to generate the required GDP, the State notified the different Industrial Policies, promising to grant various incentives, concessions, subsidies, interest, tax exemptions and other benefits indicated therein, such as:

a) Scheme of interest subsidy @ 5% of the total interest payable on the term loan from financial institutions/banks for industrial units in small scale sector, which would be sanctioned along with investment incentive on the basis of certificates to be issued by the financial institutions/banks after the units have gone into production. However, units have the option to avail either the interest subsidy or the sales tax concession.

b) To encourage the growth of existing industrial units, benefit of investment incentive and sales tax concession shall be allowed on expansion, provided the Fixed Capital Investment (FCI) is increased at least by 50% or the installed capacity as recorded in the industrial licence/certificate of the Department of Industries is increased minimum by 50%.

c) The investment incentive (capital subsidy) shall be available only in case of small scale units graduating to medium/large category as mentioned in (vii) above and for new units in the small scale sector and for large and medium units in 'A' category incentive areas.

d) With a view to encourage the rehabilitation of sick industrial units purchased by entrepreneurs from the Punjab Financial Corporation or other Corporations or agencies of the Central or State Government, the same shall be treated as new units for the purpose of incentives provided they are located in the areas eligible for incentives. Following incentives shall be provided to such units:

i) The investment incentive to the extent the same has not been availed of earlier by the original promoter. This incentive would also be available on new machinery purchased by the new entrepreneurs.

ii) Sales Tax incentive for the remaining period which has not been availed of by the original promoter. However, the maximum prescribed limit on the FCI (including new investment) shall be adhered to.

iii) These incentives shall be as admissible in 'B' category under 1992 package of incentives.

Likewise, some other concessions were also announced as described therein in the

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Industrial Policies of 1996 and 2003. In order to implement these Policies, the State of Punjab framed the relevant Rules in this respect.

4. The petitioner-Industries claimed that believing the promises of the State Government, flowing from the Industrial Policies and relevant Rules, to be true, they set up their respective industrial units by spending huge amounts and started production as per the terms and conditions of the policies. The State of Punjab did not fulfill its promises and failed to make the payment, in lieu of various kinds of concessions, interest and tax exemptions, incentives, subsidies and other benefits on untenable grounds, leaving them in lurch.

5. The petitioner-Industries did not feel satisfied with the action of the respondents and preferred the present writ petitions, invoking the provisions of Articles 226 and 227 of the Constitution of India.

6. As identical questions of law and facts are involved and collectively argued by the counsel for the parties, therefore, I propose to dispose of the instant writ petitions, by virtue of this common judgment, in order to avoid the repetition. However, the facts, which require to be noticed for the limited purpose of deciding the core controversy, involved in these matters, have been extracted from (1) CWP No. 19007 of 2002 titled as &quot;M/s. Balak Gases Oxygen Gas Plant and another v. State of Punjab and others&quot; in this context. Be that as it may, the facts of individual cases would also be separately noticed and discussed at the appropriate place and stage in the subsequent part of this judgment.

7. The matrix of the facts, culminating in the commencement, relevant for disposal of the present writ petitions and emanating from the record, is that in order to achieve the indicated aims and objects and to strengthen the economy, the Governor of Punjab was pleased to formulate the new Industrial Policies of 1996 and 2003, which were published by the Government, by way of notifications dated 20.3.1996 and 26.3.2003 (Annexure P1 annexed with CWP No.19007 of 2002 and CWP No. 4917 of 2007). In order to implement these policies, the Government of Punjab further notified the Industrial Policy and Incentives Code/Rules (for brevity &quot;relevant Rules&quot;) under the Industrial Policies of 1996 and 2003, published, by means of notifications dated 1.6.1996 and 2.4.2003 (Annexure P2 attached with the indicated writ petitions). It is not a matter of dispute that such notifications have the force of law as envisaged under Article 13(3) read with Articles 154 and 162 of the Constitution of India. As per the Industrial Policies and relevant Rules, the industries were classified in variety of categories and different area of operation. The relevant Rules of 1996 and 2003 came into force w.e.f. 1.4.1996 and 1.4.2003 respectively and were made applicable to such units, which came into production for the first time on or after or undertake expansion/modernization after 1.4.1996 and 1.4.2003. The area of operation of industry was classified in two categories &apos;A&apos; and &apos;B&apos; in this respect.

8. As is clear that Rule 5 escalates the eligibility of incentives category-wise to larger, medium and small scale industrial units, such as for rehabilitation of sick units, modernization and technology up-gradation, internet subsidy, investment incentives, incentives for projects of special significance, incentives for projects of non-conventional energy sources, incentives for Agro-based industry, incentives for electronic industry, export oriented units, village industries units. The incentives to fly ash based units were prescribed in Rules 6 to 15 respectively. Similarly, the industry was also classified in the categories of large scale, medium scale and small scale industries. The different incentives were announced for project of non-commercial agro-based unit, village industry unit, tourism industry, electronic unit, export oriented unit, project of special significance, incentives to fly ash based units and incentives for rehabilitation of sick industry units including the exemption from taxes and interest so on and so forth.

9. According to the petitioner-Industries that in the same sequence, the Indian Boilers Act, 1923 and Standards of Weights and Measures (Enforcement) Act, 1985, Indian

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Electricity Act, 1910 and Rules, 1956, implementation of Environmental Laws were promised to be amended to improve and to match the industrial atmosphere. Self-Certification Scheme under Labour Laws and mechanism of forming the Monitoring Committees were also introduced. Similarly, for the development of border area, the State Government assures to provide capital subsidy to Small Scale Industrial Units to the extent of 30% of the Fixed Capital Investment upto maximum of ` 30 lacs per unit.

10. The case set up by the petitioner-Industries, in brief insofar as relevant, was that deeply believing the promises of the State to be true and sincere and in pursuance of the indicated Industrial Policies (Annexure P1), coupled with the relevant Rules (Annexure P2), announced by the Government of Punjab, they set up their industrial units, strictly in consonance with the Industrial Policies, having spent huge amounts for establishing the industry of undertaking modernization and up-gradation. The State of Punjab did not fulfill and has backtracked from the promise to give the pointed concessions/incentives on one reason or the other and did not release the amounts of benefits despite letter/representations (Annexures P5 to P8).

11. Aggrieved by the action of the respondents, the petitioner-Industry (at serial No.1) filed CWP No.16236 of 2002 titled as &quot;M/s. Balak Gases Oxygen Gas Plant v. State of Punjab and others&quot;, which was dismissed by a Division Bench of this Court, by means of order dated 28.10.2002 (Annexure P9) on the ground that its name figured at Serial No. 383 of the seniority list prepared by the State and amount will be paid as per seniority in this regard.

12. Levelling a variety of allegations and narrating the sequence of their respective events, in all, according to the petitioner-Industries that although they were eligible to claim the concessions and incentives in view of the Industrial Policies and relevant Rules made thereunder, but the State Govt. did not release the amounts of subsidies and concessions to them in the garb of impugned orders, without any legal ground. The plea of discrimination has also been pressed into service by the petitioner-Industries. On the basis of aforesaid allegations, the petitioners claimed the depicted concessions/incentives and benefits and sought the quashment of impugned orders in the manner described hereinabove.

13. Likewise, the remaining petitioner-Industries have also filed the writ petitions almost on the basis of the same grounds and similar pleadings and challenged the orders impugned therein in this context.

14. Faced with the situation, the respondents have contested the claim of the petitioner-Industries. The contesting respondent Nos.1 and 2 filed their joint written statement, inter alia admitting the issuance/publication of the aforesaid Policies and relevant Rules and that the petitioner-Industries are duly registered as larger, medium and small scale industries with the Industry Department of Punjab State. The factum of sanction of subsidy/incentives in pursuance of the indicated Policy/Rules was also acknowledged. However, it was further pleaded in para 28 as under:

&quot;That it is the prerogative of the State Government to assign priorities with the intention to have all-round development of the State and to attract investment in the State. The matter regarding disbursement is not mentioned in the Policy/Rules. The decision taken by the Government is an administrative decision for which Government is competent to make, priority to Export Oriented Units, was assigned with a view to earn valuable foreign exchange and similarly priority to Poultry Farms and persons belonging to Scheduled Caste Entrepreneurs was assigned with a view to uplift the weaker section of the society, moreover this was in lieu of special component scheme which was discontinued. The disbursement is made as per inter-district seniority list maintained at Head Office of unit pertaining to General category and priority categories, 80% of funds released were disbursed to units of General category and only 20% of funds released were used for making disbursement to priority categories. However, in compliance with the order dated 07.08.2001 passed by this

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Hon&apos;ble High Court in another case No. 14456 of 2000 - M/s. Bassi Tubes v. State of Punjab, the 80% of subsidy shall be disbursed to the Industrial units in accordance with the seniority list and 20% of the amount to the Export Oriented Units in terms of instruction dated 25/30.11.99.&quot;

15. Sequelly, the State Government was stated to have constituted the Committees to formulate the modalities and issued certain guidelines based on the recommendations dated 28.8.2006 and 20.2.2009 of these Committees. The impugned orders were stated to have been legally and validly passed in exercise of administrative/executive powers of the State Government. It will not be out of place to mention here that the contesting respondents have stoutly denied all other allegations contained in the writ petitions and prayed for their dismissal.

16. Controverting the allegations contained in the written statements reiterating the pleadings of the writ petitions, some of the petitioner-units filed their replications. That is how I am seized of the matter.

17. At the very outset, the counsel for the petitioner-Industries, contended with some amount of vehemence that the State of Punjab, in exercise of its executive powers, issued the Industrial Policies in question and framed the relevant Rules in pursuance thereof to implement the same and promised various kinds of incentives, subsidies, tax and interest exemptions and other benefits mentioned therein. Having deep faith in the promise of the Government, the petitioner-Industries have set up their industrial units, by spending huge amounts, strictly in consonance with the Industrial Policies and relevant Rules, but it (State Government) has miserably failed to fulfill its promise. The argument is that although the State has sanctioned the amount of subsidy, incentives and other benefits to all the industrial units and discriminately paid the same to some of its favourite units, but the payment was illegally denied to the petitioner-Industries, for the reasons best known to the respondents. They unilaterally changed the terms and conditions of the incentives already adversely affecting them, without any legal authority. The argument further proceeds that once the State has notified the Industrial Policies and the relevant Rules and granted the various concessions, incentives and other benefits depicted therein and having spent huge amounts, the petitioner-Industries have set up their industrial units, then the State is estopped from denying the payment of the indicated benefits to them on the doctrine of promissory estoppel. In support of their contentions, they have placed reliance on the judgments of Hon&apos;ble Apex Court in cases U. P. Power Corporation Ltd. and Anr. v. Sant Steel and Alloys P. Ltd., 2008 (2) SCC 777 : AIR 2008 SC 693 and Assistant Commissioner of Commercial Taxes (Asst.), Dharwar and others v. Dharmendra Trading Co. etc. etc., AIR 1988 Supreme Court 1247.

18. On the contrary, the State counsel appearing on behalf of the respondents has acknowledged the existence of the Industrial Policies in question (Annexure P1) and the relevant Rules framed thereunder (Annexure P2). He has also fairly conceded that the Government has already paid or is going to release the amount of subsidies to the different categories of Industries as per the Policy dated 8.9.2009, formulated on the basis of the recommendations of the Committees constituted by the State. However, the State counsel further took pain to argue that the petitioner-Industries have no legitimate right, which can legally be enforced and Government has the power to amend the Policies and to issue guidelines to restrict the claim of the industrial units in this behalf. He has also placed reliance on the judgments of Hon&apos;ble Supreme Court in case M/s Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh and others (1979) 2 SCC 409 : (AIR 1979 SC 621) in this respect.

19. Having heard the learned counsel for the parties at quite length, having gone through the records and legal provisions with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, the instant writ petitions deserve to be accepted in this context.

20. As indicated hereinbefore, the State Government announced the Industrial Policies and published, by way of notifications

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dated 20.3.1996 and 26.3.2003 (Annexure P1). In order to implement the Industrial Policies, the State framed the relevant Rules (Annexure P2). It is not a matter of dispute that the Government has sanctioned the amount of subsidies and incentives, but the same was not released to the petitioner-Industries on variety of grounds of closure of the units and non-availability of the funds etc., by virtue of various orders impugned therein. Similarly, the State of Punjab did not pay the amount of incentives and other benefits to M/s. A. S. Forgings (Registered) on the same indicated grounds. It filed CWP No. 1801 of 1998, which came to be disposed of by a Division Bench of this Court, vide judgment dated 25.11.1998 (Annexure P3 in CWP No. 4917 of 2007), the operative part of which is as under:

&quot;However, keeping in view the facts and circumstances that have been brought to our notice during the course of hearing, we hope that the State Government shall take steps to disburse the huge balance of Subsidy to the eligible Units as early as possible. A copy of this order be sent to the Chief Secretary, Punjab for information.

With the above observation and directions, this Writ Petition stands disposed of with no costs.&quot;

21. Not only that, aggrieved by the same very impugned action of the State, The Mohali Industries Association and others filed another CWP No. 1436 of 2005 to issue directions to release the amount of subsidies and for quashing the impugned sanctioned letters only to the extent that a condition has been incorporated that the disbursement would be made subject to the availability of the funds. It was decided alongwith CWP No. 8719 of 2002 and bunch of other petitions, which again was disposed of by a Division Bench of this Court, by virtue of order dated 11.5.2006 (Annexure P5 attached with CWP No. 4917 of 2007), which, in substance, is as under:-

&quot;Learned Senior Deputy Advocate General appearing for the State of Punjab has placed on record a decision dated February 6, 2006, taken by the State Government of Punjab on the basis of the decision taken by the Council of Ministers in its meeting dated January 30,2006. Decision taken by the Council of Ministers on January 30,2006 is extracted as below:

&quot;The Council of Ministers noted that the State Government has already discussed the matter with Ministry of Finance, Government of India to issue bonds for discharging the liability created under Subsidies announced from time to time and it is expected that their formal approval will be received during February 2006 after which the Scheme will be notified. With the implementation of this Scheme, liability worth Rs.100 Crores Per Annum from 2006-07 will be cleared till the total liability created is discharged.

However, in case this Bond Scheme could not be notified due to any reason then the State Government will release an amount of Rs. 50 Crores up to March 31,2006 for this purpose and from the year 2006-07 onwards an amount of Rs.100 Crores will be released per year.&quot;

At the outset, Mr. M. C. Berry, Learned Senior Deputy Advocate General, Punjab informs the Court that the Bond Scheme has not been notified so far and, therefore, in consonance with the decision taken by the Council of Ministers, the State Government shall release an amount of Rs. 50 Crores within a period of 2 months from today and from the year 2006-2007 onwards, an amount of Rs.100 Crores would be released per year and would be disbursed strictly in accordance with the Seniority List already placed on the record of the case and available on the Website of the Department of Industries.

The aforesaid Statement of Mr. Berry fully satisfies learned counsel appearing for the petitioners. In view of the aforesaid fact, present petitions are disposed of accordingly.

The State Government shall abide by the decision of the Council of Ministers dated January 30,2006 as notified above and as so stated by Mr. M. C. Berry today, in the Court.&quot;

22. Thus, it would be seen that the State of Punjab has repeatedly admitted its liability to pay the amount of subsidies/incentives to the Industrial Units and sanctioned the amount, but it did not release the same on

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untenable grounds of closure of units and non-availability of funds etc. without any legal basis in this relevant connection.

23. Ex facie, the argument of counsel for the respondents that in the wake of recommendations of the Committees, the State Government has issued the guidelines dated 8.9.2009 to make the payment in public interest, so, the doctrine of promissory estoppel is not applicable in the present case, is neither tenable nor the observations of Hon&apos;ble Apex Court in M/s. Motilal Padampat&apos;s case (supra), are at all attracted to the facts of the present case, wherein it was observed that &quot;when the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and after his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies.&quot;

24. Possibly, no one can dispute with regard to the aforesaid observations, but, to me, the same would not come to the rescue of the respondents-State in the instant controversy, as at the same time and in the same judgment, it was also ruled (in M/s. Motilal Padampat&apos;s case (supra)) in para 24 as under:-

&quot;Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisement of the circumstances in which the obligation has arisen. The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned; the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of &quot;honesty and good faith&quot;? Why should the Government not be held to a &quot;high standard of rectangular rectitude while dealing with its citizens&quot;? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations; but, let it be said to the eternal glory of this Court, this doctrine was emphatically negatived in the Indo-Afghan Agencies case and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private

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individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society.&quot;

25. Hardly, there is any quarrel that it is the sheer grit and entrepreneurial spirit of Punjabi industrialists that they are surviving in Punjab despite every kind of odds and neighbouring States are taking away a major chunk of industries by attractive fiscal policies and incentives. To my mind, instead of taking immediate steps to save the industry in the State, which is fast falling prey to other States, having better atmosphere and facilities, the State of Punjab is still denying the benefits already announced, promised and accrued, leaving the petitioner-Industries in lurch in this direction.

26. In the instant cases, as the State has miserably failed to point out and no material, much less cogent, is forthcoming on record, even to suggest remotely that how, when, at what stage and in what manner, the public interest is going to be served by denying the legitimate rights of the petitioner-Industries, accruing to them in pursuance of the indicated Industrial Policies/relevant Rules published by the Government itself. On the contrary, to me, if the amount of incentives and subsidies is not paid to the petitioner-Industries, then, the industrial growth, which is already in doldrums, would further be jeopardized, causing huge loss to the State Exchequer directly adversely affecting the larger public interest as well.

27. The matter did not rest there. As indicated earlier, the State has already admitted its liability during the course of hearing of the above-mentioned writ petitions and have sanctioned and paid the subsidy amount to other industrial entrepreneurs. The petitioner-Industries have also pressed into service the plea of discrimination. In that eventuality, it cannot possibly be saith and State is estopped from denying the legitimate right of petitioner-Industries as well, in view of the analogy of law hidden under section 115 of the Indian Evidence Act, 1872, which envisages that when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing. Above-all, the petitioner-Industries are also legally entitled to the same treatment on the principle of equality enshrined in the Constitution of India.

28. This is not the end of the matter. The question of applicability of promissory estoppel was considered by the Hon&apos;ble Supreme Court in case Union of India and others v. Anglo-Afghan Agencies etc., AIR 1968 SC 718, and it was held that &quot;we are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional set-up no person may be deprived of his right or liberty except in due course of and by authority of law : if a member of the executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law - common or Statute, the Courts will be competent to and indeed will be bound to, protect the rights of the aggrieved citizen.&quot;

29. Not only that, having considered the various judgments, including the judgment of M/s. Motilal Padampat&apos;s case (supra) (relied on behalf of the respondents) on the point of promissory estoppel, in a recent judgment of U.P. Power Corporation Ltd.&apos;s case (supra), the Hon&apos;ble Apex Court has observed (para 20) as follows :-

&quot;In this 21st century, when there is global economy, the question of faith is very important. Government offers certain benefits to attract the entrepreneurs and the entrepreneurs act on those beneficial offers. Thereafter, the Government withdraws those benefits. This will seriously affect the credibility of the Government and would show the shortsightedness of the governance. Therefore, in order to keep the faith of the people, the Government or its instrumentality should abide by their commitments. In this context, the action taken by the appellant-Corporation in revoking the benefits given to the entrepreneurs in the hill areas will sadly reflect their credibility and people will not take the

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word of the Government. That will shake the faith of the people in the governance. Therefore, in order to keep the faith and maintain good governance it is necessary that whatever representation is made by the Government or its instrumentality which induces the other party to act, the Government should not be permitted to withdraw from that. This is a matter of faith.&quot;

30. Meaning thereby, the doctrine of promissory estoppel is also applicable to the State and its instrumentality/officers. The Rule of Estoppel is a principle of law by which a person is held bound by the representation, made by him or arising out of his conduct. If, a person made a statement intending that some other person should act upon it, he will be estopped and will be prevented, from denying the truth of his statement once the other person has altered his position on the basis of the statement. Where any person by his words or conduct willfully causes another to believe in the existence of a certain state of things, rule of estoppel precludes a person from denying the truth of the statements previously made by him. In order to hold a person bound by estoppel, there should be a representation that a certain state of thing is true and secondly, the person to whom such a representation is made, should have acted on the belief of it.

31. Above being the legal position and material on records, now the short and significant questions, thought important that arises for determination in these cases, are (i) as to whether the principle of promissory estoppel is applicable in the instant case, and (ii) whether the State has the power to unilaterally alter the eligibility clause, by means of administrative guidelines, to deny the benefits already accrued to the petitioner-Industries emanating from the Industrial Policies/relevant Rules (Annexures P1 and P2) on the grounds of closure of units and non-availability of funds etc. or not?

32. Having regard to the rival contentions of counsel for the parties, to me, the answer to first question must obviously be in the affirmative and answer to second question is in the negative. The respondents are legally bound to release the amount of subsidies, incentives and other benefits to the eligible petitioner-Industries, as per the Industrial Policies and relevant Rules framed thereunder (Annexures P1 and P2) in this behalf.

33. As is evident from the record that the Governor of Punjab was pleased to formulate the new Industrial Policies of 1996 and 2003, which were published by the Government, by virtue of notifications dated 20.3.1996 and 26.3.2003 (Annexure P1 annexed with CWP No.19007 of 2002 and CWP No. 4917 of 2007). In order to implement these policies, the Government of Punjab further notified the Industrial Policy and Incentives Code/relevant Rules under the Industrial Policy of 1996 published, by way of notifications dated 1.6.1996 and 2.4.2003 (Annexure P2 attached with the indicated writ petitions), presumably in exercise of their respective powers under Articles 154 and 162. Such notifications have the force of law as contained under Article 13(3) of the Constitution.

34. In this regard, the petitioner-Industries (in CWP No.19007 of 2002) have specifically pleaded that they got prepared a project report taking into consideration various aspects, such as availability of land, production of gas and its possible uses, market potential, future scope of the industry and production targets. They worked out the production detail and process of manufacturing. The project report involving the investment of more than ` 106 crores was prepared, which was accepted by the respondents. Thereafter, they approached the Union Bank of India for a term loan, which was sanctioned for a sum of ` 57 lacs, vide letter (Annexure P4). Then, considering its case, sanction of ` 18,48,800/- as subsidy was granted to them, by means of letter (Annexure P3).

35. Likewise, the petitioner-Industries (in CWP No. 4917 of 2007) have reiterated that in pursuance of the promises and policies of the respondents, they invested the huge amount for their projects in border area of Amritsar, after obtaining a term loan of ` 24 lacs and cash credit of ` 24 lacs by pledging a residential house of their proprietor. The said loan was taken at the exorbitant rate of 1% higher than the primary rates, vide agreement

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(Annexure P7). Having arranged the amount and taken the loan, petitioner No.1 set up an Embroidery Unit at Head Water Works Road, Ram Talai, Amritsar by further investing about ` 45 lacs. The machinery was imported from China. Since the amount of subsidy/exemption in tax was not provided, so, petitioner No.1 was compelled to pay the instalments with higher amount of interest and it has re-paid almost equivalent to subsidy, which is to be finally released to it.

36. Instead of reproducing the details of project reports, arrangement of loans and capital investments for establishment of the Industrial units and in order to avoid the repetition, suffice it to say that all other petitioner-Industries, have also categorically claimed that after completing all the required formalities and spending the huge amount, they have established their respective industrial units believing the promises of the State to be true, strictly in consonance with the Industrial Policies and relevant Rules framed thereunder. The pleadings to that effect have not been specifically denied by the respondents at any stage, rather they have acknowledged the factual matrix of spending of huge amounts and arrangement of loans etc. for establishing their respective industrial units. It is not the case of the respondents that any of the petitioner-Industries, has committed any fraud in this relevant connection. On the contrary, they (respondents) have repeatedly admitted their liability to make the payment of amount in lieu of subsidies, incentives and all other benefits, in pursuance of the aforementioned Industrial Policies and relevant Rules.

37. Sequelly, in case Bhim Singh v. State of Haryana, AIR 1980 SC 768, the State held out certain specific promises as an inducement for the appellants to move into a new Department. Subsequently, State wanted to back out from its promises. It was observed by the Hon&apos;ble Apex Court that the appellants, having believed the representation made by the State and having further acted thereon, cannot now be defeated of their hopes, which have crystallized into rights, thanks to the application of the doctrine of promissory estoppel. Thereafter, it was not open to the State to backtrack and it was directed to implement the promises and confer such rights and benefits as were promised thereunder in entirety.

38. Similarly, in case Hardwari Lal, Rohtak v. G. D. Tapase, Chandigarh and others, AIR 1982 Punjab and Haryana 439 (FB), the petitioner was appointed as Vice-Chancellor of the Maharshi Dayanand University for a period of three years with a further promise to the appointee that on the expiry of term of office of three years, his term will be renewed. After the expiry of period of three years, further term was not extended/renewed by the Chancellor. The petitioner challenged the action of the respondents on the basis of doctrine of promissory estoppel based under section 115 of the Evidence Act. Having considered the relevant provisions of law, it was authoritatively ruled by a Full Bench of this Court that the respondents were duty-bound to fulfill and cannot backtrack the promises and a direction was issued to the Chancellor of the University to issue notification renewing the term of the petitioner as Vice-Chancellor.

39. In the present cases, the offer of subsidy is a manner of providing incentives for such investment and an entrepreneur that assumes a business risk in investment, is entitled to believe that the scheme is not an empty promise but rooted on a sound government policy and is squarely covered under the regime of promissory estoppel of the industrial units. The State could not legally be permitted to completely defeat the rights of petitioner-Industries by constant re-appraisal of the scheme retrospectively, that too by issuing administrative instructions of any kind and by its officers by passing the impugned orders. Even in case of those industries, which after several years of operation has perforce to close its business by the only reason that assured subsidy did not reach him or any other valid ground beyond their control. A businessman, who makes investment and obtains loans from the market or financial institution for establishment of the industry, is at least entitled to assume that a portion of debt could be redressed from the amount of subsidy/incentive and benefits as

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promised by the State emanating from the Industrial Policies and relevant rules framed thereunder.

40. Now adverting to the next celebrated contention of the State counsel that since the respondents have issued administrative instructions/guidelines, altering the original Industrial Policies (Annexure P1) and the relevant rules framed thereunder, so, the petitioner-Industries, as such, are not entitled to the subsidies/incentives contrary to the guidelines, is not only devoid of merit but misplaced as well. Once the Governor has issued the notifications publishing the Industrial Policies (Annexure P1) in Government Gazette and State Govt. notified the relevant rules (Annexure P2) to implement the indicated Policies, then, to my mind, the administrative/executive instructions/guidelines cannot legally be issued, unilaterally to alter the eligibility criteria and imposing such restrictions on the payment of amount of incentives detrimental to already accrued valuable rights of the petitioner-Industries, that too, without issuing any notice and providing adequate opportunity of hearing to them. Such substantive rights of the petitioner-Industries cannot be taken away by issuing the executive instructions/guidelines, which have no sanctity of law and did not contain any legal force. It cannot possibly be denied that only the State Government (not its officers) has the power to amend the rules in a legal manner that too prospectively and even State cannot take away any such rights already accrued to a party by way of subsequent amendment. In the present cases, as the impugned guidelines are based on recommendations of the officers&apos; committees, therefore, the administrative instructions/guidelines will not in any way override the effect and operation of Industrial Policies and relevant rules framed thereunder in this regard by the State.

41. Moreover, the respondents cannot be permitted to keep on changing the eligibility criteria for the benefit emitting from the scheme, which was primarily intended to promote the industrial growth in the specified category of area and industry in general and production and employment in border area in particular. As indicated earlier, the entitlement of petitioner-Industries to claim the incentives and subsidies under the scheme has not been denied and was sanctioned, but the respondents did not release the amount for one or the other untenable grounds in the garb of impugned orders, which are entirely beyond the scope and jurisdiction of the original Industrial Policies and relevant rules framed thereunder. In the same manner, a welfare State cannot possibly be heard to say that the amount was not released on account of paucity of funds with it.

42. In this manner, to my mind, any subsequent administrative instructions/guidelines issued by the State or any orders passed by its officers, impugned in the present writ petitions, which have no sanctity of law and legal force, are illegal, contrary to the Industrial Policies and indicated relevant rules, without jurisdiction and in operative on the rights of the petitioner-Industries. The State cannot deny the release of the amount of incentive/subsidies to them (petitioner-Industries) in this relevant connection.

43. Therefore, there cannot be any gainsaying that the petitioner-Industries did act on the assurance of the State. If the crux of the pleadings, materials placed on the records and admission of the respondents, as discussed hereinabove, is put together and the case is construed in its totality, then the only possible conclusion, that can be drawn, is that the petitioner-Industries were given an assurance by the respondents-State and they actually acted in pursuance of the assurance in this behalf. That by itself would be sufficient to attract the doctrine of promissory estoppel.

44. In this view of the matter, it is held that the State and its instrumentality/officers are legally duty bound to fulfill their promises and are liable to release the indicated benefits to the petitioner-Industries on the principle of promissory estoppel, which is deeply applicable to the facts and in the special circumstances of the present cases. Therefore, the contrary arguments of State counsel &quot;stricto sensu&quot; deserve to be and are hereby repelled under the present set of circumstances as the law laid down in the aforesaid

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judgment &quot;mutatis mutandis&quot; is applicable to the present controversy and is the complete answer to the problem in hand in this context.

45. No other legal point, worth consideration, has either been urged or pressed by the counsel for the parties.

46. In the light of aforesaid reasons, all the writ petitions are accepted. Consequently, the impugned guidelines and the impugned orders, in all the cases, having the effect of denying the incentives/subsidies and other benefits to petitioner-Industries, emanating from the Industrial Policies and relevant rules framed thereunder, are hereby set aside in the obtaining circumstances of the case. The respondents are directed to release the amount of incentive/subsidies and other benefits, to the petitioner-Industries, (if they are otherwise eligible and entitled to it), within a period of six months from the date of receipt of certified copy of this judgment, failing which, thereafter six months, they (petitioner-Industries) would also be entitled to interest at the rate of 6% per annum on the accrued benefits till the realization of the amount in this context.

Petitions allowed.

**AIR 2009 ALLAHABAD 14 "Krishi Utpadan Mandi Samiti v. U. P. Industry Felicitation Council"**

**ALLAHABAD HIGH COURT**

Coram : 1 SUNIL AMBWANI, J. ( Single Bench )

Krishi Utpadan Mandi Samiti, Sikandra Rao etc. v. U. P. Industry Felicitation Council, Kanpur and Ors.

Civil Misc. Writ Petition Nos. 3795, 6790, 6797, 12066 and 12238 of 2008, D/- 23 -5 -2008.

(A) Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act (32 of 1993), S.6 (as amended by Act 23 of 1998) - Arbitration and Conciliation Act (26 of 1996), S.2(4), S.16 and S.34 - Constitution of India, Art.226 - INTEREST - WRITS - ARBITRATION AND CONCILIATION - RECOVERY OF DUES - Recovery of amount due - Reference to Industry Facilitation Court for arbitration - Provisions of Arbitration and Conciliation Act of 1996 would be applicable - Award can be set aside by taking recourse to S.34 of 1996 Act - Writ petition for setting aside statutory award would not be maintainable.

In case of statutory arbitrations provided under the special act, the provisions of S. 34 are not excluded. Sub-sec. (4) of S. 2 of the Arbitration and Conciliation Act, 1996 only excludes sub-sec. (1) of Ss. 40, 41 and 43. The other provisions of the Arbitration and Conciliation Act, 1996 are applicable even to the statutory arbitrations except insofar as the provisions of Part I of the Arbitration and Conciliation Act, 1995 are inconsistent, with any other enactment or with any rules made thereunder. There is no inconsistency between the Act of 1993 as amended in 1998 and the Arbitration and Conciliation Act, 1996. The award of the Arbitral Tribunal is not confined to the width of its jurisdiction and there is no impediment in contending before the Arbitral Tribunal that it has been wrongly constituted. Such plea must be raised at the threshold so that the arbitral measures may be immediately taken and time and expense involved in the hearing of the matter may be avoided. Where the Arbitral Tribunal decides the question, the writ petition would not be maintainable at that stage or even after the award is made as sub-section (6) of Section 16 provides to make an application for setting aside such an arbitral award, which has been made after rejecting the plea under Section 16, in accordance with Section 34. The Court thus held that sub-section (4) of S. 2 of the Arbitration and Conciliation Act, 1996 makes the Arbitration and Conciliation Act, 1996 except sub-section (1) of Ss. 40, 41 and 43 of the Act applicable to the statutory arbitration provided under the Interest on Delayed Payments to the Small Scale and Ancillary Undertaking Act, 1993 as amended by Act No. 23 of 1998. Decision of the Facilitation Council on its own jurisdiction is subject to challenge only under Section 34 of the Arbitration and Conciliation Act, 1996. A writ petition for setting aside the statutory award is ordinarily not maintainable. (Paras 20, 22, 24)

(B) Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act (32 of 1993), S.6 (as amended by Act 23 of 1998) - U.P. Krishi Utpadan Mandi Adhiniyam (25 of 1964), S.4, S.10 - INTEREST - AGRICULTURAL PRODUCE - Reference to arbitration - Provisions of S.4 and S.10 of U.P. Krishi Utpadan Mandi Adhiniyam, 1964 do not override the provisions of arbitration in Act of 1993 as amended in 1998.

U.P. Krishi Utpadan Mandi Adhiniyam, 1964 does not provide of any machinery of adjudication or arbitration, which is an entirely separate legislative field. The Act may provide for the manner in which the market committee will enter into contract and which may be a ground to challenge the jurisdiction of the Arbitral Tribunal regarding validity of the arbitration agreement. This, however, would not exclude the applicability of the provisions of statutory arbitration under Section 6 of the Interest oh Delayed Payment to the Small Scale and Ancillary Undertaking Act, 1993 as amended by Act No. 23 of 1998. The non-obstante clauses in Sections 4 and 10 of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 will not affect or exclude the applicability of arbitration by the facilitation Council under the Special Act which deems the consent of the parties to the arbitration clause. Thus, provisions of Sections 4 and 10 of U. P. Krishi Utpadan Mandi Adhiniyam, 1964 do not override the provisions of arbitration in the Act of 1993 as amended in 1998. (Paras 25, 26)

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Cases Referred : Chronological Paras

2007 AIR SCW 3142 : 2007 CLC 783 20

AIR 2004 SC 1766 : 2004 AIR SCW 1266 : 2004 CLC 438 12

AIR 2002 SC 778 : 2002 AIR SCW 426 : 2002 CLC 478 12

1999 (3) Arb LR 462 24

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AIR 1977 All 158 18, 21

AIR 1976 SC 425 12

AIR 1975 All 12 17, 18

AIR 1969 SC 1320 18

AIR 1966 All 489 16

AIR 1963 All 113 16

1962 All ER 518 23

(1958) 1 All ER 671 23

B.D. Mandhyan and Satish Mandhyan, for Petitioner; P.N. Saxena and Uma Nath Pandey, for Respondents.

Judgement

ORDER :- Heard Shri B. D. Mandhyan, Sr. Advocate assisted by Shri Satish Mandhyan for the petitioner. Shri P. N. Saxena, Sr. Advocate assisted by Shri Uma Nath Pandey, Advocate appear for M/s. An Ads Chowk Bazar, Bulandshahr-respondent No. 2. Learned Standing Counsel appears for respondent No. 1. With the consent of the parties, all the writ petitions were heard and are being finally decided.

2. In all these writ petitions Krishi Utpadan Mandi Samitis have prayed for writ, order or direction in the nature of certiorari quashing the proceedings in claim petitions filed by M/s. An Ads Chowk Bazar, Bulandshahr, and the award given by the Commissioner and Director of Education U.P. (Facilitation Council) Kanpur on references made by M/s. An Ads Chowk Bazar, Bulandshahr under Section 6 (2) of the Interest on Delayed Payments to Small Scale Ancillary Undertaking Act, 1993 as amended by Act No. 23 of 1998 (in short the Act) awarding the sums claimed with interest at the rate of 5% above floor rate charged by the scheduled banks on credit limit on the grounds; (a) there was no agreement between the claimant and the Mandi Samitis and that there was no arbitration clause agreed between the parties to refer the dispute to the Facilitation Council under the Act; (b) Section 4 of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (Act No. 25 of 1964), which received the assent of the President on 28-10-1964 and was published in U.P. Extraordinary Gazette on 10-11-1964, the provisions of the Act shall have effect notwithstanding anything in consistent therewith contained in any law, custom, use or agreement. The alleged agreement was not entered into in accordance with Mandi Adhiniyam, 1964 and thus the Act does not give the jurisdiction to the Facilitation Council to enter into the dispute for arbitration and for making award; (c) though the jurisdiction of the Facilitation Council under the Act is not admitted, the Facilitation Council did not decide the objections raised by the Krishi Utpadan Mandi Samiti, before it, regarding exclusive application of the Mandi Adhiniyam under Section 4 and on the question of jurisdiction of the Facilitation Council, alleging that there was no agreement between parties to allow Facilitation Council to enter into arbitration; and (d) a writ petition against the award made without jurisdiction for quashing award is maintainable under Art. 226 of the Constitution of India.

3. Briefly stated the facts giving rise to this writ petition are that M/s. An Ads Chowk Bazar. Bulandshahr made an application to the Director. State Agriculture Produce Market Board. U.P. Lucknow on August 12th 1996 for installations and supply orders of the hoarding and display boards in the market yards, and market areas of the Market Committee of the State on the rates given in the letter. The then Director, Rajkiya Krishi Utpadan Mandi Parishad by his letter dated 10-10-1996 informed all the Regional Deputy Directors (Admn.) forwarding a copy of the proposal given by M/s. An Ads Chowk Bazar, Bulandshahr and for utilizing their services in accordance with law as and when they are required. The Director clarified on 16-1-1997 in pursuance to letter written by M/s. Classical and Marketing. Lucknow that he has come to know about an order on the talk of proposal given by M/s. An Ads Chowk Bazar, Bulandshahr, that the headquarters has not approved any firm or rates and that any arrangement made by the concerned departments will be according to their own needs at the specified rates. If any orders have been made contrary to this arrangement, the same shall be modified and that the financial control may be maintained. By earlier orders issued on 13-12-1984 of the Director, Mandi Parishad, it was clarified that the Mandi Samiti will select the place for placing the hoardings. The firm will be given the required material if it is to be printed on the hoarding after receiving 50%

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conservation money by bank draft. With regard to expenses on the allotted hoardings the Mandi Samiti will make the expenses from its own income according to the administrative instructions.

4. It is contended that at no point of time any directions were issued by the Rajya Krishi Utpadan Mandi Parishad or the Mandi Samiti for the purposes of supply of hoardings and display boards to M/s. An Ads Chowk Bazar, Bulandshahr (the firm).

5. Shri B. D. Mandhyan submits that there was no agreement or any concluded contract with the firm. Taking into account the conduct of the firm it was blacklisted. The firm filed a suit for injunction against blacklisting. The firm thereafter filed Writ Petition No. 43848 of 2001 in which an order was passed on 4-8-2001 for giving opportunity before the firm is blacklisted. It is contended that before the injunction was issued the orders were passed blacklisting the firm. The writ petition is still pending.

6. It is stated that the firm was blacklisted as on the enquiry it was found that the hoardings worth less than Rs. 15,000/- were supplied, whereas the firm made a claim of Rs. 45000/- per hoarding. A finding was also recorded that the firm has already charged Rs.22 lacs in excess from the Mandi Samiti. Shri B. D. Mandhyan has neither pleaded nor explained as to how the firm would supply the hoardings, when no orders were placed and if the firm was not making any supplies, why it was blacklisted?

7. The firm, thereafter, filed several applications impleading the market committees to which the hoardings and display boards were supplied, under Section 9 of the Arbitration and Conciliation Act, 1996 in the civil Court for inspections of the goods In question, to confirm the identity, quality and deterioration in condition and for deposit in lumpsum in the form of fix deposit in security of the amount in dispute or to preserve by making payments under protest. These applications were filed with the allegation that the firm had received the orders for supply and that only a part amount was paid. The firm was blacklisted, however, the order was stayed in Writ Petition No. 2425 (M/B) of 1998. The matter has been referred for arbitration to Industry Facilitation Council under Section 6 (2) of the Amended Act 28 of 1998 and that in order to preserve and to keep the property in safe custody and for its inspection and for preserving the amount , the orders are required to be made.

8. In the proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 the Krishi Utpadan Mandi Samiti made an application for directing the firm to file a copy of the original agreement and to stay the proceedings on the ground that the Director, Rajya Krishi Utpadan Mandi Parishad, Lucknow is considering the matter. The District Judge relying upon sub-section (2) of Section 6 of the Arbitration and Conciliation Act, 1996 rejected these applications on 19.5.2000 giving rise to Writ Petition Nos. 31426 of 2000; 42249 of 2000; 42802 of 2000; 48546 of 2000; 54556 of 2000; 2012 of 2001 and 4104 of 2001. In all these writ petitions this Court has passed orders staying the proceedings in Misc. Cases under Section 9 of the Arbitration and Conciliation Act. The matters are tied up with the Bench presided by Hon'ble the Chief Justice.

9. The Commissioner and Director of Industries, U.P. acting as Facilitation Council at Kanpur made an award dated January 7th 2004 for both the principal amount and interest and has forwarded the same to the parties. Aggrieved the Krishi Uptadan Mandi Samities have filed these writ petitions.

10. Shri B. D. Mandhyan, learned counsel for the petitioner submits that there was no concluded contract between parties. There was no arbitration agreement. The U.P. Industry Facilitation Council, Kanpur had no jurisdiction to entertain the reference. The act was made for payment on interest on delayed payments and not to adjudicate the entire claim. The Mandi Samitis made applications raising preliminary objections regarding jurisdiction of the Facilitation Council alleging that Section 4 of the Mandi Adhiniyam ignores the application of other laws including the Act, and that in the absence of any concluded contract or arbitration agreement, the Facilitation Council has no jurisdiction to decide the matter. Without deciding this application on merits the Facilitation Council proceeded with the arbitration and has decided the matter exparte without giving any reasons at all, and imposing a liability upon the Mandi Samitis. In the preliminary objections dated 23-12-2005, the Mandi Samiti submitted that Krishi Utpadan Mandi Adhiniyam, 1964 is a self contained code.

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Section 4 of the Act excludes application of any other law. These objections were rejected by the Chairman of the Council on the same day on 23-12-2005.

11. Shri P.N. Saxena, Sr. Advocate appearing for the firm submits that the parliament enacted Act No. 32 of 1993 for ensuring payments of interest to the small scale industries undertaking, protecting their interest and for their benefit providing for 5% above floor rate for comparable lending by the schedule banks with further benefit of compound interest at the same rate. The Act was amended in the year 1998 providing for settlement of disputes by making a reference to Industry Facilitation Council to act as an Arbitrator or Conciliator in respect of matters referred to in subsection (1) and that the Arbitration and Conciliation Act, 1996 was to apply to such disputes as if the arbitration or conciliation were in pursuance to an arbitration agreement referred to in sub-section (1) of Section 7 of that Act. The respondent firm made a reference to the Facilitation Council under Section 6 (2) of the Act. During the pendency of the reference before the Council, Micro, Small and Medium Enterprise Development Act, 2006 (Act No. 27 of 2006) was passed, which repealed Act No. 32 of 1993, and provided that notwithstanding such repeal anything done or any action under the repealed act shall be deemed to have been done or taken under the corresponding provisions of the Act of 2006. The Facilitation Council exercises powers under Section 6 (2) of the Act No. 32 of 1993, and corresponding Section 18 (4) of Act No. 27 of 2006. Once an award is made, it can be challenged only under Section 34 of the Arbitration and Conciliation Act, 1996. Section 19 of Act No. 27 of 2006 also makes a specific provision, that the application for setting aside any award made by the Council, shall not be entertained by any Court unless appellant has deposited with it 75% of the amount in terms of the award and that no application for setting aside the award shall be entertained by any Court unless 15% of the amount is not deposited by the buyer.

12. Shri P.N. Saxena further submits that Section 16 of the Arbitration and Conciliation Act, 1996 provides and allows the Arbitral Tribunal to decide objections with regard to its jurisdiction, and if it rejects the plea and makes an Arbitral award, Section 6 provides that party aggrieved by such an arbitral award may make an application for setting aside the award under Section 34 of the Act. There is thus a specific statutory remedy and forum, where the petitioner could have challenged the jurisdiction of the award. He submits that writ petition is not maintainable and has relied upon the judgment in Secur Industries Ltd. v. M/s Godrej and Boyce Mfg. Co. Ltd. and Anr., AIR 2004 SC 1766 in which the Supreme Court held, relying upon Konkan Railways Corporation Ltd. v. Rani Construction Pvt. Ltd., AIR 2002 SC 778 and Rohtas Industries Ltd. v. Rohtas Industries Staff Union, AIR 1976 SC 425 held that Section 16 of the Arbitration and Conciliation Act, 1996 applies to the arbitration proceedings under the Act and thus direction issued by the Bombay High Court staying the arbitration proceedings before the U.P. Industry Facilitation Council was not legally sustainable.

13. Section 6 of the Small Scale and Ancillary Industrial Undertakings Act, 1993 as amended in 1998 provides :-

"Recovery of amount due -

(1) The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of Sections 4 and 5 shall be recoverable by the supplier from the buyer by way of a suit or other proceedings under any law for the time being in force.

(2) Notwithstanding anything contained in sub-section (1), any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that sub-section and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such disputes as if the arbitration or conciliation were pursuant to an arbitration agreement referred to in sub-section (1) of Section 7 of that Act."

14. Section 2 sub-section (4) and Section 16 of the Arbitration and Conciliation Act, 1996 provides :-

"2 (4). This Part except sub-section (1) of Section 40, Sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so

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far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.

16. Competence of arbitral tribunal to rule on its jurisdiction - (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose -

(a) an arbitration clause which forms party of a contract shall be treated as an agreement independent of the other terms of the contract; and (b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3) admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or subsection (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with Section 34."

15. Shri P.N. Saxena has made preliminary objections that a writ petition is not maintainable against the statutory award made by the U.P. Industrial Facilitation Council under the Act of 1993 as amended in 1998 and that the question of existence of arbitration agreement and the jurisdiction, could be raised before the Facilitation Council acting as an Arbitrator under Sec. 16 of the Arbitration and Conciliation Act, 1996. In case the petitioner was aggrieved by the decision of the Facilitation Council acting as Arbitrator with regard to existence of the agreement and the jurisdiction of the Facilitation Council to arbitrate the matter, it could raise such a dispute only under Sec. 34 of the Act by filing in application to set aside the award and not by writ petition under Art. 226 of the Constitution of India.

16. In District Co-operative Federation Ltd., Meerut and Anr. v. Registrar, Cooperative Societies, U.P. Lucknow and Ors., AIR 1966 Alld. 489 a Division Bench of this Court held, with reference to an arbitration award under Section 70 of the U.P. Cooperative Societies Act and Section 46 of the Arbitration Act, 1940 that Section 46 of the Arbitration Act provides that in the absence of any provision relating to any matter connected with an arbitration in the special act, the provisions of the Indian Arbitration Act would be followed to the extent of the omission; and for that limited purpose a statutory award made under any other enactment shall be deemed to have been made under the Arbitration Act. It is not and it could be the intention of Section 46 of the Arbitration Act to make a statutory award given under the provisions of a special act, and award under the Arbitration Act for all purposes. In any case there is nothing in Section 46 of the Arbitration Act or any other provisions of that Act, which obliterate the distinction between an award based on the agreement of the parties and a statutory award. A statutory award does not have its roots in consent of the parties, as an award based on the agreement of the parties. By this judgment the Division Bench deferred with the opinion expressed in AIR 1963 All. 113 and found that it was incorrectly decided.

17. In Bahadur Singh v. District Judge, Rampur, AIR 1975 All. 12 another Division Bench by a short judgment found that arbitration award by the Registrar under Section 71 of the U.P. Co-operative Societies Act, has been protected from interference by the civil Court. Sections 102 and 111(d) of the U.P. Co-operative Societies Act bars the jurisdiction of the civil Court from entertaining any suit or application consisting the validity of the award even where no appeal has been preferred. The Division Bench held that provisions of Sections 14, 17 and 33 of the Arbitration Act are in consistent with the provisions of Sections 98 and 111 of the U.P. Co-operative Societies Act as they bar

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the jurisdiction of the civil court for the relief of setting aside the award, hence these provisions will not be available to the petitioner for instituting the suit or application in a civil suit and thus a writ petition was maintainable.

18. In Fida Ali v. M/s Amroha Sahkari Kraya Vikaraya Samiti Ltd. and Ors., AIR 1977 All. 158 another Division Bench considered the entire case law including the two previous decisions and opined that where there was a valid reference, the Arbitrator will get a jurisdiction to make the award. In respect of an award given under Section 21 of the U.P. Co-operative Societies Act, if the plaintiffs seeks to challenge that, reference itself was bad his only remedy was to proceed under Section 33 of the Arbitration Act. If, however, the award is challenged on merits it is appellable and thereafter writ petition would lie against the appellate order. Paras 24 to 26 of the judgment are quoted as below :-

"The plaintiff, therefore, should have been a member of the Society on the date of the transaction and not on the date of reference. On the finding of the Court below itself, the plaintiff was not a member on the date of the transaction of loan. If he was not a member of the society on the date when the transaction of loan was entered into, the reference could not be within the meaning of R. 115 and if the reference itself could not be made under Rule 115, the award of the arbitrator will not be an award under the Rules of the Society within the meaning of Rule 134. Unless there was a valid reference, there could be no award under the arbitration agreement. Valid reference gives the jurisdiction to the arbitrator and if the agreement or reference itself falls through, the award cannot stand. If the plaintiff seeks to challenge that the reference itself was bad, his only remedy was to proceed under Section 33 of the Arbitration Act, which in our opinion, is not inconsistent with the provisions of the U.P. Co-operative Societies Act or the Rules framed thereunder. As observed earlier. There, is no provisions under the U.P. Coroperative Societies Act whereunder the appellant could have challenged the validity of the agreement of reference itself. Under Rule 134, only the award can be challenged on merits. In the instant case, the appellant had, however raised an objection before the arbitrator that he had no jurisdiction to proceed with the arbitration proceedings, but as this question could not be decided by the arbitrator himself, the only course open to the appellant was to proceed under Section 53 of the Arbitration Act, which applies to all arbitrations under any Act unless the provisions of the Arbitration Act are inconsistent with the provisions under the special Act. In view of the principles laid down by the Supreme Court in Deccan Merchants Co-operative Bank Ltd. v. M/s Dalichand Jugraj Jain, AIR 1969 SC 1320 (supra) the case of Bahadur Singh v. District Judge, Rampur, AIR 1975 All 12 (Supra) cannot stand in the way of the appellant.

For the reasons given above, the appeal must succeed. It is accordingly allowed and the judgment of the Court below is set aside and the suit stands decreed. In the circumstances of the case, we direct the parties to bear their own costs."

19. The law of arbitration and conciliation has undergone a change by enactment of Arbitration and Conciliation Act. 1996. Section 16 of the Act of 1996 correspondence to Art. 16 of UNCITRAL Model Law and also Art. 21 of the UNCITRAI. Arbitration Rules. This rule gives authority to the Arbitral Tribunal to decide its own jurisdiction. Section 16 has recognized the general trend of modern national legal systems and the international conventions, which allows an Arbitral Tribunal to determine its own jurisdiction. By this provision the Court has been allowed to remove the impasse.

20. The development of law by Section 16 of the Arbitration and Conciliation Act, 1996 has been recognized by the Courts. In Gas Authority of India Ltd. v. Keti Construction (I) Ltd., 2007 (5) SCC 38 : (2007 AIR SCW 3142) the Supreme Court held that the Arbitral Tribunal may rule on any objection with respect to the existence or validity of the arbitration agreement. The award of the Arbitral Tribunal is not confined to the width of its jurisdiction and there is no impediment in contending before the Arbitral Tribunal that it has been wrongly constituted. Such plea must be raised at the threshold so that the arbitral measures may be immediately taken and time and expense involved in the hearing of the matter may be avoided. Where the Arbitral Tribunal decides the question, the writ petition would not be maintainable at that stage or even after the award is made as sub-section (6) of Section 16 provides to make an

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application for setting aside such an arbitral award, which has been made after rejecting the plea under Section 16, in accordance with Section 34.

21. The judgment in Fida Ali's case was given while interpreting the provisions of Arbitration Act, 1940, which did not provide the challenge to the jurisdiction of the Arbitrator before the Arbitrator but by a separate proceedings creating an impasse. The shift in law by the Arbitration and Conciliation Act, 1996 would not allow the parties now to challenge the jurisdiction of the Arbitrator/Arbitral Tribunal by taking separate proceedings or by writ petition.

22. It may further be noticed that, in case of statutory arbitrations provided under the special Act, the provisions of Section 34 are not excluded. Sub-section (4) of Section 2 of the Arbitration and Conciliation Act. 1996 only excludes sub-section (1) of Sections 40, 41 and 43. The other provisions of the Arbitration and Conciliation Act, 1996 are applicable even to the statutory arbitrations except insofar as the provisions of Part I of the Arbitration and Conciliation Act, 1996 are inconsistent, with any other enactment or with any rules made thereunder. The counsel for the petitioner has not pointed out any such inconsistency between the Act of 1993 as amended in 1998 and the Arbitration and Conciliation Act, 1996. Russel on Arbitration, Twenty First Edition (1997) : Statutory Arbitration, paragraph A4-004 on page 627-628 says :-

Application of the Arbitration Act - The provisions of Party I of the Arbitration Act 1996 apply to every statutory arbitration "whether the enactment" was passed or made before or after the commencement of this Act, subject to the adaptations and exclusions specified in Sections 95 to 98" and subject to exclusion by or inconsistency with the enactment concerned." Usually any exclusion will be expressed in the Act of Parliament giving rise to the statutory arbitration," but even in the event of an inconsistency that Act will prevail over the provisions of Part I of the Arbitration Act, 1996.

Where the provisions of Part I of the Arbitration Act, 1996 are not excluded they will apply to a statutory arbitration :-

"as if the arbitration were pursuance to an arbitration agreement and as if the enactment were that agreement, and

- As if the persons by and against whom a claim subject to arbitration in pursuance of the enactment may be or has been made were parties to that agreement."

Thus, for the purposes of the Arbitration Act, 1996 an arbitration pursuant to another statute is treated as if it were a contractual arbitration, subject to the adaptions and exclusions mentioned in the following paragraphs."

23. In Davies v. Price and Ors., (1958) 1 All. E.R. 671 and in R. v. Agricultural Land Tribunal For The South Eastern Area, Ex parte Bracey, 1962 All. E.R. 518 the Court of appeal and the Queen's Bench Division held that where the Tribunal was acting within its jurisdiction and the error alleged was one of law and did not appear on the record, the Court could not look at the affidavit evidence and must refuse certiorari.

24. In the Stock Exchange, Mumbai v. Vinay Bubna and Ors., 1999 (Suppl.) Arb. LR 32 : (AIR 1999 Bom 266) the Bombay High Court while considering the Bombay Stock Exchange byelaws No. 248 and 249 (a) made under Sections 2(4) and 10 of the Securities Contracts (Regulation) Act, 1956 held that challenge to the composition of Arbitration Tribunal of two members (even numbers) would prevail over Section 10 of the Arbitration and Conciliation Act. The Bombay High Court held that since the byelaws are framed in exercise of powers under Section 9 of the Regulation Act and are statutory, they would squarely fall under the phrase "under any other enactment" appearing in sub-section (4) of Section 2 of the Arbitration and Conciliation Act, 1996 and the same insofar as they are inconsistent with the provisions of the Act would prevail. On the interpretation of the same provisions namely the byelaws of the Stock Exchange with reference to Securitisation Contract (Regulation) Act, 1956 and provisions of Sections 30, 33, 37 and 46 of the Arbitration and Conciliation Act, 1996 the Bombay High Court held in Ashalata S. Lahoti v. Hiralal Lilladhar, 1999 (3) Arb. LR 462 (Bombay) that Section 37 of the Arbitration and Conciliation Act. 1996 excludes the provisions of the Indian Limitation Act in the Act of 1940 and by virtue of Section 2 (4) the application of Indian Limitation Act as contained in Section 43 is excluded and thus the provisions of the Indian Limitation Act would not apply to arbitration between a member and non-member in respect of transactions made

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under the Bombay Stock Exchange Act.

25. Coming to the last submissions of Shri B.D. Mandhyan that the U.P. Krishi Utpadan Mandi Adhiniyam, 1964, which has received the assent of the President on 28-10-1964 excludes under Section 4 the provisions of the Act to prevail over anything inconsistent therewith contained in any law, custom, usage or agreement and that Section 10 of the Act will have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being enforced, and that the Act under Art. 254 (2) of the Constitution of India will prevail over the other acts, I find that the argument misses the point that U.P. Krishi Utpadan Mandi Adhiniyam, 1964 does not provide of any machinery of adjudication or arbitration, which is an entirely separate legislative field. The Act may provide for the manner in which the market committee will enter into contract and which may be a ground to challenge the jurisdiction of the Arbitral Tribunal regarding validity of the arbitration agreement. This, however, would not exclude the applicability of the provisions of statutory arbitration under Section 6 of the Interest on Delayed Payment to the Small Scale and Ancillary Undertaking Act, 1993 as amended by Act No. 23 of 1998. The non-obstante clauses in Section 4 and Section 10 of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 will not affect or exclude the applicability of arbitration by the Facilitation Council under the Special Act, which deems the consent of the parties to the arbitration clause.

26. The Court thus holds that sub-section (4) of Section 2 of the Arbitration and Conciliation Act, 1996 makes the Arbitration and Conciliation Act, 1996 except sub-section (1) of Sections 40, 41 and 43 of the Act applicable to the statutory arbitration provided under the Interest on Delayed Payments to the Small Scale and Ancillary Undertaking Act, 1993 as amended by Act No. 23 of 1998. The Court further holds that the provisions of Sections 4 and 10 of U.P. Krishi Utpadan Mandi Adhiniyam, 1964 do not override the provisions of arbitration in the Act of 1993 as amended in 1998 and that decision of the Facilitation Council on its own jurisdiction is subject to challenge only under Section 34 of the Arbitration and Conciliation Act, 1996. A writ petition for setting aside the statutory award is ordinarily not maintainable.

27. All the writ petitions are consequently dismissed with liberty to the petitioners to challenge the award of the Facilitation Council in accordance with law and subject to the limitation prescribed in law to challenge the award. There shall be no order as to costs.

Petition dismissed.

**AIR 2000 ALLAHABAD 186 "Krishi Utpadan Mandi Samiti v. Chunni Lal"**

**ALLAHABAD HIGH COURT**

Coram : 1 U. S. TRIPATHI, J. ( Single Bench )

Krishi Utpadan Mandi Samiti, Appellant v. Chunni Lal and another, Respondents.

Second Appeal No. 95 of 1999, D/- 13 -7 -1999.

Constitution of India, Art.19 - U.P. Krishi Utpadan Mandi Adhiniyam (25 of 1964), S.7(2)(b) - AGRICULTURAL PRODUCE - Wholesale traders transactions - Agricultural produce - Under S. 7(2)(b) - Traders can transact business in market area only at specified place - They cannot choose place - Provisions cover transactions between traders and traders also. (Paras 19, 20, 22, 25)

Cases Referred : Chronological Paras

M/s. Amrit Rice Mills v. Krishi Utpadan Mandi Samiti, 1987 All LJ 1118 : 1987 UPLBEC 394 15, 17

Vishal Traders v. State of U.P., 1983 All LJ 786 : 1983 All WC 204 17

M/s. Laxms Khansari v. State of U.P., AIR 1981 SC 873 : (1981) 2 SCC 600 13

R. K. Porwal v. State of Maharashtra, AIR 1981 SC 1127 14, 18, 20, 21

Kewal Krishna Puri v. State of Punjab, AIR 1980 SC 1008 18

Ram Chandra Kailash Kumar and Co. v. State of U.P., AIR 1980 SC 1124 : 1980 Supp SCC 27 : 1980 All LJ 490 13, 24

B. D. Mandhyan and Satish Mandhyan, for Appellant; R. Asthana, for Respondents.

Judgement

JUDGMENT :- This second appeal has been preferred against the judgment and decree dated 19-12-1999 passed by Sri B. D. Upadhyay, the learned XII Additional District Judge, Agra in Civil Appeal No. 297 of 1998 allowing the appeal arising out of judgment and decree passed by IVth Additional Civil Judge (Sr. Division), Agra dated 3-8-1998 in Original Suit No. 488 of 1991 dismissing the suit of the respondents.

2. The respondent No. 1, hereinafter, called the plaintiff, representing himself as president of Moti Ganj Khadya Vyapar Samiti, Moti Ganj. Agra filed suit No. 488 of 1991 against the appellant and State of U. P., respondent No. 2, hereinafter called defendants, for permanent injunction restraining the defendant Mandi Samiti from interfering in the business of Samiti and from doing business by its members at Moti Ganj, Agra, so far as Dal, rice, Khandsari and Gur were concerned, which were products of factory and not purchased from the farmers and from not realising any charges or taxes from them. The case of the plaintiff set up in the plaint, briefly stated, was that the plaintiff is President of Moti Ganj Khadya Vyapar Samiti Motiganj, Agra and the members of the Society were doing business in food grains like Dal, Rice, Khandsari and Gur and were paying taxes/charges under U.P. Krishi Utpadan Mandi Samiti Adhiniyam, 1964. The Mandi Samiti was authorised to realise taxes etc. on the agricultural products, which were brought by agriculturists for sale. Rice is produced in Rice Mill, Dal is prepared in Dal Mill and Gur is also prepared in Mills, which were purchased by members of plaintiff society from the Millers. Therefore, above products were not agricultural products. The State Government issued notification dated 15-10-1981 directing that the whole sale transaction of agricultural produce specified under notification shall be conducted only on the place specified i.e. New

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Mandi Asthal within Agra Principal Market Yard. As the plaintiff, society used to purchase above food grains i.e. Dal, Rice and Gur directly from Millers, the society was not bound to conduct business at the Mandi Yard specified in the above notification. But the employees of the Mandi Samiti, defendant, were threatening to enforce plaintiff society to bring their articles at Mandi Yard and conduct the business from there, otherwise their licence would be cancelled, hence the suit.

3. The defendant, Mandi Samiti filed written statement contending that suit itself was not maintainable as plaintiff was not Registered Society and no such distinction as alleged by plaintiff was made in U.P. Mandi Samiti Adhiniyam. The plaintiff and other traders/licencees were bound to obey the directions of Mandi Samiti. No extra taxes/charges were levied by shifting Mandi Asthal. The plaintiff and its members were also bound to conduct business at new Mandi Asthal as specified in the notification dated 15-10-1981.

4. The Trial Court framed necessary issues and on considering the evidence of the parties held that Dal, Rice, Gur and Khandsari are specified agricultural produce and not mill products and therefore, their whole sale business has to be done at Navin Mandi Asthal as specified in the notification. According to registration certificate of the plaintiff, society it was valid upto 6-1-1994 and there was no document to show its renewal thereafter. Therefore, the suit was not filed by registered society. With these findings, the Trial Court dismissed the suit.

5. In the first appeal filed by plaintiff, the First Appellate Court disagreeing with the findings of the Trial Court held that the whole sale transaction of agricultural produce at Navin Mandi Asthal is done regarding the agricultural products brought by agriculturists, while members of plaintiff, society were not purchasing articles directly from agriculturists, but from millers and whole sale traders and therefore, whole sale transaction done at Moti Ganj was being done in accordance with licence issued by the defendant, Mandi Samiti and till the above licence is inforce, they cannot be stopped from doing transaction at Moti Ganj Mandi Asthal. The First Appellate Court also made a distinction of agricultural produce purchased dirctly form agriculturists as "first arrival" and agricultural produce purchased from millers/traders as "second arrival". It further held that Moti Ganj Khadya Vyapar society, Agra is a registered society under societies Registration Act and its registration was valid upto 1999 and therefore, it was competent to file suit through its president. With these findings the appeal was allowed, and suit of the plaintiff was decreed restraining the defendant from objecting the whole sale transaction at Moti Ganj Vyapar Asthal regarding agricultural produce of second arrival i.e. Dal, Rice, Gur and Khandsari, which were pruchased by members of plaintiff society directly from whole sale traders and millers.

6. In this second appeal, caveat was filed by the plaintiffs, respondents and plaintiffs, respondents were represented by Sri Ramendra Asthana, Advocate. With the direction of this Court, the respondents learned counsel was granted time to file counter-affidavit, appellant was directed to file rejoinder-affidavit. The parties filed and exchanged their respective affidavits and with the consent of the learned counsel for the parties, the appeal was heard on merit at the stage of admission.

7. On the submission of the learned counsel for the parties, the sole question, which arose for determination in this second appeal is as to whether the members of plaintiff's society can do their business in the Moti Ganj Mandi. Permission in regard to commodity on which Mandi fee had already been paid and second levy of Mandi fee is specifically barred by the Adhiniyam, as according to counter-affidavit of the plaintiffs, respondents, the plaintiff, society do not claim any relief regarding payment of Mandi fee.

8. The Government of U. P. issued notification No. A-2047/XII-5-600(395)-81 dated October 15, 1981 as follows :-

No. A-2047/XII-5-600(395)-81

October 15, 1981

Whereas the State Government considers it necessary and expedient in the public interest to regulate the sale and purchase of agricultural produce and for controlling the markets thereof :

Now, therefore, in exercise of powers under clause (b) of sub-section (2) of Section 7 of Uttar Pradesh Krishi Utpadan mandi Adhiniyam, 1964 (U.P. Act No. XXV of 1964),

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the Governor is pleased to declare that with effect from the date of publication of this notification in the Gazette the whole sale transactions of :

(1) Wheat, (2) Barely, (3) Paddy, (4) Rice, (5) Jowar, (6) Bajra, (7) Maize, (8) Bejhar, (9) Oats, (10) Gram, (11) Peas, (12) Arhar, (13) Urd, (14) Moong (15) Lobia (seed), (16) Soyabean, (17) Sana (seed), (18) Dhaincha (seed), (19) Guar, (20) Mustard and rape seed (including bye Duwan Taraurira and Tornin of all kinds), (21) Sahuwan (seed), (22) Linseed, (23) Castor seed, (24) Ground-nit, (25) Tilseed, (26) Mahuwa seed, (27) Cottor seed, (28) Safflower seed, (29) Jute, (30) Sanhomp Fibre, (31) Patson, (32) Dhaincha (33) Bambans, (34) Mestu, (35) Corriander, (36) Sonf (Aniseed), (37) Popy seed, (38) Ramdans (39) Neem seed, (40) Gur, (41) Rab, (42) Shakkar, (43) Jaggery, (44) Khadsari, (45) Masoor, (46) Cotton (Ginned and (47) Gullu which are specified agricultural produce in respect of Agra Market Area, shall be conducted only on the place specified by the following boundary falling within the Agra Principal Market Yard of Market Area.

9. The area of village Naraich Gram Sabha Naraich of Nyaya Pachayat Narain of Vikas Khand Khaudauli, district Agra as bounded below :-

East- Plot No. 2071 Part, 3009, 2063, 2060.

West- Plot No. 2329 Part, 2330, 2335, 2332, 2337, 2339, 2340 and 2311.

North- Plot No. 2071 Part, 2323, 2324, 2325 and 2329 Part.

South- Agra-Tundla Road.

By order,

DIVAKAR DEV,

Secretary."

10. It is not disputed that prior to issuance of above notification the whole sale transaction of agricultural produce of Agra Principal Market was being done at Motiganj Mandi Asthal. By the above notification dated 15-10-1981 Mandi Asthal was changed. The above notification was issued in the exercise of powers under clause (b) of sub-section (2) of Section 7 of Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964.

11. Section 7(2) (b) of Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964, hereinafter, called Mandi Adhiniyam reads as under :-

"(2) The State Government, where it considers necessary or expedient in the public interest so to do, may, by notification-

(b) declare that the whole-sale transactions of all or any of the specified agricultural produce in respect of a market area shalla be carried on only at a specified place or places within its principal market yard or sub-market yards."

"Agricultural produce "as defined in Section 2(a) of Mandi Samiti Adhiniyam, means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandry or forest as are specified in the Schedule, and includes admixture of two or more of such items, and also includes any such item in processed form, and further includes gur, rab, shakkar, khandsari and jaggery.

12. According to plaint allegations, the members of plaintiff, society were engaged in business of Dal, Rice and Gur. These articles are mentioned in the Schedule of Mandi Samiti Adhiniyam. It is also not disputed that above articles are agricultural produce as defined in Section 2(a) of Mandi Samiti Adhiniyam.

13. The object of Mandi Samiti Adhiniyam was to provide for the regulation of sale and purchase of agricultural produce and for the establishment, superintendence and control of market therefor in Uttar Pradesh (vide preamble of the Act). It was held in this case M/s. Laxmi Khandsari v. State of U.P., (1981) 2 SCC 600 : (AIR 1981 SC 873) that the central object of the Adhiniyam being the amelioration of existing marketing condition concerning the agricultural produce and the elimination of evils attendant upon it, that cannot be subserved, nor may the market committee superintend or the check be effective unless the traders are required to sell and purchase produce in one complex. The provision is confined to whole sale transaction and the freedom to negotiate, including as to the price, the custom, the quality is left unhampered. If there be no shifting insisted upon, the entire project may remain a proper transaction. The whole object of the Act is the supervision and control of the transactions of purchase by the traders from the agriculturists in order to prevent exploitation of the latter by the former. This principle was reiterated in Ram Chandra Kailash Kumar and Company v. State of U.P., AIR

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1980 SC 1124, in relation directly to provisions of the Mandi Samiti Adhiniyam by observation as below :

"Nobody can be permitted to carry on his his business anywhere in the market area as the market committee will not be able to control and levy fee throughout the market area."

14. In the case of R. K. Porwal v. State of Maharashtra, AIR 1981 SC 1127, the Hon'ble Supreme Court in relation to corresponding provisions of the Maharashtra Act re-affirmed the above principle as below :-

"It cannot be said that the establishment of a principal and subsidiary markets for the marketing of declared agricultural produce and the bar against marketing operations being carried on elsewhere than in the markets so established is only to further and to give effet to the purposes of the Act."

15. The validity and vires of the provisions of Section 7(2) (b) of Mandi Samiti Adhiniyam was considered by Division Bench of this Court in the case of M/s. Amrit Rice Mills v. Krishi Utpadan Mandi Samiti, 1987 UPLBEC 394 : (1987 All LJ 1118) and it was held that competence of the State Legislature to enact Section 7(2) (b) of the Adhiniyam cannot be doubted.

16. It was, further, held in the said case that the provisions of the Act are neither so harsh nor so drastic as to constitute unreasonable restrictions on the right to carry on trade.

17. The question of shifting of market yard was also considered in the Amrit Rice Mills case (1987 All LJ 1118) (supra) and relying on the decision in Vishal Traders v. State of U. P., 1983 All WC 204 : (1983 All LJ 786) as well, repelled the argument that the shifting of the Market Yard from one place to the other amounts to an unreasonable act or violates the petitioners fundamental rights under Article 19 or that it contravenes Article 301 of the Constitution.

18. Thus, it is clear that under Section 7(2) (b) of Mandi Samiti Adhiniyam State Government can declare that the whole-sale transactions of all or any of the specified agriculture produce in respect of a market area shall be carried on only at a specified place or places within its principal market yard or sub-market yards. The above provisions of Section 7(2)(b) are valid and neither so harsh nor so drastic as to constitute unreasonable restrictions on the right to carry on trade. As held in R. K. Porwal v. State of Maharashtra, AIR 1981 SC 1127, by reason of Section 14 of the General Clauses Act any power that is conferred on Government can be exercised from time to time as occasion requires. Therefore, it would be clearly competent to the State Government to declare from time to time, which should be the principal market yard and which should be sub-market yards. it is also clear under Section 21 of the General Clauses Act that when a power to issue notifications, orders, rules, or by-laws is conferred, then that power includes a power to exercise in the like manner and subject to the like sanction and conditions, if any, to add, to amend, vary or rescind any notifications, orders, rules or by-laws so issued". The observations of the Supreme Court in Kewal Krishna Puri v. State of Punjab, AIR 1980 SC 1008 that "nobody can be allowed to establish a purchasing centre of his own at any place he likes in the market area without there being such a permission or authority from the Market Committee", was also affirmed in the said case.

19. Thus, it is clear that whole sale traders are bound to transact business in agricultural produce in respect of a particular market area only at specified place under Section 7(2) (b) and he cannot choose their own place to establish a purchasing centre.

20. The learned counsel for the respondent contended that modus operandi of the business of the plaintiff Samiti is that they deal only in "second arrival" and that too in commodities on which Mandi fee has already been paid, as the producers of agricultural produce carry their produces to Mandi Yard where it is cleaned and is auctioned in terms of provisions contained under Rule 76 of Krishi Utpadan Mandi Adhiniyam and produce so put to auction is purchased by dealers like retailers, whole sellers and Commission Agents, operating in the market yard on the basis of their respective licences granted to them by Mandi Samiti, who pay Mandi fee etc. and after completing formalities for obtaining gate pass etc. from Mandi Samiti. The goods are loaded in the truck and brought out side the Mandi Yard and thereafter it is purchased by members of the plaintiff society. According to him, the produces, which the agriculturists actually bring at Mandi Yard commonly known as "first

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arrival" is subject to the restrictions contained under Section 7(2) (b) of the Mandi Samiti Adhiniyam and since the members of the plaintiff society do not purchase agricultural produce directly from agriculturists, but from traders or commission agents, who firstly purchased the same from agriculturists, therefore, the members of the plaintiff, society are purchasers of "second arrival" and therefore, the provisions of Section 7(2) (b) of Mandi Samiti Adhiniyam are not applicable to them and they cannot be compelled to transact their business at new Mandi Sthal specified in the notification dated 15-10-1981. Having considered the relevant provisions of Mandi Samiti Adhiniyam I find that no such distinction has either had been provided in Section 7(2)(b) or in the definition of 'agricultural produce'. The definition of agricultural produce given in Section 2(a) of Mandi Samiti Adhiniyam is not changed by changing hands of the purchasers. Therefore, it cannot be said that only transaction of agricultural produce from agriculturists is covered by provisions of Section 7(2) (b) and not the transaction between traders and traders. The First Appellate Court has also made a distinction of 'first arrival' and 'second arrival' of agricultural produce and observed that provisions of Section 7(2)(b) is applicable only to first arrival, i.e. the agricultural produce directly purchased from agriculturists. This controversy was also considered by Hon'ble Supreme Court in R. K. Porwal v. State of Maharashtra (AIR 1981 SC 1127). Similar provisions were contained in Maharashtra Agricultural Produce Marketing (Regulation) Act. The applicability of Rule 5 of said rule was considered and it was held as below :-

"Next we pass on to the main submission made on behalf of the petitioners that the transactions between trader and trader and transactions by which the agricultural produce was imported into the market area were outside the purview of the Act and that if Section 5 and Rule 5 were intended to cover such transactions also, they were invalid. The basic assumption of the submission was that the Maharashtra Agricultural Produce Marketing Regulation Act was conceived in the interests of the agriculturists only and intended for their sole benefit. This basic assumption is not well founded. It is true that one of the principal object sought to be achieved by the Act is the securing of a fair price to the agriculturist for his produce, by the elimination of middlemen and other detracting factors. But, it would be wholly incorrect to say that the only object of the Act is to secure a fair price to the agriculturist. As the long title of the Act itself says, the act is intended to regulate the marketing of agricultural and certain other produce. The marketing of agricultural produce is not confined to the first transaction of sale by the producer to the trader but must necessarily include all subsequent transactions in the course of the movement of the commodity into the ultimate hands of the consumer, solong, of course, as the commodity retains its original character as agricultural produce. While middlemen are sought to be eliminated, it is wrong to view the Act as one aimed at legitimate and genuine traders. Far from it. The regulation and control is as much for their benefit as it is for the benefit of the producer and the ultimate consumer. The elimination of middlemen is as much in the interest of the trader as it is in the interest of producer. Promotion of grading and standardisation of the agricultural produce is as much to his benefit as to the benefit of the producer or consumer. So also proper weighment."

21. It was, further, observed in R. K. Porwal case (AIR 1981 SC 1127) (supra) as below :-

"There cannot be any doubt that localising marketing is helpful and necessary for regulation and control and for providing facilities. If all transactions are carried on in the market under the watchful and, at the same time, helpful vigil of the Market Committee and its officers, there is surely a greater chance of the success of the objectives of the statute. We are, therefore, not prepared to hold that the requirement that the locus of all transactions of sale and purchase of agricultural produce, including those between trader and trader, should be in the market is harsh and an excessive restriction on the Fundamental Right to carry on trade."

22. In this way, the provisions of Section 7(2) (b) is applicable to all sorts of whole sale transaction or in specified agrcultural produces in respect of market area, whether it is purchased directly from millers or from traders.

23. In view of above decision of Hon'ble Supreme Court, the contention of the learned counsel for the plaintiff and the observation

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of First Appellate Court in this regard are not sustainable.

24. The learned counsel for the plaintiffs, respondents further contended that in view of 1998 amendment of Section 17 of Mandi Samiti Adhiniyam, no Mandi fee shall be charged on such specified agricultural produce over which Mandi fee had already been levied in the Mandi Yard and, therefore, the agricultural produce, which are purchased from traders, who had already paid Mandi fee etc. are not subjected to payment of Mandi fee and the purpose of transacting business in agricultural produce specified place or Mandi Sthal is to realise Mandi fee etc., therefore, this provision is not applicable to purchasers, who purchase agricultural produce from traders. As held above, the only purpose of specifying place of business is not only to collect Mandi fee etc., but for other purposes also, such benefit to the consumer also and therefore, realisation of Mandi fee has no relevance with the specified place of business of agricultural produce, as observed by the Supreme Court in the case of Ram Chandra Kailash Kumar and Co. v. State of U.P., 1980 Supp SCC 27 : (AIR 1980 SC 1124) as below :-

"It is also not correct to say that agricultural produce must have been produced in the market area, in which first levy is made. It might have been produced in another market area or even outside the State of U.P., but if a transaction of sale and purchase takes place of an agricultural produce as defined in the U.P. Act and covered by the notification within a particular market area then fee can be charged in relation to the said transaction."

25. Thus, notification issued under Section 7 (2)(b) of Mandi Adhiniyam is applicable to whole sale transaction between agriculturists and traders and traders and traders and it has no relevance with the realisation of fee, which is covered by provisions of Section 17 of Mandi Samiti Adhiniyam. It is also clear that distinction made by the First Appellate Court for applicability of provisions of Section 7(2) (b) only on the 'first arrival' and not on the 'second arrival' is also against the provisions of the Act. The sole basis of allowing the appeal was the above distinction, which is not permissible under law. As held above, the whole sale traders have to obey the notification dated 15-10-1981 and to transact their whole sale business only at new Mandi Sthal specified in the notification and not at the place of their choice. Thus, the apepal was wrongly allowed.

26. In view of the above decision, the second appeal succeeds. The second appeal is, accordingly, allowed. Judgment and decree of the First Appellate Court are set aside and that of Trial Court, dismissing the suit of the plaintiff is restored. The appellant shall get costs of this appeal as well of First Appellate Court.

Appeal allowed.

**OM PRAKASH AND S.C. MOHAPATRA, JJ. ( Division Bench )**

The Indian Wood Products Company Limited, Izzatnagar, Bareilly, Petitioner v. Krishi Utpadan Mandi Samiti and another, Respondents.

Civil Misc. Writ Petn. No.18508 of 1991, D/- 17 -5 -1994.

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U.P. Krishi Utpadan Mandi Adhiniyam (25 of 1964), S.2(y), S.17(iii)(b)(3) and S.4 - AGRICULTURAL PRODUCE - Market fee - Levy of - Petitionand engaged in business of manufacture of katechu from khair wood - Is a trader within meaning of S.2(y) - Petitioner carrying on business with Forest Corporation, Selling trader - His case falls under clause (3) and not under clause (4) of Section 17(iii)(b) - Forest Corporation, therefore, liable to pay market fee to Samiti.

To become trader under Section 2(y) it is not necessary for a person to engage himself in the twin activities of buying and selling of agricultural produce. Since the words "buying or selling" have been used disjunctively, a person carrying on either of the activities will become a trader. The business of the petitioner is of manufacture of katechu, which cannot be carried on without buying the raw material. The Khair wood, which is sold by the Forest Corporation from its various Depots, is a raw material which is to be purchased necessarily by the petitioner for carrying on its business. Purchase of raw material is integral part of the business and, therefore, purchase of the Khair wood is a purchase in ordinary course of business. Since the petitioner is engaged in buying the Khair wood from the Forest Corporation, it is nothing but a trader under Section 2(y). Further, the petitioner engaged in the manufacture of katechu from the Khair wood can be said to be engaged processing of agricultural produce and hence also covered by the inclusive definition of trader under Section 2(y). Therefore, the petitioner is trader as both parts of the definition of word 'trader' under Section 2(y) cover up the activity. Thus, the case of the petitioner carrying on business with the forest Corporation, a selling trader. falls under Clause (3) of Section 17(iii)(b) and cl. (4) of Section 17(iii)(b) cannot be invoked and, therefore, the forests Corporation is liable to pay market fee to the Samiti. (Paras 10, 11, 12, 13, 14)

Cases Referred : Chronological Paras

1985 UPLBEC 1192 13

Navin Sinha, for Petitioner; Standing Counsel, B.D. Mandhyan and Y.K. Singh, for Respondents.

Judgement

ORDER :- The sole question for consideration in this writ petition is whether the petitioner, a Limited Company, engaged in the business of manufacture of katechu from Khair wood, is liable to pay market fee to the Krishi Utpadan Mandi Samiti (briefly the Samiti') respondent No. 1 on the purchase of Khair wood from the U.P. Forest Corporation, respondent No. 2.

2. It is indisputed that Khair wood, which is a raw material for the manufacture of katechu, is purchased by the petitioner from various Depots of the U.P. Forest Corporation, respondent No. 2. After manufacturing katechu from the Khair wood, purchased from the Forest Corporation, the petitioner sells out the finished product, i.e., katechu.

3. In paragraph 10 of the writ petition, it is averred that the Samiti does not render any service to the petitioner and, therefore, it cannot levy any market fee. In short, the contention is that fee can be realised only when there is quid pro quo and that when no services are rendered by the Samiti, no fee can be charged from the petitioner. It is, further, contended in paragraphs 15 and 28 of the writ petition that if at all the Samiti is entitled to levy market fee, that can be charged from the Forest Corporation, which is a selling trader, and not from the petitioner which is a purchasing trader. The submission of the Counsel for the petitioner in short is that the petitioner is engaged in ordinary course of business in the purchases of the raw material, i.e., Khair wood, for the manufacture of katechu and therefore, is a 'trader' within the meaning of Section 2(y) of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (for short, 'the Act') and that as the Khair wood, which is nothing but a forest produce, is purchased by the petitioner a purchasing trader, from the Forest Corporation a selling trader; the latter being the trader, selling the forest produce, shall be liable to pay the market fee to the Samiti under Section 17(iii)(b)(3) of the Act.

4. The Samiti, respondent No.1, has filed counter-affidavit. In paragraph 4 of the counter affidavit, it is pleaded by the Samiti that the

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petitioner is not a trader but a mere consumer and, therefore, it is liable to pay the market fee. The contention, in brief is that the transaction of sale and purchase of Khair wood is not between two traders and, therefore, the case of petitioner does not fall under Section 17(iii)(b)(3) but under Section 17(iii)(b)(4) of the Act and hence the petitioner being the purchaser of the wood is liable to pay the market fee.

5. Though the petitioner pleaded that there being no quid pro quo, the Samiti is not at all entitled to charge market fee, this plea was not pursued during arguments and the question for consideration, therefore, remained whether the petitioner or the Forest Corporation is liable to pay the market fee to the Samiti. The arguments proceeded on the assumption that the market fee is payable. The controversy was narrowed down to the question as to whether the petitioner or the Forest Corporation is liable to pay the market fee. To consider this question it is nothing but appropriate to dissect the anatomy of Section 17 of the Act.

6. Section 17, which bears the heading "Powers of the Committee" so far as relevant for the purpose of this case is reproduced below:

17. "A Committee shall, for the purpose of this Act, have the power to-

(i) .... .... ..... ......

(ii) .... .... ..... ......

(iii) levy and collect:

(a) .... .... ..... ......

(b) market fee, which shall be payable on transactions of sale of specified agricultural produce in the market area at such rates .................................. and such fee shall be realised in the following manner-

(1) if the produce is sold through a commission agent, the commission agent may realise the market fee from the purchaser and shall be liable to pay the same to the Committee;

(2) if the produce is purchased directly by a trader from a producer the trader shall be liable to pay the market fee to the Committee;

(3) if the product is purchased by a trader from another trader, the trader selling the produce may realise it from the purchaser and shall be liable to pay the market fee to the Committee; and

(4) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee to the Committee;"

7. Neither party relied on clauses (1) and (2). Relying on clause (3) Sri Navin Sinha, learned Counsel for the petitioner, urged that the business of the petitioner of manufacture of katechu could not be carried on without the raw material and, therefore, purchase of the Khair wood, which is nothing but agricultural produce, from the Forest Corporation, is necessary and, as such, the petitioner purchased the Khair wood from the Forest Corporation to run its business. It was urged that purchases of agricultural produce from the Forest Corporation by the petitioner were in ordinary course of business and that being so the petitioner is nothing but a purchasing trader. According to Sri Sinha, if a person is engaged in buying or selling of agricultural produce, he will partake the character of trader. The submission was that the petitioner being engaged in purchasing the Khair wood, i.e. agricultural produce, is a trader within the meaning of Section 2(y) of the Act. The petitioner and the Forest Corporation both being the traders, according to Sri Sinha, the Forest Corporation a selling trader - shall be liable to pay the market fee to the Committee under Section 17(iii)(b)(3).

8. It is not disputed by Sri Mandhyan, learned Counsel for the Samiti, that the Forest Corporation, respondent No. 2, is a trader. He, however, disputes that the petitioner is a trader. The submission of Sri Mandhyan is that the petitioner is engaged in the business of manufacture of katechu and, therefore, the petitioner is trader in katechu and not in the Khair wood, which is consumed for the manufacture of katechu. His submisison is that the petitioner is a consumer of wood simpliciter and not a trader. The

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petitioner not being a 'trader', Sri Mandhyan urged that the case of the petitioner will not be covered by clause (3) - The case of the petitioner not being covered by clauses (1), (2) and (3), Sri Mandhyan urged that the petitioner being a consumer is covered only by the residuary clause (4) and hence is liable to pay the market fee to the Committee.

9. The question is whether the petitioner is a trader within the meaning of Section Section 2(y)?. Section 2(y) runs as follows:

2. "(y) 'trader' means a person who in the ordinary course of business is engaged in buying or selling agricultural produce as a principal or as a duly authorised agent of one or more principals and include a person, engaged in processing of agricultural produce."

10. From the above reproduced definition, it appears that a person who is engaged in buying or selling agricultural produce in ordinary course of business and who is engaged in processing of agricultural produce, will be a trader. The question is whether the petitioner can be said to have been engaged in buying agricultural produce in ordinary course of business and whether it can be said to have been engaged in processing of agricultural produce. To become a trader it is not necessary that a person should engage himself in the activity of buying and selling agricultural produce concomitantly. A single activity of either buying or selling agricultural produce is enough, if such activity is carried on in ordinary course of business. The business of the petitioner is of manufacture of katechu, which cannot be carried on without buying the raw material. The Khair wood which is sold by the Forest Corporation from its various Depots, is a raw material which is to be purchased necessarily by the petitioner for carrying on its business. Purchase of raw material is integral part of the business and, therefore, purchase of the Khair wood is a purchase in ordinary course of business. Since the petitioner is engaged in buying the Khair wood from the Forest Corporation, it is nothing but a trader under Section 2(y). The argument of Sri Mandhyan that the petitioner is only engaged in buying agricultural produce and, therefore, is not a trader is fallacious. The words "buying or selling" under Section 2(y) have been disjunctively and not conjunctively and, therefore, the submission of Sri Mandhyan that since petitioner is engaged only in the single activity of buying, it cannot be a trader, is erroneous. To become trader under Section 2(y) it is not necessary for a person to engage himself in the twin activities of buying and selling of agricultural produce. Since the words "buying or selling" have been used disjunctively, a person carrying on either of the activities will become a trader. The argument of Sri Mandhyan that the petitioner is merely a consumer of the agricultural produce, i.e., Khair wood, and hence it cannot be a trader, does not commend to us. The cardinal principle of interpretation is that the words being used in a statute if they are free from ambiguity should be given their plain meaning. We see no reason to read the words "buying or selling" occurring in Section 2(y) as 'buying and selling'. The disjunction "or" used between the words "buying and selling". in Section 2(y), insignificant and that indicates that it is not necessary to carry on both the activities of buying and selling concomitantly. Sri Mandhyan is, therefore, not right in arguing that the petitioner cannot be said to be a trader, because it is engaged only in the single activity of buying of wood. The words used in Section 2(y) are unambiguous and therefore, they have to be read as they stand. We are, therefore, justified in taking the semantic view that the petitioner buying wood in ordinary course of business is a trader.

11. The matter can also be looked at from a different angle. Sri Mandhyan has not taken note of still more important phrase being used in Section 2(y). Section 2(y) does not give the exhaustive definition, but it gives inclusive definition of 'trader' as well, inasmuch as, it states:

"............. and includes a person engaged in processing of agricultural produce."

The portion underlined by us indicates that even if a person is engaged in processing of agricultural produce, he may become a trader under Section 2(y). Can the petitioner engaged in the manufacture of katechu from the

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Khair wood, be said to be engaged in processing of agricultural produce. If it can be so said, then the petitioner will be covered by the inclusive definition being given in Section 2(y). In the New Lexicon Webster's Distionary the word 'Process' means, inter alia a method of manufacture or conditioning some thing." So the words processing and manufacturing are not distinct, but they overlap. Sri Mandhyan is, therefore, wrong in saying that the petitioner being engaged in the business of manufacture of katechu from the Khair wood, cannot be a trader. As per Chambers English Dictionary, the word 'process', amongst others means: "to prepare (e.g. agricultural produce) for marketing by some special process, e.g., canning or bottling; to perform operations of adding, subtracting etc. or other operations; to subject (data) to such operation." The petitioner manufactures katechu from the Khair wood by subjecting the wood to successive opertions and, thus, the petitioner can be said to have been engaged in processing the wood, which after being subjected to successive operations, is transformed into katechu. Therefore, the submission of Sri Mandhyan that the petitioner cannot be a trader because it is engaged in the manufacture of katechu from Khair wood, has to be rejected. The petitioner is engaged in processing of agricultural produce and, therefore, the inclusive definition of trader takes the petitioner within its sweep. Both parts of the definition of the word 'trader' under Section 2(y) cover up the activity of the petitioner and we, therefore, unhesitatingly hold that the petitioner is a trader under Section 2(y). The definition of the word 'trader' under Section 2(y) is very wide and we see no justification to give it restrictive meaning as sought to be given by Sri Mandhyan.

12. The petitioner being a trader under Section 2(y) and the Forest Corporation being admitted to be trader by Sri Mandhyan, we hold that the case of the Petitioner falls under clause (3) of Section 17 of the Act. This is a case where the petitioner being a purchasing trader, carried on business with the Forest Corporation - a selling trader - and, therefore, the latter is liable to pay the market fee to the Samiti under Section 17 (iii) (b) (3). The case of the petitioner having fallen under Section 17(iii)(b)(3), recourse cannot be taken to clause (4).

13. Sri Mandhyan relied on certain observations made by a Division Bench of this Court in U.P. Forest Corporation Lucknow v. Krishi Utpadan Mandi Samiti, (1985 UPLBEC 1192) (para 36 at page 1206), in this authority, the Division Bench while considering, if the case falls under clause (3) of Section 17(iii)(b) observed that the Railways or Public Sector organisation would normally be not covered in the definition of trader in sub-clause(y) of Section 2. The case of the Railways is entirely different from that of the instant petitioner; the former is, merely a consumer of the wooden sleepers which are used by the Railways to lay down Railway tracks, but the latter is engaged in processing of agricultural produce within the meaning of Section 2(y) and hence is a trader. Therefore, the reliance of Sri Mandhyan on the case of U.P. Forest Corporation (supra) is misplaced.

14. For the reasons, we accept the contention of the Counsel for the petitioner that the case of the petitioner having fallen under clause (3) of Section 17(iii)(b), clause (4) of Section 17(iii)(b) cannot be invoked. The petitioner as well as the Forest Corporation, respondent No. 2, both being the traders, the latter is liable to pay the market fee to the Committee under Section 117(iii)(b)(3).

In the result, the petition succeeds and is allowed. Respondent No.1 is restrained from collecting the market fee from the petitioner with regard to the transactions of purchase of the Khair wood by the petitioner from respondent No.2. If any market fee on such transactions has been paid by the petitioner to respondent No.1 under protest, the same will be refunded to the petitioner within a month from the date a proper application is made by the petitioner in this behalf to respondent No.2 annexing a certified copy of this order. No order as to costs,

Petition allowed. .

**FULL BENCH**

**Coram : 3 SATISH CHANDRA, C.J., K. N. SINGH AND K. C. AGRAWAL, JJ. ( Full Bench )**

Umesh Chand Vinod Kumar and others, Petitioners v. Krishi Utpadan Mandi Samiti, Bharthana and another, Respondents.

Civil Misc. Writ Petn. No. 13367 of 1981, Connected with C.M. W.P. Nos. 6538, 8422 and 6886 of 1980, D/- 26 -9 -1983.

(A) Constitution of India, Art.226 - WRITS - WORDS AND PHRASES - Loucs standi - Petition by association of persons for enforcement of rights of its members as distinguished from its own rights - Maintainability - Words and Phrases - "Littleman".

An association of persons, registered or unregistered, can file a petition under Art. 226 for enforcement of the rights of its members as distinguished from the enforcement of its own rights- (1) In case members of such an association are themselves unable to approach the court by reason of poverty, disability or socially or economically disadvantaged position (little Indians). (2) In case of a public injury leading to public interest litigation provided the association has some concern deeper than that of a wayfarer or a busybody i.e. it has a special interest in the subject matter; (3) Where the rules or regulations of the association specifically authorise it to take legal proceedings on behalf of its members, so that any order passed by the court in such proceedings will be binding on the members. In other cases an association whether registered or unregistered cannot maintain a petition under Art. 226 for the enforcement or protection of the rights of its members, as distinguished from the enforcement of its own rights, (Case law discussed). (Paras 20, 45)

According to some of the observations made in the Supreme Court cases the concept of cause of action and person aggrieved has become obsolescent in some jurisdictions, like "public interest litigation" by little Indians in large numbers seeking remedies in courts. In such a case alone an association of little Indians may be permitted to sue on their behalf. These observations graft an exception to the traditional rule of locus standi. They will not cover the case of an association suing on behalf of its members where its own interests are not affected and where its members do not answer the description of little Indians. The little Indian mentioned in the Supreme Court case is that person who by reason of poverty, disability or socially or economically disadvantaged position is unable to approach the Court. The legal injury or wrong suffered by such a person can he brought to the notice of the Court by any other person, be it an association of such persons or a member of the public. AIR 1981 SC 298, Foll. (Paras 17, 18)

In this connection it may be noted that the concept of locus standi is different and distinct from the question of joinder of parties. The former relates to the right of a person to approach the Court the latter to join with others in

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approaching the Court. One may not be confused with the other. (Para 23)

(B) Constitution of India, Art.226 - WRITS - Writ petition - Single petition by persons unconnected with one another - Maintainability.

A single writ petition under Art.226 more than one petitioner, not connected with each other as partners or any per other legally subsisting jural relationship, is maintainable where the right to relief arises from the same act or transaction and there is a common question of law or fact or where though the right claim does not arise from the same act or transaction, the petitioners are jointly interested in the cause or causes of action. Case law discussed. (Paras 34, 45)

Generally joinder of more than one person can be permitted in a proceeding under Art. 226 where the right to relief arises out of the same act or transaction or where the petitioners are jointly interested, in the cause of action and a common question of law or fact arises. In other words, joinder of more than one person is permissible when the cause of action is the same. Such joinder may not be permissible if the cause of action is similar. (Para 28)

(C) Constitution of India, Art.226 - WRITS - COURT-FEE - Petition filed by association of persons to enforce rights of its members - Court-fees payable - Misjoinder of petitioners - Defect can be cured by each petitioner paying separate court-fees.

Where a single writ petition by an association or by more than one person is maintainable, only one set of court-fees would be payable. The levy of court-fee will not depend on the number of persons who have joined in the writ petition. But, where a single writ petition is not validly maintainable, but nonetheless several persons join in it, then each petitioner will have to pay court-fee separately as if he had filed a separate writ petition. In such cases the writ petition may not, in the discretion of the court, be dismissed outright. The defect of misjoinder of petitioners can be cured by requiring each petitioner to pay separate court-fees. (Paras 36, 37, 38)

In the present group of writ petitions the position is that the petitioners are businessmen carrying on business in foodgrains etc., under licences granted to each one of them separately. They are, in effect, seeking enforcement of their individual rights. Their grievance is against the levy of market fee on each of them by the Mandi Samiti. The Mandi Samiti has issued notices to individual traders who are the petitioners requiring them to file returns as provided in the Rules and to pay market fee. They want the quashing of these notices issued to individual petitioners. In some of the writ petitions a direction has been sought that the Mandi Samiti is not entitled, to levy market fee. It is true that the principal question raised in these petitions is the same, but nonetheless each petitioner has an independent cause of action because each petitioner has been made liable to pay market fee. The cause of action is not joint. Under these circumstances the petitioners cannot validly maintain a joint writ petition. The petitions may not, however, be dismissed on this ground, provided the petitioners pay separate court-fee for each one of them. (Paras 39, 40, 41)

(D) Constitution of India, Art.226 - WRITS - AGRICULTURAL PRODUCE - Single petition challenging levy of fees by several Mandi Samitis - Petition seeking relief against each such Samiti - such Samitis arrayed as respondents - Maintainability of petition.

A single writ petition by different traders is maintainable for questioning similar actions taken by different Mandi Samitis independently of each other in cases where the aggrieved party seeks relief against each such committee on identical grounds. (Para 45)

The petitioners were dealers in manufactured tobacco. Their case was that tobacco is manufactured in various parts of the country outside the jurisdiction of Mandi Samiti Kanpur, within whose jurisdiction they carry on trade. They import such tobacco in Kanpur or take it out of Kanpur. The tobacco has to pass through the various other Mandi Samitis on the way. These Mandi Samitis require the petitioners to pay market fee as soon as tobacco enters their respective jurisdiction. The various Mandi Samitis were impleaded. The petitioners claimed that the demand of market fee was unauthorised and they should be restrained from demanding it.

Held, that in view of averments made in the petition there appears to be no legal obstacle to the impleadment of these various Mandi Samitis. If of course, these Mandi Samitis raise different defences and the court finds that it

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is not convenient or proper to adjudicate upon the cases of the various defendants in the same writ petition, it may order the petitioners to file separate was petitions against each Mandi samiti. (Para 44)

Cases Referred : Chronological Paras

AIR 1983 SC 130 : 1983 Lab IC 1 19

AIR 1982 SC 149 19

1982 SC 1473 : 1982 Lab IC 1646 17

AIR 1981 SC 298 : 1980 Lab IC 1325 17, 33

AIR 1981 SC 344 : 1980 Lab IC 1367 15, 32

AIR 1981 SC 484 25, 30, 32, 36

(1981) Civil Misc. Writ Petn. No. 1254 of 1981, Manzoor Ahmad Khan v. State of U.P. (All) 29

AIR 1976 SC 242 16

AIR 1975 SC 2092 16

AIR 1970 SC 564 13

1968 All LJ 210 (FB) 24, 28

AIR 1966 SC 828 12

AIR 1962 SC 1044 12, 31

AIR 1952 SC 12 11

AIR 1951 SC 41 12

AIR 1951 All 1 : 1950 All LJ 767 (FB) 14

S.P. Gupta, Sr. Advocate and Rakesh Dwivedi, for Petitioners; B.D. Mandhyan, for Respondents.

Judgement

SATISH CHANDRA, C.J.:- A Division Bench of our Court has referred five questions of law to a larger Bench. The questions are -

(1) Whether an association of persons, registered or unregistered can maintain petition under Art.226 of the Constitution for the enforcement of the rights of its members as distinguished from the enforcement of its own rights?

(2) Whether a single writ petition under Art.226 of the Constitution is maintainable on behalf of more than one petitioners, not connected with each other as partners or those who have no other legally subsisting jural relationship where the questions of law and fact, involved in the petition, are common?

(3) In case the answer to question No. 1 is in the affirmative, whether only one set of court-fees would be payable on such petition or each such individual petitioner has to pay court-fees separately?

(4) In case answer to question No. 1 is in the negative, whether the defect of misjoinder of several petitioners in the writ petition can be cured by requiring each such petitioner to pay separate court-fees?

(5) Whether the petition is maintainable for questioning similar actions taken by different Mandi Samitis independently of each other in cases where the aggrieved party seeks relief against each such committee on identical grounds?

2. These questions arise out of writ petitions filed by a large number of persons jointly. For instance, in Writ Petition No. 13367 of 1981 36 partnership firms have filed a single writ petition. Each such firm carries on business independently and under a licence granted to it separately by the Mandi Samiti.

3. In Writ Petition No. 6886 of 1980 there are 22 petitioners. Petitioners 1 to 21 are traders who carry on business of commission agent in finished tobacco. Petitioner No. 2 is a registered association of which petitioners Nos. 1 to 21 are members.

4. In each writ petition the petitioners claim that the Mandi Samiti is not entitled to charge market fee. They pray that the Mandi Samiti be directed not to demand payment of market fee. In some cases they have prayed for quashing of the notices issued by the Mandi Samiti for filing returns and paying the market fee.

5. In each writ petition the ground of attack is common to all various petitioners. For instance, in Writ Petition No. 6886 of 1980 all the 22 petitioners claim that tobacco is not a specified agricultural produce. The Mandi Samiti is hence not entitled to charge any market fee in respect of transactions of manufactured tobacco. In Writ Petition No. 133/67 of 1981 all the 36 petitioners state that since the Mandi Samiti does not render any service, it is not entitled to charge market fee from the traders.

6. At the hearing of the writ petitions the respondents raised a preliminary objection. It was submitted that an association of traders had no locus standi to file a writ petition on behalf of the traders when no right of the association as such was being adversely affected by the impugned action of the Mandi Samiti. It was also urged that the various traders have an independent cause of action in respect of their liability to pay market fee. They cannot validly join in a single writ petition. In any event they must pay separate sets of court-fees.

7. It has also urged that in some cases several Mandi Samitis have been

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made defendants. They may have different defences. This will lead to confusion and multifariousness. Such a writ petition is not maintainable.

8.The Division Bench felt that the questions raised by these preliminary objections should more properly engage the attention of a larger Bench. Accordingly the Bench has referred the aforesaid questions of law for decision by a larger Bench. That is how the matter has come before this Full Bench.

9. We shall deal with the questions seriatim. Question No. 1 : "Whether an association of persons, registered or unregistered can maintain a petition under Art. 226 of the Constitution for the enforcement of the rights of its members as distinguished, from the enforcement its own rights?

10. Article 226 of the Constitution confers very wide power on the High Courts for enforcement of rights. It is implicit that the relief asked for must be one to enforce a legal right.

11. In Madan Gopal's case AIR 1952 SC 12 it was held that the existence of the right is the foundation of the exercise of jurisdiction under Art. 226 of the Constitution.

12. Charanjit Lal's case AIR 1951 SC 41 decided that the legal right that can enforced under Art. 32 must ordinarily be the right of the petitioner itself who complains of infraction of such right. Calcutta Gas Co. AIR 1962 SC 1044, holds that the same principle applies to a petition under Art. 226. The Supreme Court reiterated these principles in Venkateswara's case AIR 1966 SC 828.

13. In the Bank Nationalisation case AIR 1970 SC 564 the Supreme Court held that a shareholder, a depositor or a director of a company registered under the Companies Act may not be entitled to move a petition for infringement of the right of the Company unless by the action impugned by him his rights are also infringed. In other words, the petitioner may seek relief in respect of his own rights and not of others.

14. In Indian Sugar Mills Association case AIR 1951 All 1 a Full Bench of our Court held that a registered trade union is a distinct and separate person from the various members and it may not sue on behalf of its members if its own interests are not affected unless by the rules and regulations of an association provision has been made giving to the association the right to represent the members in any legal proceedings before the Court. The reason being that without any such express autrorisation it cannot be held that the association had a right to move the court on behalf of its members because any order passed in these proceedings will not bind the mills.

15. In Fertilizer Corporation's case AIR 1981 SC 344 Chandrachud, C. J. speaking for the majority ruled that the question whether a person has the locus to file a proceeding depends mostly and often on whether he possesses a legal right and that right is violated. But, in an appropriate case, it may become necessary in the changing awareness of legal rights and social obligations to take a broader view of the question of locus to initiate a proceeding, be it under Article 226 or under Article 32 of the Constitution. (Para 23)

16. Krishna Iyer, J. dealt with the question of access to justice elaborately. In paragraph 44, He observed :

"Public interest litigation is part of the process of participative justice and "standing" in civil litigation of that pattern must have liberal reception at the judicial door-steps."

The concept of locus standi in public interest litigation was further explained by his Lordship in paragraph 48 where he observed :

"If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him. But if he belongs to an organisation which has special interest in the subject matter, if he has some concern deeper than that of a busybody, he cannot be told off at the gates, although whether the issue raised by him is justiciable may still remain to be considered. I, therefore, take the view that the present petition would clearly have been permissible under Article 226." See judgments of Krishna Iyer J. in (1975) 2 SCC 703 : (AIR 1975 SC 2092) and (1976) 2 SCC 291 : (AIR 1976 SC 242).

17. The question of "standing" was the subject of a passing observation by Krishna Iyer, J. in Akhil Bharatiya Soshit Karamchari Sangh's case AIR 1981 SC 298 (to which the other two

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learned Judges constituting the Bench did not advert to). His Lordship observed (Para 63) :-

"A technical point is taken in the counter-affidavit that the Ist petitioner is an unrecognised association and that, therefore, the petition to that extent, is not sustainable. It has to be overruled. Whether the petitioners belong to a recognised union or not, the fact remains that a large body of persons with a common grievance exists and they have approached this Court under Art. 32. Our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is broad-based and people-oriented and envisions access to justice through 'class actions', `public interest litigation', and `representative proceedings'. Indeed, little Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of `cause of action' and `person aggrieved' and individual litigation is becoming obsolescent in some jurisdictions. It must fairly be stated that the learned Attorney General has taken no objection to a non-recognized association maintaining the writ petitions."

According to these observations the concept of `cause of action' and `person aggrieved' has become obsolescent in some jurisdictions, like `public interest litigation' by little Indians in large numbers seeking remedies in courts. In such a case alone an association of little Indians may be permitted to sue the their behalf. These observations graft on exception to an traditional rule of locus standi. They will not cover the case of an association suing on behalf of its members where its own interests are not affected and where its members do not answer the description of little Indians.

17A. Another exception to the traditional rule of locus standi was discussed in People's Union for Democratic Rights case AIR 1982 SC 1473 at p. 1483 :

"Where judicial redress is sought of a legal injury or legal wrong suffered by a person or class of persons who by reason of poverty, disability or socially or economically disadvantaged position are unable to approach the court and the court is moved for this purpose by a member of a public by addressing a letter drawing the attention of the Court to such legal injury or legal wrong, Court would cast aside all technical rules of procedure and entertain the letter as a writ petition on the judicial side and take action upon it."

18. It appears that the little Indian mentioned by Krishna Iyer, J. is this person, that is, who by reason of poverty, disability or socially or economically disadvantaged position is unable to approach the Court. The legal injury or wrong suffered by such a person can be brought to the notice of the Court by any other person, be it an association of such persons or a member of the public.

19. The question of locus standi was elaborately dealt with in the Judges' case AIR 1982 SC 149. The law laid down by the majority decision in that case was affirmed in Nakara's case AIR 1983 SC 130. There it was observed (at Pp. 149-50) -

"The majority decision of this Court in S.P. Gupta v. Union of India (AIR 1982 SC 149 at page 194) rules that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and the observance of such constitutional or legal provision."

Accordingly a public interest litigation can be initiated for judicial redress for public injury by a person not personally hurt. This principle will not apply where an association or organisation seeks to enforce a personal or private right of another, as distinguished from public injury.

20. To summarise, the position appears to be that an association of persons, registered or unregistered, can file a petition under Article 226 for enforcement of the rights of its members as distinguished from the enforcement of its own rights-

(1) In case members of such an association are themselves unable to approach the court by reason of poverty, disability or socially or economically disadvantaged position "little Indians".

(2) In case of a public injury leading to public interest litigation provided the association has some concern deeper than that of a way-farer or a busybody i.e. it has a special interest in the subject matter.

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(3) Where the rules or regulations of the association specifically authorise it to take legal proceedings on behalf of its members, so that any order passed by the court in such proceedings will be binding on the members.

21. In other cases an association whether registered or unregistered cannot maintain a petition under Article 226 for the enforcement or protection of the rights of its members, as distinguished from the enforcement of its own rights.

22. This is our answer to question No. 1. Question No. 2: Whether a single writ petition under Art. 226 of the Constitution is maintainable on behalf of more than one petitioner not connected with each other as partners or those who have no other legal subsisting jural relationship where the questions of law and facts involved in the petitions are common?

23. It will be seen that this question raises the issue of maintainability on gound of joinder or misjoinder of petitioners. Question No. 1, on the other hand, raised the point about locus standi or standing. The concept of locus standi is different and distinct from the question of joinder of parties. The former relates to the right of a person to approach the Court; the latter to join with others in approaching the Court. One may not be confused with the other.

24. The question of joinder came up for consideration before a Full Bench of this Court in Mall Singh's case 1968 All LJ 210. The Full Bench decided that an application under Art. 226 of the Constitution is a proceeding in a court of civil jurisdiction, Section 141 of the Code of Civil Procedure was attracted. The provisions of the Code of Civil Procedure apply to proceedings under Art.226 in so far as the provisions of the Code can be made applicable. The majority view was :

"The joinder of more than one person under Article 226 can be permitted only where the right to relief arises from the same act or transaction and there is a common question of law or fact or where though the right of claim does not arise from the same act or transaction the petitioners are jointly interested in the cause or causes of action"

This view was based on a combined reading of Order 1, Rule 2, and Order 2, R.3 C. P. C. The Civil Procedure Code (Amendment) Act. 104 of 1976 added an Explanation to Section 141, stating that in this section the expression "proceedings" includes proceedings under Order 9, but does not include any proceeding under Article 226 of the Constitution. The result is that now the provisions of the Code of Civil Procedure are not, of their own force, applicable to writ petitions.

25. The question came up for consideration before the Supreme Court in Mota Singh's case AIR 1981 SC 484. In that case several truck operators filed a single writ petition challenging the liability of each one of them to pay tax. The Court observed (at p. 485) -

"Having regard to the nature of these cases where every owner of a truck plying his truck for transport of goods has a liability to pay tax impugned in the petition, each one has his own independent cause of action. A firm as understood under the Partnership Act or a Company as understood under the Indian Companies Act, if it is entitled in a law to commence action either in the firm name or in the Company's name can do so by filing a petition for the benefit of the Company or the partnership and in such a case court-fee would be payable depending upon the legal status of the petitioner. But it is too much to expect that different truck owners having no relation with each other either as partners or any other legally subsisting jural relationship of association of persons would be liable to pay only one set of court-fee simply because they have joined as petitioners in one petition. Each one has his own cause of action arising out of the liability to pay tax individually and the petition of each one would be a separate and independent petition and each such person would be liable to pay legally payable court-fee on his petition. It would be a travesty of law if one were to hold that as each one uses high way, he was common cause of action with the rest of truck pliers".

26. The relevant part of the observations relating to joinder of parties is -

"Having regard to the nature of these cases where every owner of a truck plying his truck for transport of goods has a liability to pay tax impugned in the petition, each one has his own independent cause of action......Each one has his own cause of action arising out of the liability to pay tax individually and the petition of each one would be a separate and independent petition ......."

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27. It was further held :

'It would be a travesty of law if one were to hold that as each one uses highway, he has common cause of action with the rest of truck pliers''.

28. It appears to us that according to this decision a joint writ petition would be validly maintainable if there is legally subsisting jural relationship of association of persons between them or if they have the same cause of action. In substance, this decision applies the same principle of procedure as was enunciated by the Full Bench of our Court in Mall Singh's case (1968 All LJ 210), namely, generally joinder of more than one person can be permitted in a proceeding under Art.226 where the right to relief arises out of the same act or transaction or where the petitioners are jointly interested in the cause of action and a common question of law or fact arises. In other words, joinder of more than one person is permissible when the cause of action is the same. Such joinder may not be permissible if the cause of action is similar.

29. Our attention was invited to a Division Bench decision of this Court in Manzoor Ahmad Khan v. State of U.P. (Civil Misc. Writ Petition No. 1254 of 1981). In that case it was held that the petitioners had separate causes of action and so they were liable to pay separate Court-fee. To that extent the decision is correct.

30. Learned counsel for the petitioners submitted that Mota Singh's case (AIR 1981 SC 484) was not applicable because it related to petitions under Art.32 of the Constitution.

31. In Calcutta Gas Company's case (AIR 1962 SC 1044) the Supreme Court held that the same procedure applied to a petition under Art.226 as they applied to a petition under Art.32.

32. Similarly, in Fertilizer Corporation's case (AIR 1981 SC 344) the Supreme Court reiterated that the same principle governs the question of locus standi, be it a proceeding under Article 226 or under Article 32 of the Constitution. In our opinion on the question of joinder of parties or causes of action the same principle would govern proceedings under Article 32 as well as Article 226. The decision in Mota Singh's case (AIR 1981 SC 484) will be equally applicable to a proceeding under Article 226.

33. Learned counsel for the petitioners relied upon the observations of Krishna Iyer, J. in Soshit Karamchari Singh's case (AIR 1981 SC 298). Those observations related to locus stands. They had no bearing on the question of joinder of petitioners. The passing observation of Krishna Iyer, J. (to which the other two learned Judges constituting the Bench did not advert to) related to the technical point taken in the counter-affidavit (though not argued at the hearing) that the "first petitioner is a non-recognised association and that, therefore, the petition to that extent is not sustainable". This objection related to locus standi of the first petitioner. It had nothing to do with the question whether more than one person can validly join in a single writ petition.

34. Our answer to the second question is that a single writ petition under Article 226 of the Constitution by more than one petitioner, not connected with each other as partners or any other legally subsisting jural relationship, is maintainable where the right to relief arises from the sane act or transaction and there is a common question of law or fact or where though the right of claim does not arise from the same act or transaction, the petitioners are jointly interested in the cause or causes of action.

35. The third and the fourth questions are -

(3) In case the answer to question No. 1 is in the affirmative, whether only one set of court-fees would be payable on such petition or each such individual petitioner has to pay court-fees separately?

(4) In case answer to question No. 1 is in the negative, whether the defect of misjoinder of several petitioners in the writ petition can be cured by requiring each such petitioner to pay separate court-fees?

36. Where a single writ petition by an association or by more than one person is maintainable as mentioned above, only one set of court-fees would be payable. The levy of court-fee will not depend on the number of persons who have joined in the writ petition. But, where a single writ petition is not validly maintainable, but nontheless several persons join in it, then the principle laid down in Mota Singh's case (AIR 1981 SC 484) will apply; namely, each petitioner will have to pay court-fee separately as if he had filed a separate writ petition. In such cases the writ

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petition may not, in the discretion of the Court, be dismissed outright. The defect of misjoinder of petitioners can be cured by requiring each petitioner to pay separate court-fees.

37. Our answer to the third question that where a single writ petition by association or by more than one person is maintainable, then a single set of Court-fees would be payable. Else, each petitioner is liable to pay separate court-fees.

38. Our answer to the fourth question is that the technical defect of misjoinder of petitioners can, in the discretion of the Court, be cured, by each petitioner paying separate court-fees.

39. In the present group of writ petitions the position is that the petitioners are businessmen carrying on business in foodgrains etc. under licences granted to each one of them separately. They are, in effect, seeking enforcement of their individual rights. Their grievance is against the levy of market fee on each of them by the Mandi Samiti. The Mandi Samiti has issued notices to individual traders who are the petitioners requiring them to file returns as provided in the Rules and to pay market fee. They want the quashing of these notices issued to individual petitioners. In some of the writ petitions a direction has been sought that the Mandi Samiti is not entitled to levy market fee.

40. It is true that the principal question raised in these petitions is the same, but nonetheless each petitioner has an independent cause of action because each petitioner has been made liable to pay market fee. The cause of action is not joint. Under these circumstances the petitioners cannot validly maintain a joint writ petition.

41. The petitioners may not, however, be dismissed on this ground, provided the petitioners pay separate court-fee for each one of them.

42. Question No. 5: "Whether one petition is maintainable for questioning similar actions taken by different Mandi Samitis independently of each other in cases where the aggrieved party seek relief against each such Committee on identical grounds?"

43. This question arises in writ petition No. 6886 of 1980. In that case the petitioners deal in manufactured tobacco. Their case is that tobacco is manufactured in various parts of the country outside the jurisdiction of Mandi Samiti, Kanpur, within whose jurisdiction they carry on trade. They import such tobacco in Kanpur or take it out of Kanpur, and this tobacco has to pass the territories of various other Mandi Samitis on the way. These other Samitis have fixed barriers on the road like octroi barrier of Municipal Boards, and they require the petitioners to pay market fees on the tobacco as soon as it enters within their respective jurisdictions. Such Committees have been arrayed as respondents 3 to 7 in the writ petition. The petitioners' case is that the demand of market fees by these several Mandi Samitis on the basis of entry of the tobacco within their respective territories is absolutely unauthorised. Their prayer is that these Mandi Samitis be restrained from demanding market fees from the petitioners on manufactured tobacco.

44. In view of the averments made in the writ petition there appears to be no legal obstacle to the impleadment of these various Mandi Samitis. If, of course, these Mandi Samitis raise different defences and the Court finds that it is not convenient or proper to adjudicate upon the cases of the various defendant in the same writ petition, it may order the petitioners to file separate writ petitions against each Mandi Samiti.

45. Our answer to the referred questions is as follows:-

Q. 1 - Whether an association of persons, registered or unregistered, can maintain a petition under Article 226 of the Constitution for the enforcement of the rights of its members as distinguished from the enforcement of its own rights? A. 1 - The position appears to be that an association of persons, registered or unregistered, can file a petition under Article 226 for enforcement of the rights of its members as distinguished from the enforcement of its own rights - @page-All54

(1) In case members of such an association are themselves unable to approach the court by reason of poverty, disability or socially or economically disadvantaged position ("little Indians").

(2) In case of a public injury leading to public interest litigation; provided the association has some concern deeper than that of a wayfarer or a busybody, i.e., it has a special interest in the subject matter.

(3)Where the rules or regulations of the association specifically authorise it to take legal proceedings on behalf of its members, so that any order passed by the court in such proceedings will be binding on the members.

In other cases an association, whether registered or unregistered, cannot maintain a petition under Article 226 for the enforcement or protection of the rights of its members, as distinguished from the enforcement of its own rights.

Q. 2 Whether a single writ petition under Article 226 of the Constitution is maintainable on behalf of more than one petitioner, not connected with each other as partners or those who have no other legally subsisting jural relationship where the question of law and fact, involved in the petition, are common? A. 2 A single writ petition under Art. 226 of the Constitution by more than one petitioner, not connected with each other as partners or any other legally subsisting jural relationship, is maintainable where the right to relief arises from the same act or transaction and there is a common question of law or fact or where though the right of claim does not arise from the same act or transaction, the petitioners are jointly interested in the cause or causes of action.

Q.3 In case the answer to question No. 1 is in the affirmative, whether only one set of court-fees would be payable on such petition or each such individual petitioner has to pay court-fees separately? A. 3 Where a single writ petition by an association or by more than one person is maintainable, then a single set of court-fees would be payable. Else, each petitioner is liable to pay separate court-fees.

Q. 4 In case answer to question No. 1 is in the negative, whether the defect of misjoinder of several petitioners in the writ petition can be cured by requiring each such petitioners to pay separate court-fees? A. 4 The technical defect of misjoinder of petitioners can, in the description of the Court, be cured by each petitioner paying separate court-fees.

Q. 5 Whether the petition is maintainable for questioning similar actions taken by different Maindi Samitis independently of each other in cases where the aggrieved, party seeks relief against each such Committee on identical grounds? A. 5 Our answer to this question is in the affirmative.

46. Let the papers be laid before the concerned Bench with this opinion and answers.

Answered accordingly.

**AIR 1979 ALLAHABAD 3 "Mahavir v. State"**

**ALLAHABAD HIGH COURT**

Coram : 2 N. D. OJHA AND R. R. RASTOGI, JJ. ( Division Bench )

Mahavir and others, Petitioners v. The State of U.P. and others, Respondents.

Civil Misc. Writ No. 6077 of 1978, D/- 25 -9 -1978.

U.P. Krishi Utpadan Mandi Adhiniyam (25 of 1964), S.12(2) - LOCAL AUTHORITY - ACQUISITION OF LAND - AGRICULTURAL PRODUCE - REPUGNANCY BETWEEN STATUTES - GENERAL CLAUSES - Mandi Samiti is a local authority for purpose of land acquisition - Definition of local authority in U.P. Act 25 of 1964 prevails over that under the General Clauses Act.

General Clauses Act (10 of 1897), S.3(31).

Constitution of India, Art.254.

Mandi samiti is local authority under Section 12(2) of U.P. Krishi Utpadan Mandi Adhiniyam. But it would not be so if definition of "local authority" as contained in Section 3(31) of General Clauses Act is applied. However as the U.P. Krishi Utpadan Mandi Adhiniyam has received assent of the President, the definition of local authority as contained in U.P. Act No. 25 of 1964 would prevail and the Mandi samiti would be local authority. So acquisition of land under the Land Acquisition Act for Mandi Samiti has to be treated as acquisition for local authority. AIR 1963 SC 1890, Disting. (Para 3)

Anno : AIR Man. (3rd Edn.) General Clauses Act, S.3(31), N.23; AIR Comm. Constn. of India (2nd Edn.), Art.254, N.2.

Cases Referred : Chronological Paras

AIR 1963 SC 1890 : 1964 All LJ 639 3

Ramendra Asthana, for Petitioners.

Judgement

N. D. OJHA, J. :- The only point which has been urged by counsel for the petitioners in this writ petition is that the Mandi Samiti for which the land is being acquired is a company within the meaning of the Land Acquisition Act and since the procedure prescribed under the said Act for acquisition for a company has not been followed, the proceedings for acquisition are illegal.

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2. Having heard learned counsel we are of opinion that there is no substance in this submission. Section 12 of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (U.P. Act No. XXV of 1964) which received the President's assent on October 24, 1964, prescribes for establishment and incorporation of a Committee for every market area. The Committee is to be called the Mandi Samiti. Sub-Section (2) of Section 12 provides that the Committee shall be deemed to be a local authority for the purposes of Land Acquisition Act, 1894 and any other law for the time being in force.

3. Counsel for the petitioners placed reliance on Valjibhai Miljibhai Soneji v. State of Bombay (AIR 1963 SC 1890). In that case the question arose whether the State Transport Corporation was a local authority within the meaning of the Land Acquisition Act. The learned Attorney General placed reliance on S.29 of the State Road Transport Act, 1950 which provided that the Corporation shall for all purposes be deemed to be a local authority. It was held (at pp. 1894-95) :

"No doubt, that is so. But the definition contained in this Act cannot override the definition contained in the General Clauses Act of 1897 which alone must apply for construing the expression occurring in a Central Act like the Land Acquisition Act unless there is something repugnant in the subject or context. Though land acquisition is now in the concurrent list and, therefore the State can legislate, the Bombay Act not having received the President's assent cannot prevail against the meaning of the expression 'local authority' in that Act. No repugnancy is pointed out."

In the instant case, in view of Sub-Sec. (2) of S.12 of the U.P. Krishi Utpadan Mandi Adhiniyam there is apparent repugnancy. If the definition of 'local authority' as contained in the General Clauses Act is taken into consideration the Mandi Samiti will not be a local authority. On the other hand, it Section 12(2) of the U.P. Krishi Utpadan Mandi Adhiniyam is taken into consideration it would be a local authority. In the instant case, unlike the Bombay State Road Transport Act, the U.P. Krishi Utpadan Mandi Adhiniyam, as has already been pointed out above, has received the assent of the President. In this view of the matter notwithstanding the definition of 'local authority' contained in the General Clauses Act the Mandi Samiti or the Committee would be a 'local authority' for the purposes of Land Acquisition Act and as such acquisition for such a Committee cannot be treated as acquisition for a company.

4. No other point has been pressed.

5. In the result, the writ petition fails and is, accordingly, dismissed.

Writ petition dismissed.

**AIR 1977 ALLAHABAD 544 "Ramjidas v. State"**

**ALLAHABAD HIGH COURT**

**Coram : 2 K**. N. SINGH AND K. C. AGARWAL, JJ. ( Division Bench )

Ramjidas and others, Petitioners v. State of U.P. and others, Respondents.

Civil Misc. Writ Petn. No. 590 of 1976, D/- 12 -10 -1977.

(A) Land Acquisition Act (1 of 1894), S.5A - ACQUISITION OF LAND - Dispensation of S.5A - Effect of U. P. Act 8 of 1974 - Power can be exercised in respect of land other than waste and arable as well.

The effect of the amendment made by U. P. Act No. VIII of 1974 was that the proceedings contemplated by S.5-A can be dispensed with also in respect of

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land other than waste and arable. AIR 1976 All 166 and (1976) 2 All LR 529; AIR 1977 NOC 10 (All), Foll. (Para 6)

(B) Land Acquisition Act (1 of 1894), S.4, S.6, S.17 - ACQUISITION OF LAND - PLANNING AND DEVELOPMENT - AGRICULTURAL PRODUCE - Acquisition of land for planned development - Acquisition of land for construction of market yard for Krishi Utpadan Mandi Samiti is valid.

AIR 1977 All 464, Relied on. (Para 7)

(C) Land Acquisition Act (1 of 1894), S.4, S.6, S.17 - ACQUISITION OF LAND - Acquisition of land - No mention in notification that it was sought to be acquired for planned development - Notification is not rendered invalid.

There is nothing either in S.4 or S.6 which make it a condition precedent for the exercise of the powers under sub-sec.(4) of S.17 for the appropriate government to mention the fact of the requirement of the land for the planned development in the notifications issued thereunder. Even if a recital in a notification is defective and does not contain the necessary statement that the required conditions have been fulfilled, evidence can be led to show that the condition precedent to the exercise of the power has been actually fulfilled. AIR 1961 SC 1381, Relied on. (Para 8)

It is thus clear that if it appears upon an examination of the entire facts and the evidence on the record that the power conferred had been exercised for the purpose for which it was provided the same cannot be declared to be invalid merely because there is some defect in the notifications issued by the government concerned. (Para 9)

(D) Land Acquisition Act (1 of 1894), S.5A - ACQUISITION OF LAND - Dispensing with enquiry - Government applying mind and dispensing with enquiry - Notification cannot be quashed on ground that petitioners had not been given opportunity to file objections u/S.5A. (Para 11)

Cases Referred: Chronological Paras

AIR 1977 SC 183 12

AIR 1977 All 464 7

(1977) Writ Petition No. 343 of 1977, D/- 12-9-1977 (All) 12

AIR 1976 All 166 6

(1976) 2 All LR 529 : AIR 1977 NOC 10 6

AIR 1965 SC 1763 : 1966 All LJ 1 5

AIR 1961 SC 1381 8

H.S. Nigam, for Petitioners; B.D. Madhyan and S.C., for Respondents.

Judgement

K. C. AGRAWAL, J. :- By this petition under Article 226 of the Constitution the petitioners have challenged the validity of the notifications issued under Ss. 4 (1) and 6 of the Land Acquisition Act (briefly stated as the Act), dated 30th October, 1975, and 29th October, 1975, respectively. The petitioners claim themselves to be the bhumidhars of the land in dispute situate in village Kukuda, district Muzaffarnagar. A notification under S. 4 of the Act dated 14th March, 1975 was published by the State Government notifying a number of plots which were likely to be required for public purpose namely, for the construction of market, yard for Krishi Utpadan Mandi Samiti, Muzaffarnagar (hereinafter referred to as the Mandi Samiti). The petitioners filed a writ petition in this court on 10th July, 1975, challenging the validity of the said notification issued under S. 4 of the Act. The petition was admitted, and the respondents were restrained from dispossessing the petitioners from the land forming subject matter of the acquisition proceedings. During the pendency of the above writ petition, the State Government issued another notification on 5th August, 1975, cancelling the notification dated 14th March, 1975. The writ petition filed challenging the notification dated 14th March, 1975, was thereafter dismissed on the ground that it had become infructuous. Subsequently, the State Government issued another notification under S. 4 (1) of the Act on 30th October, 1975. The Governor, being of the opinion that the case was one of urgency and, as such, the provisions of Sub-sec. (1) of S. 17 of the Act were applicable to the land, was further pleased to direct under Sub-sec. (4) of S. 17 of the Act that the provisions of S. 5-A would not apply to the acquisition of the land in dispute. In this notification, the purpose disclosed for acquisition was the construction of market yard for Krishi Utpadan Mandi Samiti, Muzaffarnagar. This was followed by a notification under S. 6 of the Act. The petitioners have filed the present writ petition challenging these notifications under Ss. 4 and 6 of the Act.

2. The first ground urged in support of the writ petition by the petitioners was that a substantial portion of the land was covered by constructions and, therefore, the State Government did not have power to dispense with the mandatory provisions of S. 5-A of the Act inasmuch as under Sub-sec. (4) of S. 17, the power of dispensing with S. 5-A could be applied only with respect

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to waste and arable land and not with respect to the land over which constructions were standing on the date of the notification issued under S. 4 (1) of the Act. The petitioners gave the details of the various constructions which according to them were standing on the land in dispute on the aforesaid date. In the counter affidavits filed on behalf of the Collector, Muzaffarnagar, as well as the Mandi Samiti, the fact that the constructions were standing on the land in dispute has been denied. The aforesaid respondents in their separate affidavits asserted that there were no constructions on the land on the date on which the notification under S. 4 (1) of the Act had been issued.

3. The view which we are going to take in the instant case does not require us to give any concluded finding on the question whether any constructions were standing on the land or not. Had it been necessary for us to do so, we would have declined to go into this disputed question of fact as this court has said that it is not proper and appropriate for the High Court to enter into disputed questions of facts in the proceedings under Art. 226 of the Constitution. But, the controversy can be resolved on the legal aspect of this question which we will presently deal.

4. We may, very briefly, refer to the scheme of the Land Acquisition Act, which provides machinery for compulsory acquisition of land, amongst others, for public purposes. Under S. 4 (1) of the Act, the appropriate Government, if it appears to that government that land in any locality is needed or is likely to be needed for any public purpose, may publish a notification to that effect in the official gazette. On the issue of such a notification, it is open to an officer authorised to enter upon and survey and take possession of any land in such locality. By S. 5-A opportunity is provided to any person interested in any land in respect of which the notification under S. 4 (1) has been issued to raise objections either to the acquisition of the land or of any land in the locality, as the case may be. On such an objection being raised, the Collector is required to give an opportunity of hearing to the party concerned and, thereafter, to submit the case for decision of the appropriate Government, together with his recommendations on the objections, and if the appropriate government is satisfied after considering the report, if any, made under Sub-sec. (2) of S. 5-A of the Act that any particular land is needed for a public purpose, a declaration under S. 6 may be made to that effect by the Government. Sub-s. (3) of S. 6 of the Act makes the declaration issued by the Government as conclusive evidence that the land is needed for a public purpose. The next relevant section with which we are concerned is S. 17. It confers special powers exercisable in cases of urgency. Under this section, in cases of urgency, when the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice, mentioned in S. 9 (1), take possession of any waste or arable land needed for public purposes. Sub-s. (4) of S. 17 lays down that in the case of any land to which the provisions of Sub-s. (1) or (2) were applicable, the appropriate Government may direct that the provisions of S. 5-A shall not apply.

5. This would show that S. 17 confers special power on the appropriate Government to be exercised in appropriate cases of urgency. Under Sub-secs. (1) and (2), the State Government is empowered to take possession of land notified for acquisition even though an award is not made. This power, however, could be exercised only in respect of waste and arable land. By Sub-sec. (4) power has been conferred upon the appropriate Government to direct that the provisions of S. 5-A relating to the filing of the objection would not be applicable. As these powers could under the Act be exercised, only in respect of lands described in Sub-secs. (1) and (2), by Sub-s. (1-A), added by U. P. Amendment Act XXII of 1954, power was conferred on the appropriate Government to take possession under Sub-sec. (1) even in respect of lands other than waste and arable. It, however, appears that even under the amended provision, the State Government was not authorised to use the power conferred by Sub-sec. (4) to a case falling under Sub-sec. (1-A). Accordingly, the provisions of S. 5-A had to be complied with in all the cases of urgency. Reference may be made to a ease of the Supreme Court reported in Sarju Prasad Saha v. State of U. P. 1966 All LJ 1 : (AIR 1965 SC 1763) where the Supreme Court held that by the Land Acquisition Act No. XXII of 1954, the State legislature did not provide that the provisions of S. 5-A could be dispensed with in cases of lands other than waste and arable. It,

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however, appears that subsequently by U. P. Act No. VIII of 1974, the Legislature amended S. 17 (4) of the Land Acquisition Act and made a provision to that effect. After amendment, S. 17 (4) reads as under (at pages 1765, 1766 of AIR):

"In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1), or Sub-section (2) are applicable, the appropriate Government may direct that the provisions of S. 5-A shall not apply, and, if it does so direct, a declaration may be made under S. 6 in respect of the land at any time after the publication of the notification under S. 4, Sub-sec. (1)."

6. By the aforesaid amendment, it is now clear that the power of dispensation of S. 5-A can be exercised with respect to the land other than waste and arable as well. Accordingly, the submission of the learned counsel for the petitioners that Sub-s. (5-A) could not be dispensed with in the present case as the land was not waste and arable, cannot be accept-ed. As already stated, the effect of the amendment made by U. P. Act. No. VIII of 1974 was that the proceedings contemplated by S. 5-A can be dispensed with also in respect of land other than waste and arable. This view of ours is amply supported by the decision of our court reported in Somdutt v. State of U. P. ((1976) 2 All LR 529: (AIR 1977 NOC 10)) and Ram Surat v. State of U. P. (AIR 1976 All 166). In view of the above, it is not necessary for us now to go into the controversy whether the constructions belonging to the petitioners were standing on the land in dispute or not. As a matter of fact, this writ petition was mainly filed on the ground that the power of Sub-sec. (4) of S. 17 could not be exercised in respect of lands other than waste and arable, presumably due to the ignorance that the said provision had been amended by U. P. Act. No. XXII of 1974.

7. The second contention advanced on behalf of the learned counsel for the petitioner was that the purpose for which the land was acquired was not planned development, hence the power conferred by S. 17 (4) could not be exercised in the above case. We may mention at the very beginning that the petitioners did not take any such ground in the writ petition. The respondents therefore, had had no opportunity to rebut the same. Even on merits, we do not find any substance in this argument. The question relating to acquisition of land for making construction of market yard for Krishi Utpadan Mandi Samiti came up recently for consideration before a division Bench of this Court in Babu Lal v State of U. P. Writ Petn. No. 3499 of 1976, decided on 12-7-1977. (Reported in AIR 1977 All 464). The Bench held that the land was sought to be acquired for planned development as contemplated by S. 17 (1-A) of the Act. We are in respectful agreement with the view taken by the Division Bench in the aforesaid case. Market yards are being constructed in U. P. by way of planned development under the Fifth five year plan. Hence, the submission made by the learned counsel for the petitioners is not acceptable to us.

8. Learned counsel for the petitioners next contended that as neither the notifications issued under Section 4 nor under Section 6 mentioned that the land was being acquired for the planned development, therefore, the notifications were invalid. Elaborating the submission, the learned counsel contended that if the Government intended to exercise the power conferred by Sub-sec. (4) of S. 17 of the Act, it ought to have mentioned that the land was being acquired for the planned development. We do not find any merit in this submission. We have carefully examined the various provisions of the Land Acquisition Act, but fail to find anything either in S. 4 or S. 6 which made it a condition precedent for the exercise of the powers under Sub-sec. (4) of S. 17 for the appropriate Government to mention the fact of the requirement of the land for the planned development in the notifications issued thereunder. Even if a recital in a notification is defective and does not contain the necessary statement that the required conditions have been fulfilled, evidence can be led to show that the condition precedent to the exercise of the power has been actually fulfilled. This was laid down by the Supreme Court in Swadeshi Cotton Mills Company Ltd. v. State Industrial Tribunal, (AIR 1961 SC 1381). The relevant portion of the aforesaid (case) is quoted below:- (at pp. 1387 and 1388)

"Our conclusion therefore is that where certain conditions precedent have to be satisfied before a subordinate authority can pass an order, (be it executive or of the character of subordinate legislation),

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it is not necessary that the satisfaction of those conditions must be recited in the order itself unless the statute requires it, though, as we have already remarked, it is most desirable that it should be so, for in that case the presumption that the conditions were satisfied would immediately arise and burden would be thrown on the person challenging the fact of satisfaction to show that what is recited is not correct. But even where the recital is not there on the face of the order, the order will not become illegal ab initio and only a further burden is thrown on the authority passing the order to satisfy the court by other means that the conditions precedent were complied with. In the present case this has been done by the filing of an affidavit before us."

9. It is thus clear that if it appears upon an examination of the entire fact and the evidence on the record that the power conferred had been exercised for the purpose for which it was provided, the same cannot be declared to be invalid merely because there is gome defect in the notifications issued by the Government concerned. As already said, there is nothing in the Land Acquisition Act which required the State Government to mention that the land was required for the planned development. In the instant case, we have already found that the power conferred by Sub-sec. (4) of S. 17 was utilised by the State Government for the purposes of the planned development.

10. The last point urged by the learned counsel for the petitioners was that the State Government did not have any material before it to enable it to come to the conclusion that the urgency in the instant case was of such a nature that even the summary proceedings, under S. 5-A of the Act ought to have been eliminated. According to his submission, it was not just the existence of an urgency but the need to dispense with an enquiry under S. 5-A which had to be considered by the Government while exercising the power conferred by Sub-sec. (4) of S. 17 of the Act, In support of this assertion, the learned counsel for the petitioner invited our attention to paragraph 17 of the writ petition in which the petitioners alleged that the State Government had no evidence to come to the conclusion that the need for which the land was intended to be acquired was such that S. 5-A could be dispensed with. This allegation has been denied in the counter-affidavits filed on behalf of the respon-dents. Denying the allegation, the respondents stated that the need was so urgent that an enquiry under S. 5-A would have delayed the matter resulting in defeating the purpose of the acquisition. Along with the supplementary counter-affidavit of Rampal Singh Verma filed on behalf of the Mandi Samiti, a copy of the letter written by the District Magistrate dated July 26, 1974, was annexed. In this letter, the District Magistrate clearly stated that the funds for the construction of the market yard had been sanctioned, and that if the constructions were started at an early date there were chances that the World Bank might also grant some loan for the same. Considering the urgency, the Collector recommended to the State Government that the acquisitions which were intended to be started for constructing the market yard, were such which required the dispensing with the enquiry under Section 5-A.

11. After perusal of the counter-affidavits fild on behalf of the respondents and the papers filed along with the same, it appears that the State Government applied its mind to the question whether it was a case necessitating the elimination of the enquiry under S. 5-A of the Act. After having found the existence of the urgency and the need to dispense with the enquiry under S. 5-A the impugned notification under S. 4 of the Act was issued. It is, therefore, not correct, as urged by the learned counsel for the petitioners that the notifications issued under Sections 4 and 6 were liable to be quashed on the ground that the petitioners had not been given opportunity to file objections under S. 5-A of the Act.

12. Reliance was placed by the learned counsel for the petitioners on a case of the Supreme Court reported in Narayan v. State of Maharashtra, AIR 1977 SC 183, in support of the submission that the powers conferred by S. 5-A could be exercised only in cases where the land is intended to be acquired for meeting the exigencies emerging due to natural and physical forces beyond human control. We have had an occasion to consider this argument recently in Writ Petition No. 343 of 1977, Smt. Kailashwati v. State of U. P. (decided on 12th Sept. 1977 (All)). On the basis of the decision of the said case, we find that Narayan's case (supra) relied upon by the learned counsel for the petitioners

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does not help the petitioners in advancing his argument. We, accordingly, find that the last contention urged on behalf of the petitioners also has no substance.

13. In the result, the writ petition is dismissed with costs. The stay order, if any, shall stand discharged.

Petition dismissed.

**AIR 1976 ALLAHABAD 72 "H. C. S. and G. Mills v. State"**

**ALLAHABAD HIGH COURT**

Coram : 2 K. B. ASTHANA C. J. AND H. N. SETH, J, ( Division Bench )

Hari Cold Storage and Gen. Mills Co. Pvt. Ltd. and others, Petitioners v. State of U.P. and another, Respondents.

Civil Misc. Writ No. 2456 of 1972, D/- 11 -7 -1975.

(A) Defence of India Rules (1971), R.114 - ESSENTIAL COMMODITIES - NATIONAL SECURITY - AGRICULTURAL PRODUCE - U. P. Cold Storage Order 1972 - Fixation of hiring charges for cold storage of potatoes - Order is not valid.

Rule 114, while conferring a very wide discretion on the State Government in regard to making of orders providing for the matters enumerated therein, contemplates that there should be a nexus between the order and the opinion framed by the State Government, which necessitates the making of it. (Para 15)

An order directed towards regulating cold storage of potatoes cannot be said to be directed towards regulating trade or commerce in potatoes. (Para 16)

A cold storage owner who hires out space for storing agricultural produce to growers or depositors, does not himself, as contemplated by Rule 114, use the cold storage. It is a grower or depositor who actually uses the cold storage. (Para 17)

An order controlling the business activities of cold storage owners is not envisaged by Rule 114 (2) of the Defence of India Rules. (Para 17)

The Cold Storage Order 1972 is, therefore not valid. AIR 1959 SC 626, Dist. (Paras 18, 20)

Order fixing the storage rates could not have been made without the prior concurrence of the Central Government, which in this case has not been obtained. (Para 29)

The order neither falls within the ambit of the regulations contained in Rule 114 (2) of the Defence of India Rules, nor was the satisfaction of the State Government recited therein, which was condition precedent for making the order, based on relevant material. (Para 32)

Cases Referred : Chronological Paras

Civil Misc. Writ. No. 4217 of 1974, decided on 12-9-1974 (All) 22

AIR 1959 SC 626 : (1959) Supp 2 SCR 123 25

Chand Kishore, for Petitioners: Standing Counsel, for Respondents.

Judgement

H. N. SETH, J.:- In these connected petitions under Article 226 of the Constitution, common questions of law arising in identical circumstances, are involved. Accordingly, all these petitions are being disposed of by a common judgment.

Petitioners in all these cases are owners of cold storages located in the State of U. P. They carry on the business of providing cold storage facility to those who agree to pay charges for hiring space for storage of potato.

2. On 16th of March 1972, the State of U. P. Purporting to exercise its powers under rule 114 of the Defence of India Rules 1971, promulgated an Order entitled U. P. Cold Storage Order 1972. This order sought to regulate the running of cold storage business by issue of licences and by obliging the cold storage owners not to levy hire charges

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for storage of agricultural produce at a rate higher than that specified in the second schedule of the Order (storage charges specified for storing potato were not to exceed Rs. 8/- per quintal for the entire period February to November or part thereof). Aforesaid Order was subsequently amended on 27th June, 1972, 9th February, 1973, and 20th March, 1975. By these petitions under Article 226 of the Constitution, the petitioners challenge the validity of the Cold Storage Order 1972, and particularly, its clause which fixes the maximum hiring charges for storage of agricultural produce, inter alia on the ground that neither the provisions contained in the order fall within the ambit or scope of the powers conferred by Rule 114 of the Defence of India Rules, the conditions precedent for making the order existed.

3. Relevant portion of Rule 114 of the Defence of India Rules under which the impugned Order was made, runs thus:-

"114. General Control of Industries etc. (1) In this rule unless the context otherwise requires-

(a) any reference to any article or thing shall be construed as including a reference to electrical energy;

(b) the expression `undertaking' means any undertaking by way of any industry, trade or business and includes the occupation of handling, loading or unloading of goods in the course of transport.

(2) If the Central Government or the State Government is of opinion that it is necessary or expedient so to do for securing the defence of India and civil defence, the efficient conduct of military operations or the maintenance or increase of supplies and services essential to the life of the community or for securing the equitable distribution and availability of any article or thing at fair prices, it may, by order, provide for regulating or prohibiting the production, manufacture, supply and distribution, use and consumption of articles or things and trade and commerce therein or for preventing any corrupt-practice or abuse of authority in respect of any such matter.

(3) Without prejudice to the generality of the powers conferred by sub-rule (2) an order made thereunder may provide for-

(a) regulating by licence, permits or otherwise the, production, manufacture, treatment, keeping, storage, movement, transport, distribution, disposal, acquisition, use and consumption of articles or things of any description whatsoever:

(b) regulating or prohibiting any class of commercial or financial transactions in respect of any article or thing, which in opinion of the Government are, or if not regulated or prohibited, are likely to be detrimental to any of the Purposes specified in sub-rule (2).

……… ……….. ……… …….. …….. ………

(h) controlling the price or rates at which articles or things of any description whatsoever may be sold or hired or for relaxing any maximum or minimum limits otherwise imposed on such price or rates.

……… …………….. ………. …………. ……….. ………..

(4) Notwithstanding anything contained in sub-rules (2) and (3) an order under these sub-rules for regulating by licences, permits or otherwise the movement or transport of any foodstuffs, including edible oil seeds and edible oils or for controlling the prices or rates at which any such foodstuffs may be bought or sold, shall not be made by the State Government except with the prior concurrence of the Central Government."

4. A perusal of Rule 114 (2) shows that the Power under this rule can be exercised if certain conditions pre-exist, namely, that the State Government has formed an opinion that it is necessary or expedient so to do for securing either-

(a) Defence of India and Civil Defence; or

(b) The efficient conduct of military operations: or

(c) The maintenance or increasing of supplies and services essential to the life of the community or

(d) Equitable distribution and availability of any article or thing at a fair price.

5. Once the State Government forms such opinion it gets jurisdiction to make an order providing for regulating or prohibiting the following things:-

(1) Production of any article or thing; or

(2) Manufacture of any article or thing; or;

(3) Supply and Distribution of any article or thing: or

(4) Use and consumption of any article or thing; or

(5) Trade and commerce in any article or thing: or

(6) Preventing any corrupt practice or abuse of authority in respect of any of the aforementioned matters.

6. Rule 114 (3) then provides that without prejudice to the generality of the powers conferred by sub-rule (2) an order made thereunder may also provide for the various matters enumerated therein.

7. It will thus be seen that a provision in an order under Rule 114 can be made only with regard to production, manufacture, supply and distribution, use and consumption and trade and commerce in an article or thing, or for preventing any corrupt practice in respect of any of the aforementioned matters.

7-A. According to the preamble of the Order, the State Government exercised

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its jurisdiction to make the impugned order as in its opinion it was necessary and expedient so to do for (a) securing the maintenance and increasing the supplies and services essential to the life of the community and (b) for securing the equitable distribution and availability of essential commodities at fair price,

8. When asked to elucidate, the learned Advocate-General, appearing for the State, stated that as in this case the Sate Government was of opinion that it was necessary to secure the maintenance and increase of supply of potato (a supply) and the service of cold storage (a service), which were essential to the life of the community. as also the equitable distribution of potato (an essential commodity) at a fair price; that it made the impugned order providing for the use of cold storage, trade and commerce therein and for preventing corrupt practice in respect of the use thereof.

9. In order to appreciate the rival contentions of learned counsel appearing for both the parties, it will be desirable to state the circumstances in which the U. P. Cold Storage Order, as amended from time to time, came to be promulgated, as also its salient features.

10. According to the counter-affidavit of Sri S.C. Tripathi. Deputy Secretary. Agricultural Department, the Government had been receiving complaints from various, quarters in the last several months with regard to the working of cold storages in the State of U. P. Certain materials and other information had also been given to the State which showed that for the past two years the cold storage owners had been charging exorbitantly for keeping potato and other agricultural produce in their cold storages. Information received by the Government also showed that there was agitation against the unreasonable demand of high prices and in that connection some representations had also been made. It was apprehended that in subsequent years also the situation was such which needed immediate attention. The State Government therefore formed an opinion that it was necessary to make an order for securing the maintenance and increase of supply of an essential commodity and its equitable distribution at fair price. Accordingly, it promulgated the Order in question. However, before promulgating the Order, the Government appointed a Committee consisting of Members of the Legislature and officials, asking it to submit a report regarding the working of cold storages and other matters connected with it. The Committee made its report regarding the rent to be charged by cold storages and finding it to be reasonable the Government fixed the maximum hiring charge accordingly.

11. Sri Yashpal Chandra. Deputy Director Potato U. P. also filed a counter-affidavit on behalf of the State. He asserted that in the past it had been found that cold storage owners were merely interested in earning profits anti did not care for the quality of the food stuff stored by them. It was reported that they were not maintaining proper refrigeration conditions and were storing more potato than their licensed capacity with the result that the required temperature was not maintained and spoilage occurred. It was further observes that the agreement that was entered into between growers of agricultural produce and cold storage owners were generally vague. If something went wrong with the food stuff stored in cold storage there was no security for the concerned grower-depositor. The agreements did not contain any clause for compulsory insurance with the result that in case of break down, there were heavy losses and usually the farmers were not compensated. The Cold Storage owners also charged heavy rent in the growing district like Farrukhabad and adopted unfair means by declaring in advance that their capacity was full thereby compelling the farmers to sell their potato at a very low rate through them or to store them at exorbitantly high rate. This practice affected the regular supply of potato and also resulted in its being available to the consumer at a pries which was very much higher than the price at which it could generally be made available in case the cold store owners were not permitted to charge such high rent. In the year 1971, in Farrukhabad and other districts, it was reported that the cold storage owners had raised the charges for storing potato from Rs. 8/- to Rs. 18/-. This rise in storage charges jumped by leaps and bounds and it gave rise to agitation creating law and order problem an a large scale which the Government authorities found it difficult to face.

12. According to the affidavits of Sri S.C. Tripathi and Yashpal Chandra, the necessity to promulgate the impugned order regulating the cold storage business arose as the Government thought that cold storage owners were charging exorbitant rent for storing potato. They did not maintain proper refrigeration conditions and indulged in certain malpractice so as to enable them to levy extortionate storage charges. This, in the opinion of the State Gowernment, adversely afected the maintenance of supply of potato and its availability at fair price.

13. So far as the provisions in the Order are coueerned clause (2) of the Order defines certain words mentioned therein. Clause (3) lay's down that no person can carry on the business of storing any

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agricultural produce in a cold storage except under and in accordance with the terms and conditions of a licence issued under the Order. Clauses (4) to (7) lay down the manner in which the applications for licence are to be made by the persons intending to carry on the business of storing agricultural produce in cold storages, and hose those applications are to be dealt with. Clause (8) lays down the statutory conditions subject to which the licence is to be granted. Clauses (9) to (11) then deal with the cancellation, expiry and renewal of licence. Clause (12) enables the licensing Officer to procure information and authorises him to enter and search any premises in which the cold storage is installed for satisfying himself that the requirements of the order are being complied with. Clause (13) provides for the keeping and maintenance of certain records and for submission of returns and statements. Clause (14) provides for an appeal against the order of the licensing authority. Clauses (15 to 17) make provision relating to issue of receipts to hires by the cold storage owners. Clause (18) then precludes the licensee (owner of the cold storage) from levying in any period after the commencement of the order, storage charges exceeding the charges specified against each of the agricultural produce in Schedule II of the Order and for the refund of the excess charges. Clause (19) makes it obligatory upon the licensee to get the goods stored in his cold storage insured. Clauses 20 to 29 provide for certain obligations of the licensees vis-a-vis the goods which are stored in his cold storage. Clause 30 provides for the manner in which disputes regarding damages arising between the licensee and the depositor etc., are to be settled. Clauses 32 and 33 which were subsequently added in the year 1975 obliged the licensee to display at or near the main entrance of the cold storage certain information and compel him to accept goods for storage in case the space for the same is available.

14. A re'sume' of the facts stated in the affidavits of Sri S.C. Tripathi and Sri Yashpal Chandra as also that of the provisions contained in the impugned Order shows that impugned order is directed primarily towards regulating the business done by owners of cold storages U. P. and one of the most important regulations in this regard is by providing for the maximum amount that a cold storage owner can charge for storing agricultural produce. The Order is not at all directed towards regulating the manner and the circumstances in which a cold storage is to be used by the persons storing patato or any other agricultural produce therein. Even if it be accepted that the State Government was satisfied it was necessary or expedient so to do for securing the maintenance of increasing supplies and services essential to the life of the community and for securing the equitable distribution and availability of potato at a fair price it could under Rule 114 (2), make an Order for the purposes of regulating or prohibiting-

(1) production of any article or thing,

(2) manufacture of any article or thing; or

(3) Supply and distribution of any article or thing; or

(4) Use or consumption of any article or thing; or

(5) Trade and commerce in any article or thing; or

(6) Preventing any corrupt practice by or on behalf of an authority in respect of any of the aforementioned matters.

15. We further feel that Rule 114 of the Defence of India Rules, while conferring a very wide discretion on the State Government in regard to making of orders providing for the matters enumerated therein certainly contemplates that there should be a nexus between the order and the opinion framed by the State Government, which necessitates the making of it. In other words after framing a particular opinion the State Government will have jurisdiction to make such provisions which are relevant for, or are directed towards achieving that object. It may not be open to the State Government to make such provisions in the order which have no bearing op the subject-matter of the opinion, e.g., if the State Government is of opinion that it was necessary or expedient to maintain or increase the supply of sugar it may make an order providing for regulating the production. use and consumption and trade and commerce in sugar-cane which has bearing on the supply of sugar. But, for achieving that purpose it will not be open to the State Government to make an order regulating production etc., of an article which has absolutely no bearing on the maintenance of supplies of sugar.

16. The learned Advocate-General accepts that the impugned order is not directed towards regulating or prohibiting production or manufacture of any article or thing. In our opinion the order is also not directed towards regulating the supply and distribution of any article or thing. The Order merely aims at regulating cold storage business and has no relevance to supply and distribution of potato or any other article or thing. Since the order is directed towards regulating cold storage business it cannot be said that it is directed towards regulating trade or commerce in potato or any other agricultural produce or article or thing sought to be stored therein. However,

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the learned Advocate-General vehemently urged that the impugned order is essentially directed towards regulating the use of a cold storage (a thing), as also for preventing a corrupt practice in respect its use viz., to prevent mal-practices by cold storage owners in taking advantage of their position and charging ex-orbitant rent for the storage of potato.

17. It is true that Rule 114 (2) permits the State Government to make order regulating the use and consumption of an article or thing which has a bearing on the question of maintenance or increase of supplies and services essential to the life of the Community. But, use and consumption of an article or thing can be regulated only by providing for the manner and circumstances in which a person is to use and consume the same i.e., by regulating the activity of the person using the article or thing. The object cannot be achieved by regulating the activity of any other person who does not use or consume the article or thing. This immediately brings us to the question whether in a case where a cold storage owner hires out space in the cold storage, it is the owner who uses the cold storage or it is the hirer who uses the same. In our opinion a cold storage owner who hires out space for storing agricultural produce to growers or depositors, does not himself, as contemplated by Rule 114, use the cold storage. He merely carries on the business of making cold storage space and facility available to the grower or depositor. It is a grower or depositor of agricultural produce who actually uses the cold storage for the storage of potato or other agricultural Produce. In this view of the matter, the order intended to be made under Rule 114 (2) could not have been directed towards controlling the business activities of cold storage owners who did not themselves use the cold storage.

18. Learned Advocate General argued that in wider sense, even an owner of cold storage who makes the storage facility available to other, can be said to use the cold storage in connection with his business. Accordingly, if such use has any relevance on the question of maintenance or increasing of the supplies essential to the life of the community, it could also be regulated under Rule 114 (2) of the Defence of India Rules. We are unable to accept this submission. The rule provides for the regulation of 'use and consumption' of an article or thing. In the context, the expression 'use and consumption' implies the actual physical user or consumption of an article or thing and not its use in the sense suggested by the Advocate-General. When a cold storage owner hires out space for storing agricultural produce, the storage facility or the space in the storage is used by the person who stores his produce and not by the owner who, on receipt of consideration merely makes the storage available for use by the grower or the depositor. A provision in an Order, made under Rule 114, providing for prevention of a corrupt practice can also be directed only against the activity of a person who uses the cold storage and not in respect of the acting of a person who does not use the cold storage. Neither in the affidavits filed by Sarvasri S.C. Tripathi and Yashpal Chandra, nor in any provision contained in the impugned Order is there any indication that the order is directed towards regulating the activity of a person who uses the cold storage. The order is clearly directed towards regulating business activity of a person who was merely making cold storage facility available to a person who wanted to use the same for storing his agricultural produce.We are, therefore, of opinion that the impugned Order cannot be justified as an order providing for use and consumption of any article or thing or for preventing any corrupt practice in respect of such user.

19. Learned Advocate-General then argued that in any case, regulation of cold storage business was clearly authorised by clauses (a), (b) and (h) of sub-rule (3) of Rule 114 of the Defence of India Rules. According to him, these clauses clearly enable the Government to make an Order providing for regulation by licence of storage of any article or thing (clause a), any class of commercial and financial transaction in respect of an article or thing (clause b) and to control the price or rates at which an article or thing may be sold (clause h). According to him the regulation specified in sub-rule (3) could be made over and above the regulation as contemplated by sub-rule (2).

20. We are unable to accept the argument that sub-rule (3) enables the Government to make an order which goes beyond the ambit and scope of sub-rule (2). The opening words of sub-rule (3) read thus:-

"Without prejudice to the generality of the power conferred by sub-rule (2). an order made thereunder may provide.

……………………"

These words clearly indicate that sub-rule (3) does not confer upon the Government any power in addition to that conferred upon it under sub-rule (2). It merely clarifies the types of orders which can, if they have a nexus to the exercise of power under sub-rule (2), also be made. In our opinion an order Purporting to be made under Rule 114, if it travels beyond the ambit of sub-rule (2), cannot be justified with reference to the provisions contained in sub-rule (3).

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21. It thus appears to us that even if it be assumed that the condition precedent for making the order existed, the impugned order did not fall within the ambit of the regulations which could be made under Rule 114 (2) of the Defence of India Rules.

22. We are also not satisfied that before making the impugned order, the State Government had a clear idea about matters regarding which it had to be satisfied before making an order under Rule 114 (2) of the Defence of India Rules. Preamble of the Order recites that the State Government was of opinion that it was necessary and expedient to make the Order in order to secure the equitable distribution and availability of an essential commodity at a fair price. It was argued on behalf of the petitioners that the fixing of the cold storage charges did not at all reflect on the ultimate price at which the agricultural produce is in the market. Being a perishable commodity, price of agricultural produce depends solely on its supply and demand position at a particular time. He contended that mere fixation of cold storage charges, without, in any manner determining the price at which the agricultural produce may ultimately be sold to consumer, has no bearing on the availability of the produce at a fair price.

22-A. The learned Advocate-General appearing for the State contended that storage of agricultural produce is an intermediate stage in the process of production of an agricultural produce and ultimate distribution or availability to the consumer. Accordingly, if the charges for storage of agricultural produce are controlled, it is bound to have a repercussion on the price at which the commodity is ultimately sold to the consumer. A provision fixing maximum charges for the storage of agricultural produce, therefore, is calculated towards making the agricultural produce available atthe fair price. He, however, conceded that in this case, there was no material before the State Government on which it could form an opinion as to what should be the fair price at which potato should be made available to members of public in a particular season. He justified the Order as having an impact on its fair price, whatever it may be at a particular time. In the case of Gaya Prasad v. Board of High School and Intermediate Education. Civil Misc. Writ No. 4217 of 1974, decided on 12-9-1974 (All) a Division Bench of this Court observed thus:-

"It is first necessary to consider the nature of the power conferred by Rule 114 (2) leaving out those parts of Rules 114 (2) and (3) which are also material to this case. The provisions may be summarised thus:-

For the purposes of securing availability of articles essential to the life of the community at a fair price the State Government may regulate their supply by controlling their prices.

How can Government make an article available at a fair price without fixing or determining the fair price? The power to control price can only be exercised by fixing the fair price of the article which is the subject matter of the regulation. In our opinion keeping the purpose of the provision in mind i. e. to make available an article at a fair price the power to regulate its supply by controlling the price necessarily involves and means fixing a fair price for the article. Therefore in the present case the Government had to fix price for the course books."

23. These observations in our opinion clearly imply that if the Government intends to exercise its power under rule 114 of the Defence of India Rules with a view to secure availability of any article at a fair price then it should apply its mind and find out as to what should be the fair price at which the article in question has to be made available and thereafter to make the Order providing for such regulations as may have a bearing on the availability of the commodity at that price.

24. Merely because regulating the manner in which an agricultural produce is to be stored in a cold storage or fixing the maximum charge for its storage may have some bearing on the price at which the produce may be available to the consumer, it does not follow that it, necessarily, has a repercussion on its availability at a fair price. Unless the State Government has an idea as to what the fair price of the agricultural produce should be, it will not be possible for it to assess the impact of the provisions proposed to be made by it, on the question of availability of the produce at a fair price. We are, therefore, of opinion that in the absence of such a data it could not be concluded that the regulations under the U. P. Cold Storage Order had a bearing on the availability of agricultural produce at a fair price, specially when the price at which the commodity in question is to be sold to the consumer is not sought to be regulated in any manner.

25. The learned Advocate-General relied upon a decision of the Supreme Court in the case of Messrs. Diwan Sugar and General Mills v. Union of India, reported in AIR 1959 SC 626 wherein, under similar provisions of the Essential Commodities Act, the Supreme Court upheld the action of the Government also, instead of fixing the retail price for sugar, fixed its ex-factory price. The Supreme Court held that fixation of ex-factory price of sugar, without determining the price at which it should be made available

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to consumer was valid. Learned counsel argued that similarly, in this case, it was open to the State Government to fix the maximum limit of storage charges for agricultural produce without in any way considering as to what effect such charges will have on the price at which the produce will be available to a consumer and whether such price will or will not be a fair price. We are unable to accept this submission. In Diwan Sugar anal General Mills case the learned Judges of the Supreme Court observed thus :-

"The argument under this head is two fold. It is said that in the first instance Section 3 of the Act requires that price for consumer only should be fixed. The object of Section 3 is undoubtedly to secure essential commodities at fair prices for the general public i.e., the consumer. It is well known that there are three Kinds of prices prevalent in the market for a commodity like sugar, ex-factory price, wholesale price and retail price. It is the last that the consumer has to pay. It is urged that when Section 3 provides for availability of essential commodity at price to the general public it means the price can only be fixed at the stage where the consumer is the purchaser. In particular our attention was invited to clause (c) of Section 3 (2) which provides for control of price at which any essential commodity may be bought or sold. Now there is no doubt that the object of the Act is to secure essential commodities for the consumer i.e., the general public at fair price; but it does not follow from this that this object can only be achieved if retail prices are fixed and that there is no other way of achieving it. In any case clause (c) of Section 3 (2) which speaks specifically of control of price is very general in terms. It provides for fixation of price at which any essential commodity may be bought or sold.

……………..It does not specify the stage at which the price should be fixed. Therefore we are of opinion that the control provided under clause (c) of Section 3 (2) is control at any of the three stages mentioned above. There is no reason to cut down the generality of the words used in clause (c) so as to make them applicable only to the last stage, namely retail price. This contention therefore that Section 3 only authorises the Central Government to fix the retail price i.e., the price for the consumer fails."

26. It will thus be seen that the real ratio for upholding the fixation of ex-factory price, without fixing the retail price was that in the opinion of the Supreme Court Section 3 (2) (c) permitted fixation of price at any of the three stages, namely, ex-factory price, wholesale arise or retail price. In the opinion of the learned Judges such fixation of price could have an indirect bearing on the availability of sugar to the consumer also at a fair price. But what had weighed with them was that there was no reason to cut down the generality of the words used in clause (c) of Section 3 of the Essential Commodities Act so as to make them applicable only to the last stage, i.e., the retail price. It should be noted that the Order fixed the price of sugar for sale at the factory. Here in the instant case price of potato has not been fixed.

27. Rule 114 of the Defence of India Rules is, however, different from Section 3 (2) (c), of the Essential Commodities Act. Whereas Section 3 (2) (c) enabled the State Government to make provision for controlling the price at which any essential commodity may be bought or sold. Rule 114 enables the concerned Government to make an order regarding equitable distribution of or availability of an article or thing at a fair price i.e., its availability at a fair price to a consumer.

28. Even if, for the sake of argument, the submission of the learned Advocate-General that fixing maximum charges for cold storage has a direct bearing on the availability of potato to a consumer at a fair price is accepted, the objective of the impugned provision obviously would be to control the price or rate at which potato may be ultimately bought or sold. Sub-rule (4) of Rule 114 runs thus:-

"Notwithstanding anything contained in sub-rules (2) and (3) an order under these sub-rules for regulating by licences, permits or otherwise the movement or transport of any food stuffs including edible oil seeds and edible oils or for controlling the price or rates at which any such foodstuff may be bought or sold shall not be made by the State Government except with the prior concurrence of the Central Government."

29. It cannot be disputed that potato is a food stuff and according to the argument of the respondents, the storage charges have been fixed so as to make it available at a price i.e., it may not be sold at a price higher than what is considered to be a fair price. Such an object obviously will be to control the price or rate at which potato may be sold to consumer. Accordingly, the order fixing the storage rates could not have been made without the prior concurrence of the Central Government, which in this case has not been obtained. Learned Advocate-General argued that since in this case the price at which potato may be bought or sold has not been fixed it cannot be said that the provisions were aimed at controlling the price at which the potato may be

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bought or sold within the meaning of sub-rule (1). In our opinion the expression controlling the price at which any food stuff may be bought or sold does not necessarily imply fixing the price at which the food stuff should be bought sold. What it means is that the provision should be directed towards securing that the purchase price or sale price of foodstuff does not go above or below a certain amount. If the provision is directed towards achieving the object that potato may not be sold above a price which may be considered to be a fair price, it is certainly directed towards controlling the price at which potato may be sold to a consumer. Accordingly, the fixation of storage charges, which according to the learned Advocate-General will have a direct bearing on the fair price of potato, would be bad because prior concurrence of the Central Government had not been obtained.

30. In case the State Government wanted to get space in various cold storage available to the growers, for storage of potato, at a reasonable rate, necessary action could have been taken under Rule 154 of the Defence of India Rules which provides that the competent authority may by order in writing require the owner of any warehouse or cold storage depot or of any premises capable of being used for storage purposes (not being premises used for residential purposes), to place at his disposal the whole any part of the space or accommodation available in such a warehouse or cold storage depot or premises and to employ such space or accommodation for the storage of any articles or things specified in order; and such an order may require the said owner or person to afford such facilities and maintenance of such services in respect of the storage of such article or things as may be specified. Whenever in pursuance of any such Order any space or accommodation in a warehouse or cold storage depot or premises is placed at the disposal of the competent authority the owner of such warehouse, cold storage depot or premises shall be paid therefor at such rate as the competent authority may by order made in this behalf determine having regard to the usual rates paid for like space or accommodation during 12 months immediately preceding the date of proclamation of emergency.

31. It will thus be seen that short of requisitioning the space in cold storage and taking up the responsibility of paying reasonable charges as provided in Rule 154 by the Prescribed Authority for such requisitioned space, the object underling promulgation of the impugned cold storage Order is almost identical to that for achieving which an Order under rule 154 could be made. In our opinion, in order to achieve the objects underlying the impugned U. P. Cold Storage Order, the respondents could have more appropriately acted under Rule 154, which they have not done in this case.

32. In view of the aforesaid discussion we are of opinion that the impugned order neither falls within the ambit of the regulations contained in Rule 114 (2) of the Defence of India Rules, nor was the satisfaction of the State Government recited therein, which was condition precedent for making the order, based on relevant material.

33. All these writ petitions, therefore, succeed and are allowed with costs. The impugned U.P. Cold Storage Order 1972 as amended from time to time is quashed as being invalid.

Petitions allowed.

**AIR 1974 ALLAHABAD 126 (V. 61, C 33) "Sumer Chand v. K. U. Mandi Samiti"**

**ALLAHABAD HIGH COURT**

Coram : 1 H. N. SETH, J. ( Single Bench )

M/s. Sumer Chand Pati Ram and others, Petitioners v. Krishi Utpadan Mandi Samiti and others, Respondents.

Civil Misc. Writ Petn. No. 3090 of 1972, D/- 29 -3 -1973.

(A) Constitution of India, Art.226 - WRITS - PLEA - AGRICULTURAL PRODUCE - New plea - Sufficiency of material for opinion u/S.5 of U.P. Krishi Utpadan Mandi Adhiniyam 1964 (Act 25 of 1964) - Time to question provided lay S.5(1).

The question whether there was sufficient material before the State Government on the basis of which it could form an opinion that it was necessary or expedient in the public interest to regulate sale and purchase of agricultural produce in a market area is one of fact. An objection that then was no such material or that the material before the State Government was insufficient for forming such an opinion could be raised by the petitioners in response to the notification issued under Section 5(1). Where such objections were invited, but, the petitioners did not care to raise the same before the State Government as provided in Section 5(2) the petitioners should not be permitted to raise the objection at the stage of arguments.

(Para 8)

(B) Constitution of India, Art.19(1)(g) - U.P. Krishi Utpadan Mandi Adhiniyam (25 of 1964), S.7 - FREEDOM OF TRADE - AGRICULTURAL PRODUCE - Validity - Right to hold property not affected by declaration of area as market area.

The consequences of declaring an area as a market area or market yard have been laid down in Sections 9 and 10 of the Adhiniyam. The restrictions placed by these sections do not at all touch the petitioner's right to hold his property situated in the principal or sub-market yard. Whenever an area is declared as a principal or sub-market yard under Section 7, such a declaration does not have the effect of vesting the ownership and control of property lying in that area with the Mandi Samiti. Propertied located in an area which has been declared to be a market or a sub-market yard do not by themselves become the principal or the sub-market yard, and as such the right conferred by Section 16(xiv) of the Act on the Mandi Samiti to control and regulate admission to and use of the principal market yard and sub-market yard does not empower the Mandi Samiti to control and regulate admission to and use of individual properties as such, located inside the principal or the sub-market yard. 1973 Tax LR 2372 (All), Rel. on. (Paras 10 , 11)

S.P. Gupta, for Petitioners; B.D. Mandhayan Standing Counsel, for Respondents.

Judgement

ORDER :- The 21 petitioners of this case are the persons who carry on their business as dealers and Commission Agents in

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village Ghiror, district Mainpuri. On 25th of January, 1972, the State Government issued a Notification No. 376/XXI-B-1200(156)-69. under Sub-Section (1) of Section 5 of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam 1964 (U. P. Act 25 of 1964), declaring its intention to regulate, sale and purchase of specified agricultural produce in the area mentioned in that notification. No one filed any objection against the aforesaid proposal. Consequently, by means of Notification No. H-1633/XII-B-1200 (118)-69, dated 21-3-1972, issued under Section 6 of the Adhiniyam, the entire area of Nyaya Panchayat Circle Ghiror, District Mainpuri was declared as Ghiror Market Area. This notification was followed by a notification dated April 22, 1972, declaring the area of Gram Sabha Ghiror and Town Area Ghiror as the principal and sub-market yards, under Section 7 of the Adhiniyam (Annexure I to the writ petition).

2. By this petition under Article 226 of the Constitution, the petitioners seek to get the aforementioned notifications issued under Secs. 5 6 and 7 of the Krishi Utpadan Mandi Adhiniyam, 1964 quashed, and pray for certain other consequential reliefs.

3. The petitioners have impugned the validity of the notification issued under Sections 5, 6 and 7 on a number of grounds. Large number of those grounds are covered by various decisions of this Court in the cases of the (1) Hari Ram v. State of Uttar Pradesh. Special Appeal No. 463 of 1968, and other connected cases decided on 16-9-1969 (All) (2) M/s. Mangli Prasad Kamta Prasad v. Krishi Utpadan Mandi Samiti Farrukhabad. Special Appeal No. 280 of 1972. decided on 23-11-1972 : (reported in 1973 Tax LR 2372 All) : (3) Mandi Samiti Achalda v. Sri Lal Pratap Singh. Special Appeal No. 250 of 1972. decided on 15-5-1972 : (reported in 1973 Tax LR 2383 All) and (4) Krishi Utpadan Mandi Samiti Gonda v. Jai Narain Hanuman Bux. Special Appeal No. 418 of 1971 decided on 9-12-1971 (All).

4. Sri S.P. Gupta wanted to urge that the decision rendered in the aforementioned Special appeals require reconsideration. However, titling as a Single Judge. I am bound to follow all these decisions, and as such restatement or reconsideration of the points covered by those decisions will not serve any useful purpose. Learned counsel for the petitioners, however, advanced certain additional arguments for questioning the validity of the impugned notifications which according to him were neither raised nor considered in aforementioned cases, and I would proceed to consider them.

5. Section 5 of the Adhiniyam lays down that where the State is of opinion that it is necessary or expedient in the public interest to regulate the tale and purchase of any agricultural produce in any area where such transactions are usually carried on and for purpose to declare that area as market area is may by notification in the Gazette, and in such other manner as may be prescribed, declare its intention so to do and invite objection against the proposed declaration. Sub-Section (2) then lays down that any objection may be preferred within such period as may be prescribed and shall be addressed to the Director, who shall forward the same with his comments thereon to the State Government Section 6 requires the State Government to consider the objections received within time and authorizes it to declare that the whole or any specified portion of the area mentioned in the notification under Section 5, shall be the market area in respect of such agricultural produce and with effect from such date as may be specified ill the declaration. Section 7 enables the State Government to declare areas lying in the market area as principal and sub-market yards.

6. Learned Counsel for the petitioners contends that the first step in the chain of these notifications is that the State Government should form an opinion that it is necessary or expedient in the public interest to regulate the sale and purchase of any agricultural produce in any area where any such transactions are usually carried on. It is only after the State Government has validly formed such opinion that it can issue a notification under Section 5(1) of the Act declaring its intention so to do and to invite objections against the proposed declaration. Notifications under Sections 6 and 7 are to follow the notification issued under Section 5(1). In this case there was absolutely no material on the basis of which the State Government could possibly have framed an opinion that it was necessary or expedient in the public interest to regulate the sale and purchase of agricultural produce in the area which it proposed to declare as a market area under notification dated 25th of January, 1972. The opinion if any, so framed by the State Government was accordingly Invalid and the State Government had no jurisdiction to issue the notification dated 25th of January. 1972. under Section 5(1) of the Act. It follows that the subsequent notifications under Sections 6 and 7 are also invalid.

7. I find that there is no averment In the petition raising the question that there was no material before the State Government on the basis of which it could form an opinion that it was necessary or expedient in the public interest to regulate the sale and purchase of any agricultural produce in the area which has since been declared as Ghiror Market Area. My attention was invited to paragraph 15 of the petition which contains the following averment :-

That the petitioners have been advised to state that the declaration of market area of Kannauj is wholly invalid inasmuch as there does not at all exist any such fact and circumstances on the basis of which power under Section 6 of the Act would be exercised

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by the Government The declaration of market area is not expedient or in the public interest. ..........."

This averment is in respect of market area of Kannaju and not in respect of Ghiror which lies in the District of Manipuri. Thus no foundation has been laid in the writ petition for advancing the aforesaid argument.

8. Moreover, the question whether there was sufficient material before the State Government on the basis of which it could form an opinion that it was necessary or expedient in the public interest to regulate sale and purchase of agricultural produce in Dhiror market area, is one of fact. An objection that then war no such material or that the material before the State Government was insufficient for forming such an opinion could be raised by the petitioners in response to the notification issued under Section 5(1). After all, the very object of inviting objection to the proposal for declaring any area as market area is to afford an opportunity to the persons concerned to show to the State Government that in respect of that area such circumstances do not exist which may justify an inference that it would be in public interest to regulate sale and purchase of agricultural produce therein. Such objections were invited, but the petitioners did not care to raise the same before the State Government as provided in Section 5(2) of the Act. In the circumstances, this is not a fit case in which the petitioners should be permitted to raise this objection at this stage.

9. I am accordingly of opinion that the impugned notifications should not be interfered with or the ground that there was no material on the basis of which the State Government could form the requisite opinion under Section 5 of the Act.

10. Sri S.P. Gupta then pressed ground No. 7 of the writ petition viz., that Section 7 of the Krishi Utpadan Mandi Adhiniyam 1964 violates Article 19(f) and (g) of the Constitution inasmuch as it places unreasonable restriction on petitioners right to carry on trade and to hold and deal with his property. When asked to reply this objection. Sri Gupta conceded that in view of the various division bench decisions of this Court, mentioned above, it is not possible for him to successfully contend before me that Section 7 of the Adhiniyam offends Article 19(1)(g) of the Constitution. He confined his arguments to the alleged contravention of his rights to acquire, hold and dispose of property as conferred by Article 19(1)(g) of the Constitution. He contended that after the entire area of Gram Sabha Ghiror and Town area Ghiror had been declared as principal and sub-market yard, the places of business of the petitioner which lay that area also became principal market yard. After the premises belonging to various petitioners had been declared as Principal or tub-market yard, it became open to the Mandi Samiti to exercise its control over those premises as provided in Rules 50, 51 and 52 of the Rules framed under the Act Such a control would according to him offend against the rights guaranteed to the petitioners under Article 19(1)(g) of Constitution. 1 am unable to accept this argument.

The consequences of declaring an area as a market area or market yard have been laid down in Sections 9 and 10 of the Adhiniyam. These sections provide that from the date of declaration of an area as market area no local body or other person shall within the market area set up, establish or continue or allow to be set up, established or continued any place for the sale, purchase, storage weighment or processing of the specified agricultural produce except under and in accordance with the conditions of a licence granted by the Committee concerned and that no person shall in the principal market yard or in any sub-market yard carry on business or work as a trader broker, commission agent, warehouse man, weighman, Palledar or in such other capacity as may be prescribed in respect of any special agricultural produce except under and in. accordance with the conditions of a licence obtained therefor for the commodity concerned. The levy or realisation of any trade charges other than those prescribed by bye-laws made under the Act in respect of any sale or purchase of a specified agricultural produce has been prohibited. These restrictions do not at all touch the petitioner's right to hold his property situated in the principal or sub-market yard.

11. Learned Counsel urged that notification dated April 22, 1972, Annexure I, had the effect of constituting even the petitioner's property as principal or sub-market yard within the meaning of the Act. The Mandi Samiti therefore acquired jurisdiction under Section 16(xiv) to control and regulate admission to and use of petitioner's property. This according to him is an unreasonable restriction on his right to hold property. I am unable to accept this submission. Whenever an area is declared as a principal or sub-market yard under Section 7, such a declaration does not have the effect of vesting the ownership and control of property lying in that area with the Mandi Samiti, Properties located in an area which has been declared to be a market or a sub-market yard do not by themselves become the principal or the sub-market yard, and as such the right conferred by Section 16(xiv) on the Mandi Samiti to control and regulate admission to and use of the principal market yard and sub-market yard does not empower the Mandi Samiti to control and regulate admission to and use of individual properties as such, located inside the principal or the sub market yard. In this connection the following observations made by the Division Bench in the case of Mangali Prasad Kamta Prasad v. Krishi Utpadan Mandi Samiti. Farrukhabad, Special Appeal No. 280 of

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1972 decided on 23rd November, 1972 may be quoted with advantage.

"Under Section 15(2)(xiv) it is also required to control and regulate the admission to and use of the principal market yard and sub-market yard i.e., it has to regulate the ingress and egress. The submission made at the bar was that unless the authorities constructed a yard in a sense of an enclosure, the performance of the various functions contemplated by such provisions as Section 16 of the Act would interfere with the rights of ordinary citizen. In our opinion no such results would follow. All the aforesaid provisions must be read in then proper context their main purpose is to regulate the tale and purchase of agricultural produce. The object is not to interfere with the entry of ordinary citizens. The creation of a whole township as the marker would not lead to the anomalous consequences of disturbing the rights of ordinary citizens and controlling their ingress or egress or involve such lay out of the road, pathways, etc., as might interfere with the normal activities of the ordinary citizen. Even where the entire market area or whole township is declared as the principal marker yard, the Mandi Samiti shall discharge its functions and duties as contemplated by Section 16 of the Act only With a view to achieving the objections and purposes of the Act and not otherwise. Hence we are unable to find in the Act any intrinsic evidence. .............."

12. I am accordingly of opinion that the provisions contained in the Act do not touch the petitioners right to hold the property in any manner and that there is no force in this argument raised by him.

13. In the circumstances I find no force in either of the two arguments advanced by the petitioners. The writ petition accordingly fails and is dismissed with costs.

Petition dismissed.

**AIR 2007 ANDHRA PRADESH 204 "M. A. Farooq v. Selection Grade Secretary"**

**ANDHRA PRADESH HIGH COURT**

Coram : 1 L. NARASIMHA REDDY, J. ( Single Bench )

M. A. Farooq and Ors. v. Selection Grade Secretary, Hyderabad Agricultural Market Committee.

W.P. No. 236 of 2007, D/- 12 -2 -2007.

Constitution of India, Art.19(1)(g), Art.14 - A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.7 - FREEDOM OF TRADE - EQUALITY - AGRICULTURAL PRODUCE - LICENSE - AFFIDAVIT - Right to trade - Regulating supply of hay in market area - Insistence on issuance of licence to trader by Market Committee - Not illegal - Market Committee is competent to control various activities in market yard by issuing permits, licences or leases - However no similar regulation regarding other packing materials such as wooden boxes, cartons, waste paper etc. - Choosing only item of hay is discriminatory - Counter-affidavit by State stating that steps were being taken to regulate supply of other packing materials also - Court directed licence for hay even if granted, must be made operative along with licences, that may be issued, for supply of other materials. (Paras 6, 7, 10)

N. Bharat Babu, for Petitioner; V. V. Narayana Rao (sc), for Respondent.

Judgement

ORDER :- Petitioners challenge the tender notice dated 18-12-2006, issued by the respondent, in so far as it relates to the grant of licence for sale of hay in the Gaddiannaram Market Yard, as packing material.

2. Petitioners state that they have been supplying the hay in the fruit market yard, when it was functioning at Mojamjahi market, and after it was shifted to Gaddiannaram; for the past several decades. According to them, the proposal of the respondent to issue licence for supply of hay is contrary to the provisions of Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short 'the Act'), and violative of their fundamental right, under Article 19(1)(g) of the Constitution of India. They complain about discrimination also, in the sense that the respondent has not chosen to regulate the supply of other

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packing material, such as wooden boxes, cartons, waste paper etc.

3. The respondent filed a counter-affidavit. Apart from denying the allegations made by the petitioners, he stated that the necessity to regulate the supply of hay in the market yard arose, on account of the serious obstruction being caused by the petitioners and other persons in illegal stocking of the same in the market yard, leading not only to trafic congestion, but also to fire accidents. It is stated that steps are being taken to regulate the supply of other packing material also.

4. Sri P. Gangaiah Naidu, learned senior counsel, appearing for the petitioners, submits that hay is not a notified agricultural produce, and the question of granting licence for the same under Section 7, or to modify market fee, under Section 12 of the Act does not arise. He contends that even if the proposed licence is to be treated as a regulatory measure, the respondent acted in a discriminatory manner in permitting the supply of other packing material, without any restrictions. He had urged certain subsidiary contentions also.

5. Sri V. V. Narayana Rao, learned Standing Counsel for the respondent, on the other hand, submits that the licence proposed to be issued for supply of hay is not the one, contemplated under the Act, but a regulatory measure, for proper upkeep of the market yard. He contends that the unregulated supply has brought about unhygienic conditions, and has become a threat to safety. He points out that the petitioners did not have any vested or legal right to supply hay in the market yard.

6. Before examination of legality or otherwise of the action of the respondent, one doubt needs to be clarified. The tender notice contemplates issuance of licence for supply of hay. The Act provides for regulation of trade and business in agriculture produce by issuing licences under Section 7. Admittedly, hay is not a notified agriculture produce. Therefore, the question of granting any licence, in relation to the same, under Section 7 of the Act; does not arise. What the respondent intended through the tender notice is, to regulate the supply of hay in the market yard, by way of issuing licence. This licence is different from the one, contemplated under Section 7 of the Act, It is the one, contemplated under the Easement Act, and broadly comparable to a lease. Therefore, the question of examining the action of the respondent, with reference to Sections 7 and 12 of the Act, does not arise.

7. Being an Authority, which has established the market yard, and vested with the power to regulate the activities therein, the respondent is certainly competent to control the various activities in the market yard by issuing permits, licences, or leases, as the case may be. Item 2 of the tender notice relates to running of a canteen and pan shop. Though the said activities do not come under the provisions of the Act, they are sought to be regulated, to ensure congenial atmosphere in the market yard. Similarly, the matter of supply of hay also is sought to be regulated by granting licences.

8. Learned Senior Counsel, appearing for the petitioners, is not able to satisfy this Court, that the step taken by the respondent to regulate the supply of hay is beyond his competence, or jurisdiction. Therefore, no exception can be taken to the respondent, in issuing the tender notice.

9. One area, in which this Court is impressed by the submissions made on behalf of the petitioners, is, that though there exist several items of packing material such as, wooden boxes or paper cartons, filing material of various categories; licence is being insisted only for supply of hay. In the event of the supply of one packing material being regulated, and others being left unregulated, a clear situation of discrimination emerges, and the persons, who are required to obtain licences for a particular material, would be made to face not only unhealthy competition, but also a situation lacking level play. The respondent is not able to sustain the classification and the resultant discrimination among equals.

10. There is no nexus between the proposed action, and the object sought to be achieved. If the intention is to regulate the supply of the packing materials, identical steps ought to have been taken, as regards all other material. Choosing the item of hay alone, for the purpose of regulating the supply, leads to discrimination, which is violative of Article 14 of the Constitution of India. Both, from the contents of the counter-affidavit and the submissions of the learned Standing Counsel for the respondent, it is evident that the steps are being taken to regulate the supply of other packing material

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also. If that be so, the licence, in pursuance of the impugned tender notification, even if granted, must be made operative along with the licences, that may be issued, for supply of other materials.

11. For the foregoing reasons, the writ petition is disposed of, upholding the validity of the impugned tender notice, but directing that the respondent shall enforce the resultant licence, as regards supply of hay, along with those, that may be granted in respect of other packing material.

12. There shall be no order as to costs.

Petition allowed.

**AIR 2000 ANDHRA PRADESH 172 "Agricultural Market Committee v. Mandal Revenue Officer, Punganur"**

**ANDHRA PRADESH HIGH COURT**

Coram : 2 P. VENKATARAMA REDDI AND B. PRAKASH RAO, JJ. ( Division Bench)

Agricultural Market Committee, Punganur and etc., Petitioners v. The Mandal Revenue Officer, Punganur Mandal and others, Respondents.

W.P. Nos. 21408, 21896 of 1997, 8987, 33667, 385, 407 and etc. of 1998, 4167, 4179, 4240 and etc. of 1999, D/- 5 -8 -1999.

(A) A.P. Non-Agricultural Land Assessment Act (14 of 1963), S.12(c) - AGRICULTURAL LAND - 'Communal purpose' - Private lands purchased by Market Committee and used as its office and bringing agriculturists and traders together for conducting sales and purchase of agricultural produce - User of land can be said to be for 'communal purpose' since it benefits substantial section of public namely, growers or ryots and even trading community - Land consequently not exempt from payment of tax under Act. (Para 4)

(B) A.P. General Clauses Act (1 of 1891), S.3(31) - LOCAL AUTHORITY - AGRICULTURAL PRODUCE - Local authority - Definition of - Includes 'Market Committee'.

A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.5.

A.P. Non-Agricultural Land Assessment Act (14 of 1963), S.12(c).

The Market Committee conforms to the definition of local authority. Since it is a statutory body confided with quasi-governmental functions in the interests of public having substantial autonomy in administering the provisions of the Act subject of course to certain amount of control by the Government. It is also administering and defraying the expenses from the fund known as 'Market Committee Fund'. It has power to levy fees. It frames the budget and spends it for the purposes laid down by the Act. The Markets Act itself lays down the powers, duties and functions of Market Committee. The provision of various services and amenities in the market yards etc. for the benefit of growers, traders and workers is undertaken by the Market Committee. True, the Committee does not consist of elected members but that by itself does not detract from the character of being a local authority. The Market Committee consists of members nominated from various sections such as growers, traders etc. and it is truly a representative body. Thus there cannot be an escape from the conclusion that the market committee can legitimately be treated as a local authority.

AIR 1981 SC 951 and AIR 1988 SC 1125, Foll. (Para 9)

Cases Referred : Chronological Paras

Commr. of Income-tax, Lucknow v. U.P. Forest Corporation, AIR 1998 SC 1125 : (1998) 3 SCC 530 : 1998 AIR SCW 937 : 1998 Tax LR 338 (Foll) 5, 8, 9

Commr. of Income-tax v. Agricultural Market Committee, Cuddapah, (1983) 143 ITR 1020 (Andh Pra) 6

Budha Veerinaidu v. State of A.P., (1983) 143 ITR 1021 (Andh Pra) 5, 6

Union of India v. R. C. Jain, AIR 1981 SC 951 : 1981 Lab IC 498 (Foll) 7, 8, 9

Budha Veerinaidu v. State of A.P., (1978) 2 Andh LT 175 5, 6

Patel Premji Jiva v. State of Gujarat, (1970) 2 SCWR 460 : 1970 UJ (SC) 813 5

Mr. Badana Bhaskara Rao, Smt. Nanda Ramachandra Rao, S.C. for ABC, Posani Venkateswarlu, for Petitioners; The Spl. G.P. for Taxes, for Respondents.

Judgement

P. VENKATARAMA REDDI, J. :- In this batch of writ petitions, the petitioners which are Agricultural Market Committees constituted under the provisions of the A.P. (Agricultural Produce and Live-stock) Markets Act, 1966, hereinafter referred to as the "Markets Act" have questioned the demand notices issued either by the Mandal Revenue Officer or the Mandal Revenue Inspector

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under the provisions of the A.P. Non Agricultural Land Assessment Act, 1963, hereinafter referred to as "NALA Act". The tax demanded pertains to several years/faslies. In almost all the cases, notices demanding the tax were straightway issued without issuing show cause notice or without holding any enquiry as contemplated by the A.P. Non-Agricultural Land Assessment Rules. In some of the cases, the notices issued demanding the tax are so bald that even the extent of land on which the assessment is made is not furnished. The petitioners made representations either to the Mandal Revenue Officer concerned or in some cases to the Revenue Divisional Officer, but there was no favourable response. Hence, the present writ petitions.

2. Apart from pointing out the procedural infirmities, the foremost contention raised by the petitioners is that the land held by the Market Committees is exempt from tax by virtue of Section 12 of the NALA Act. Section 12 insofar as it is relevant is extracted below :

"Section 12 : Act not to apply to certain lands :- Nothing in this Act shall apply to-

(a) ............ ............. ............ .............

(b) land owned by the State Government or the Central Government other than

(i) the land leased out for any commercial, industrial or other non-agricultural purpose; or

(ii) the land vested in a local authority and used for any commercial, industrial or other non-agricultural purpose deriving income therefrom;

(c) and owned by a local authority and used for any communal purpose so long as no income is derived in respect thereof;"

It is contended that the land which is at the disposal of the Market Committees stands excluded either under Clause (ii) of Section 12 (b) or Clause (c) of Section 12.

3. The learned Government Pleader while not seriously disputing the legal position that Agricultural Market Committee is a 'local authority', has raised the contention that the Market Committees derive income from the land held by them and therefore, they are not within the scope of exemption envisaged by Section 12.

4. Thus, primarily the question is whether the Market Committee qualifies for exemption under one of the said two provisions. As far as sub-clause (ii) of Clause (b) of Section 12 is concerned, there is some ambiguity. It is possible to contend that basically the land contemplated by the said provision should be the land owned by the State Government or the Central Government and when such land is kept at the disposal of the local authority, then, subject to the fulfilment of other conditions, the exemption will apply. In other words, it could possibly be contended that the private lands purchased by the Market Committee or made available to it by resorting to acquisition under the Land Acquisition Act does not come under the scope of Clause (b). Be that as it may, there is no reason why Clause (c) should not come into play provided the other requirements are satisfied. It can very well be said that the user of land occupied by the Office of the Market Committee and the market yards which bring agriculturists and the traders together for conducting the sales and purchase of agricultural produce without the intervention of middlemen is for a communal purpose. The word "communal purpose" is sufficiently elastic and wide enough to cover the activities of a market committee which undoubtedly benefits a substantial section of the public, namely, the growers or ryots and even the trading community. The preamble of the "Markets Act" says that it is meant to regulate purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection therewith. The Market Committee renders various services as provided for by the Act, Rules and the Bye-laws. Thus, promotion of a communal purpose is writ large on the face of the provisions of the Markets Act and the subordinate legislation framed thereunder.

5. The next question whether it is a 'local authority' need not detain us much in view of the undisputed position. However, we would only reinforce the conclusion that the Market Committee is a 'local authority' by making reference to some decided cases. 'Local authority' is not defined under the Act. The definition under Section 3 (31) of the Andhra Pradesh General Clauses Act should, therefore, determine the connotation of the expression 'local authority'. Section 3 (31) of the General Clauses Act defines 'local authority' as follows :

"Local Authority" shall mean a Municipal

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Committee, District Board, Body of Port Commissioners or other Authority legally entitled to, or entrusted by the Government with the control or management of a Municipal or local fund."

It is well settled that the principle of 'ejusdem generis' can be resorted to in understanding the expression 'other authority' mentioned in Section 3 (31). (Vide the decision of Supreme Court in Commr. of Income-tax, Lucknow v. U.P. Forest Corporation, (1998) 3 SCC 530 : (AIR 1998 SC 1125). There are two direct Division Bench decisions of this Court in which it was held that the Market Committee is a local authority within the meaning of Section 3 (31) of the General Clauses Act. The first judgment is reported in Budha Veerinaidu v. State of A.P., (1978 (2) Andh LT 175 : (1983) 143 ITR 1021 (Andh Pra). There the question arose whether the Market Committee is a local authority within the meaning of Section 6 of the Land Acquisition Act. The learned Judges relied on the following observations of the Supreme Court in Patel Premji Jiva v. State of Gujarat, (1970) 2 SCWR 460 :-

"A local authority being by virtue of Section 3 (26) of the Bombay General Clauses Act, 1904, a body which is entrusted by Government with control or management, inter alia, of a local fund, there is no scope for the argument that the market committee constituted under the Gujarat Agricultural Market Act, 1963, is not a local authority within the meaning of Section 6 of the Land Acquisition Act."

6. In the light of the above observations made by the Supreme Court, the Division Bench came to the conclusion that the Market Committee having been entrusted by the Government with the control and management of 'local fund', it would be a local authority within the meaning of Clause (31) of Section 3 of the General Clauses Act. No doubt, the learned Judges held that the principle of 'ejusdem generis' is not applicable because there is no genus to be found in the definition under Clause (31) of Section 3. But, this part of the reasoning cannot be accepted in view of the later decisions of Supreme Court. But, the ultimate conclusion reached by the learned Judges is not thereby affected. The decision in Budha Veerinaidu was followed in the case of CIT v. Agricultural Market Committee, Cuddapah, (1983 (143) ITR 1020) (Andh Pra) wherein it was decided that a market committee is a local authority within the meaning of Section 10 (20) of the Income Tax Act, 1961. It may be mentioned that the definition in the Central General Clauses Act is almost the same.

7. In the case of Union of India v. R. C. Jain, AIR 1981 SC 951 the Supreme Court laid down the tests to determine whether a statutory or public body is a local authority. It was held therein that the Delhi Development Authority is a local authority. Chinnapa Reddy J., speaking for the Supreme Court succinctly enunciated the tests in the following words :

"It was held therein that the fact that budget and annual returns have to be submitted to the Central Government and that the D.D.A. was bound to carry out the directions given by the Central Government, does not divest it of its autonomy. The powers of the Central Government were described as usual supervisory powers".

8. In Commr. of Income Tax v. U.P. Forest Corpn., AIR 1998 SC 1125, Kirpal, J. speaking for the Supreme Court, after referring to the decision in R.C. Jain's case, (AIR 1981 SC 951) (supra) observed thus :

"To put it differently 'other authority' referred to in Section 3 (31) must be similar or akin to Municipal Committee, District Board or body of Port Commissioners. In R.C. Jain's case, at least five attributes or characteristics of an authority falling under Section 3 (31) of the General Clauses Act have been mentioned. At least three of the five attributes mentioned in the passage quoted above from R. C. Jain's case are absent here."

It was then observed :

"In the case of respondent Corporation - U.P. Forest Corpn., the Act does not enable it to levy any tax, cess or fee. It is the income from the sale of the forest produce which goes to augment its funds. It has no power under the Act of compulsory exaction such as taxes, fees, rates or charges. Like any commercial organisation it makes profit from sale of forest produce and it has been given the power to raise loans. Whereas municipal or local funds are required to be spent for providing civic amenities there is no such obligation on the respondent to do so. Merely because Section 17 of the U.P. Forest Corporation Act states that the fund of the

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Corporation 'shall be a local fund' would not make it a local fund as contemplated by Section 3 (31) of the General Clauses Act."

9. Applying the tests laid down in the case of Union of India v. R. C. Jain, (AIR 1981 SC 951) (supra) and U.P. Forest Corpn. case (AIR 1998 SC 1125), independent of the decisions of this Court, we have no doubt in mind that the Market Committee conforms to the definition of local authority. The various provisions and features of the Markets Act unerringly indicate that it is a statutory body confided with quasi-governmental functions in the interests of public having substantial autonomy in administering the provisions of the Act subject of course to certain amount of control by the Government. It is also administering and defraying the expenses from the fund known as 'Market Committee Fund'. It has power to levy fees. It frames the budget and spends it for the purposes laid down by the Act. The Markets Act itself lays down the powers, duties and functions of Market Committee. The provision of various services and amenities in the market yards etc. for the benefit of growers, traders and workers is undertaken by the Market Committee. True, the Committee does not consist of elected members but that by itself does not detract from the character of being a local authority. The Market Committee consists of members nominated from various sections such as growers, traders etc. and it is truly a representative body. There cannot be an escape from the conclusion that the tests laid down by the Supreme Court in the aforementioned decisions are substantially fulfilled and the Market Committee can legitimately be treated as a 'local authority'.

10. Thus, having held that the Market Committee is a local authority and its land is broadly put to use for a communal purpose which the statute itself spells out, the remaining and perhaps the only controversial question is whether any income is derived in respect of the land owned by the Market Committee. While the counsel for the Market Committees submit that no income is being derived even in respect of the godowns constructed, the learned Special Government Pleader vehemently submits that the Market Committees are in fact deriving income from the land by constructing godowns and shops thereon. The learned Government Pleader is right in saying that to the extent that any part of the land is being so used as to derive income therefrom in any form, that land is assessable to tax under the NALA Act at the appropriate rate. But, whether the income is being actually derived from the land put to use, is a debatable and disputed question which involves ascertainment of facts. Whether any income is being derived from any part of the land or the constructions made thereon and if so what is the extent of such land has to be determined on the basis of the factual data to be furnished by the petitioner-Market Committees, of course, the data or details furnished by the Market Committees are subject to scrutiny and verification either on the basis of personal inspection or on the basis of record. But, an enquiry is indispensable in the process of determination of the question whether the whole or any part of the land is exempt from tax under Section 12 of the NALA Act. If no income is derived from the whole or any part of the land, it is made clear that tax under NALA Act shall not be imposed and collected on that land. To this extent, we clarify and leave it to the concerned authorities under the Act to ascertain the details and to take a final decision in the matter in the light of the observations made supra.

11. As already noticed, the assessments were made and demands raised in a very slip-shod manner and in violation of the mandatory procedural requirements. In the normal course, we would have directed the primary assessing authority namely, the Revenue Inspector to redo the assessment after giving notice, but instead of prolonging the litigation, it is desirable that the Mandal Revenue Officer who is already seized of the appeals in most of the cases, to decide the crucial issue in the light of the observations made herein. For this purpose, we direct the petitioner-market Committees to submit the relevant details about the utilisation of the land and the income, if any derived within a period of three months together with a petition which shall be treated as appeal and the same shall be disposed of by the Mandal Revenue Officer concerned after giving opportunity of hearing to the petitioners. Till the final decision is taken, the impugned demands shall not be enforced.

12. Accordingly the writ petitions are

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disposed of. We make no order as to costs.

Order accordingly.

**AIR 2000 ANDHRA PRADESH 210 "Wholesale Vegetable Vendors Welfare Assocnv. Govt. of A.P."**

**ANDHRA PRADESH HIGH COURT**

Coram : 1 D. S. R. VARMA, J. ( Single Bench )

Wholesale Vegetable Vendors Welfare Association, Petitioner v. Govt. of A.P. and others, Respondents.

Writ Petn. 2524 of 1999, D/- 20 -7 -1999.

A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.35 - AGRICULTURAL PRODUCE - Ryot Bazaars - Establishment of within Market Committee area - Is not illegal and contrary to provisions of Act.

By allowing market areas called as Ryothu Bazaars the intention of the Government appears certainly not to preponderate over the existing conditions, but only to standardize the present conditions eliminating the scope of immoral restrains of trade or monopoly. Not abolishing the present system under the Act itself indicates that there is no total deviation from the object and the scheme of the Act. Such an action on the

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part of the Government may amount to change in the policy of the State which again cannot be questioned unless and until the same is found either arbitrary or unreasonable. (Para 19)

P. Gangaiah Naidu, for Petitioner; Addl. Advocate General and Govt. Pleader (for Agrl. and Co-operation), for Respondents.

Judgement

ORDER :- At the interlocutory stage, both the parties consented for final adjudication of the matter.

2. Initially the writ petition is filed seeking declaration that the action of the first respondent in establishing Ryot Bazaars within the Hyderabad Market Committee area as illegal, improper, unjust and contrary to the provisions of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966, and for further declaration that the establishment of Ryot Bazaars is without jurisdiction and as ultra vires. The said writ petition was filed on 9-2-1999.

3. The contentions in the said writ petition are that after following the procedure prescribed under various provisions final notification has to be issued and after such notification the Government has to constitute a market committee for the notified area declared under Section 3 of the A. P. (Agricultural Produce and Livestock) Markets Act, 1966 (hereinafter called the 'Act', for brevity). It is further contended that Section 7 of the Act prescribes that if a person wants to set up or establish or use or continue or allowed to be continued any place for the purchase, sale, storage, weighment, curing, dressing or processing of any notified agricultural produce or products of livestock, or for purchase or sale of livestock is bound to take a licence in respect of such place. Under this Section power is also conferred to exempt from taking such licence. It also provides for withdrawal of such exemption in certain cases. Further, it is stated that such licensee shall comply with the provisions of the Act, Rules, Bye-laws and the conditions specified in the licence.

4. The important submission is that Section 7(6) of the Act contemplates that no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area, outside the market in that area and that the Act has been enacted mainly in the interest of growers-sellers to enable them to get a reasonable price for their produce. The Commission Agent is under obligation to provide certain facilities for the grower-seller in the market yard. The Commission Agent further collects market fee from the purchaser and remits the same to the Market Committee, and therefore, Commission Agents are doing service both to the grower-seller and the Market Committee. It is contended that while so, the first respondent ignoring the existence of the Act started establishing Ryot Bazaars, as a result the farmers viz., grower-sellers themselves can sell their agricultural produce directly to the purchasers. Under these circumstances, the petitioner-Association raised the following questions :

"(1) Whether the Constitution of Ryot Bazaars are traceable to any provisions of law?

(2) Whether the Ryot Bazaars are being run parallel to Market Yards without any authority of law and there is a conflict between the Revenue Department and Market Committee in this regard?

5. Subsequently, the Government of Andhra Pradesh issued G.O. Ms. No. 37, Agriculture and Co-operation (Mktg. I), dated 14-2-1999, which reads as follows :

"In exercise of the powers conferred under Section 35 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (Act 16 of 1966) the Governor of Andhra Pradesh hereby exempt the persons selling notified agricultural produce, livestock or products of livestock grown, reared or produced by them to persons for their own domestic consumption or purchasing such agricultural produce, livestock or products of livestock for their own domestic consumption from the provisions of sub-section (6) of Section 7 and sub-section (1) of the Section 12 of the said Act with immediate effect."

6. Having come to know of the fact of issuance of the said G.O., the writ petitioner filed two M.Ps.- W.P.M.P. (SR) No. 28037 of 1999 to amend the prayer in the writ petition to the following effect :

"For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue a writ of mandamus declaring the impugned G.O.Ms. No. 37, Agriculture and Co-operation dated

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14-2-1999, issued by the third respondent, as illegal, improper and contrary to Section 35 of the A. P. Markets Act and further declare that the establishment of Ryothu bazaars within the Hyderabad Agricultural Market Area, is illegal, improper, unjust and contrary to law and also without jurisdiction and lack of power and pass such other order or orders as this Hon'ble Court may deem fit and proper."

W.P.M.P. No. 6873 of 1999 is filed seeking to implead the Principal Secretary to Government, Agriculture and Co-operative Department as third respondent in the writ petition. Both the W.P.M.Ps. were ordered on 11-6-1999.

7. In the affidavit filed in support of W.P.M.P. (SR) No. 28037 of 1999, the issuance of G.O.Ms. No. 37, dated 14-2-1999 was questioned mainly on two grounds, firstly, the said G.O., did not specify any reasons what-so-ever for granting exemption to Section 7(6) and Section 12(1) of the Act; and secondly, such exemption was given for extraneous reasons, and hence, does not stand for legal scrutiny. According to the petitioner such an amendment was necessitated in view of the counter-affidavit filed by the respondents in the main writ petition.

8. In fact, a perusal of the said G.O., shows that there were no reasons given. It appears, subsequently the Government has issued the same G.O. and gazetted on 11-4-1999 wherein some reasons were given. In this regard, the learned Additional Advocate-General submits that initially only the operative portion of the G.O., was notified on 14-2-1999, but the same has been notified again as an abundant caution giving out reasons on 11-4-1999. Therefore, he submits that for all practical purposes, the G.O.Ms. No. 37 dated 11-4-1999 can be treated as the G.O., since the operative portion is the same as G.O., dated 14-2-1999 and also since there is no change in the number of the G.O. The learned counsel for the petitioner also does not seriously contest G.O.Ms. No. 37 dated 11-4-1999 and submits that the same can be treated as the impugned notification. Therefore it is not necessary to go into the question of validity or otherwise of G.O.Ms. No. 37 dated 14-2-1999.

Therefore in view of the changed circumstances viz., issuance of G.O.Ms. No. 37 dated 11-4-1999 subsequent to the filing of the writ petition, the question that has to be decided is whether the G.O.Ms. No. 37 dated 11-4-1999 is valid or not?

9. The learned counsel for the petitioner drew the attention of the Court to various provisions of the Act in connection with Constitution of Market Yards, objects of their constitution and the procedure regarding transaction of business. It is relevant to read Section 7(6) of the Act which is as follows :

"7(6) Notwithstanding anything in sub-section (1), no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area, outside the market in that area."

The said provision shows that it prohibits purchase or sale of any notified agricultural produce in a notified market area, outside the market. Therefore, the petitioner contends that the purchase or sale of the notified agricultural produce under the Act is not permissible outside the market in that area. In other words, it means that the transaction between the grower-seller and the purchaser-consumer with regard to agricultural produce, livestock and products of livestock shall be made only in the notified market area.

10. Attention is also drawn to Section 12(1) of the Act, which reads as follows :

"Section 12: Levy of Fees by the Market Committee:-

The market committee shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area 1(at such rate, not exceeding 2(two rupees) as may be specified in the bye-laws) for every hundred rupees of the aggregate amount for which the notified agricultural produce, livestock or products of livestock is purchased or sold whether for cash or deferred payment or other valid consideration."

.. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. .. ..

The above provision empowers the market committee to levy prescribed fee on any notified agricultural produce or livestock if purchased or sold in the market area.

11. A conjoint reading of these two provisions shows that notified agricultural produce or products of livestock shall be sold or purchased only in the market area notified and the market committee is

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authorised to levy fees on such transactions.

12. The petitioner states in his affidavit filed in support of the amendment petition in W.P.M.P. (SR) No. 28037 of 1999 that the Government can exercise such power under Section 35 of the Act by notification either permanently or for any specific period, exempt any market committee, any person, or class of persons from all or any other provisions by specifying the reasons. The Government may also impose such other conditions as it deems fit.

13. The petitioner contends that such a G.O., which was issued invoking the provisions under Section 35 of the Act is illegal for two reasons. Firstly, the G.O., did not specify any reason what-so-ever for granting exemption which is mandatory requirement under Section 35 of the Act, and secondly, the exemption was given for extraneous reasons.

14. As already indicated earlier, these averments were made in the affidavit filed in support of W.P.M.P. (SR) No. 28037 of 1999 filed seeking amendment of the prayer in the writ petition in view of the changed circumstances viz., issuance of G.O.Ms. No. 37 dated 14-2-1999 (which was subsequently notified with reasons on 11-4-1999). Therefore, the petitioner has raised the objection that though it is mandatory under Section 35 of the Act, no reasons were given.

15. Now, in the G.O.Ms. No. 37 dated 11-4-1999 three reasons were given viz., firstly, farmers are not getting remuneration price for their produce and on the other there has been a steep increase in the prices of Agriculural commodities causing great hardship to consumers particularly from poorer sections; secondly, there is a series of intermediaries in the process; and thirdly, a direct interface between the produce-farmer and consumer will be of benefit to both the sections.

Section 35 of the Act reads as follows :

"35. Exemption :- The Government may, by notification, and for the reasons to be specified therein, either permanently or for any specified period, exempt any market committee, any person or class of persons from all or any of the provisions of this Act, subject to such conditions as the Government may deem fit to impose."

16. Now a perusal of G.O.Ms. No. 37 shows that it was issued by the Government exercising the power conferred under Section 35 of the Act by giving exemption to Sections 7(6) and 12(1) of the Act and as a result, business transaction between the seller-grower and purchaser-consumer was possibilised outside the periphery of notified market yard which hither to was prohibited. From the language used in the G.O., it can be seen that not only the public interest is explicit but also the reasons given in my view are reasonable and adequate.

17. When some defects were noticed by the State or the Statutory provision is noticeably causing prejudice to the public interest, the Government must come forward with remedial measures and the object of the impugned G.O., is quite apparent from the reasons therein and such authority of the Government is traceable under Section 35. The original intention of the Legislation is to regulate the system of marketing Agricultural products and livestock in the interest of farmer-grower and purchaser-consumer. Permitting the intermediaries to play a role was also a part of that scheme. When it is found by the State that such system has been in operation to the detriment of both grower-seller and purchaser-consumer equally, promptness is required by the State which is the key-note of the power of the State. If quick action is not taken, many undersirable things may take place and needless to say that the State had responded in right manner in right time tracing its authority under right provision i.e., Section 35 of the Act. The mala fides identified in the impugned G.O. have already been in the public notice since long and was taken note of by the State at the chronic stage of course, before collapse.

18. When once the Legislature gives power to the Government under Section 35 of the Act, the consequential actions of the Executive are discretionary. It is such discretion which obviously caused the constitution of the market areas may be at the behest of the Government functionaries, which are identified as Ryothu Bazaars. It is only by virtue of exemption under Section 35 market areas were created and christened as Ryothu Bazaars. Therefore Ryothu Bazaars are conceptual in nature. In fact under Section 28 of the Act, the Government also can undertake the activities of purchasing or selling of Agricultural products and products of livestock. Of course that provision

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was not in question in this writ petition. The comprehensive effect is that the Government can undertake all such activities covered by the Act on it's own or take such necessary steps exercising jurisdiction under Section 35 of the Act.

19. By allowing such market areas called as Ryothu Bazaars the intention of the Government appears certainly not to preponder over the existing conditions, but only to standrdize the present conditions eliminating the scope of immoral restrains of trade or monopoly. Not abolishing the present system under the Act itself indicates that there is no total deviation from the object and the scheme of the Act. Such an action on the part of the Government may amount to change in the policy of the State which again cannot be questioned unless and until the same is found either arbitrary or unreasonable and either of these elements in my view are not present in the light of the reasons given in the impugned G.O.

20. Therefore, Section 35 of the Act gives ample power to the Government to grant exemption to any person or class of persons from all or any of the provisions of the Act for a variety of reasons, and in my view, the reasons accorded by the Government in the impugned G.O., are perceptibly sufficient and valid. Hence, the petitioner fails on his first contention viz., no valid reasons were given in the impugned G.O.

21. Coming to the next contention viz., exemption was given for extraneous reasons, the petitioner could not place any material before this Court to substantiate his contention. The intention and the object of the Government in giving exemption is very clear from the reasons given in the impugned G.O. Therefore, I do not accept the contention of the petitioner that the exemption was given for extraneous reasons. It is further clear from the averments made in the affidavit filed in support of the Amendment petition that the petitioner is not questioning the competence of the Government under Section 35 of the Act. It is submitted by the learned Additional Advocate-General that when compared to the notified Market Yards, the Ryothu Bazaars are very few in number and that the G.O., was issued in the public interest simultaneously preserving the object of the Act and as such it cannot be said that the impugned G.O.Ms. No. 37 dated 11-4-1999 is neither unreasonable nor extraneously reasoned.

22. Therefore viewed from any angle the writ petition fails and is accordingly dismissed. No costs.

Petition dismissed.

**AIR 1999 ANDHRA PRADESH 114 "Etikoppaka Co-op. Agrl. IndI. Society v. Secretary, AgrI. Market Committee"**

**ANDHRA PRADESH HIGH COURT**

Coram : 2 Dr. MOTILAL B. NAIK AND Y. V. NARAYANA, JJ. ( Division Bench )

Etikoppaka Co-operative Agrl. Industrial Society Ltd. and etc. etc., Petitioners v. Secretary, Agricultural Market Committee, Narsipatnam and etc. etc., Respondents.

Writ Petn. Nos. 4188, 4196 and 4839 etc. etc. of 1995 and 25382, 30700 and 35341 etc. of 1997 and 6321, 7637 and 17141 of 1998, D/- 22 -1 -1999.

(A) A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.12 - AGRICULTURAL PRODUCE - Levy of fee on cane growers - Does not amount to unreasonable restriction on their trade on ground that no direct service is rendered to them by market committee.

Constitution of India, Art.19(1)(g), Art.265.

It is enough if there is a broad, reasonable and general correlationship between the levy and the resultant benefit to the class of people on which the fee is levied though no single payer of the fee receives direct or personal benefit from those services. (Para 5)

The collection of fee under the Markets Act need not have direct relation to the service or benefits rendered to the payer of the fee. What is to be seen is whether the machinery created under the Markets Act is providing any service, which need not be a direct service but may well be an indirect service, to the community of the cane growers in general. If it is shown that the cane growers in the State are deriving some benefit under the Act, the collection of fee from the cane growers can be sustainable. In this case, the Government is able to demonstrate that it did take necessary steps for the overall improvement of the sugarcane crop, by producing some governmental orders. Thus it could be said that the State Government has taken positive steps from time to time for the benefit of sugar cane crop by spending considerable amounts, defraying the same from the fund which is created under the Markets Act. Those Governmental orders are placed on record. Therefore, it cannot be said that demand of fees under the Markets Act without rendering any direct service to the cane growers

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amounts to unreasonable restriction upon their trade. (Para 8)

(B) General Clauses Act (10 of 1897), S.5 - GOVERNMENT RESOLUTION - Publication of notification - Notification published in public document - It can be presumed under law that such G. O. is put to notice of general public and public does have knowledge about said G.O. - Fact that petitioners missed to notice the publication in Official Gazettes - Not a ground to say that said G.O. was never issued nor published by Government at any time. (Para 9)

(C) A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.12 - AGRICULTURAL PRODUCE - Levy of fee on cane growers - Delay of eight years in issuance of draft notification and final notification by Govt. declaring its intention to regulate purchase and sale of "sugarcane" - No mala fides can be attributed to such a decision taken by Government as it was a matter of policy - Notifications cannot be said to be invalid on ground of abnormal delay between them - Moreso when there is no stipulation anywhere in statute which prescribes maximum or minimum period within which notification under S. 3(3) should be issued. (Para 10)

Cases Referred : Chronological Paras

(1996) 10 SCC 100 7

1994 AIR SCW 5156 : (1995) 1 SCC 655 5, 6, 7

AIR 1990 PunjHar 259 (FB) 7

AIR 1983 SC 1246 5

AIR 1980 SC 1008 5

AIR 1976 SC 263 : 1975 Cri LJ 1993 9

AIR 1954 SC 282 5

60 CLR 263 (Aus), Mathews v. Chicory Marketing Board 5

S. R. Ashok, S. Janardhan Reddy, C. Kodandaram, S. V. Bhatt, K. S. Murthy, S. Ravi and Sambasiva Pratap, for Petitioners; P. Harinath Gupta, S. C., Posani Venkateswarlu, S.C., Badana Bhaskara Rao, S.C. and Addl. Advocate General and Govt. Pleader, for Respondents.

Judgement

Y. V. NARAYANA, J. :- In this batch of writ petitions, the vires of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short, 'Markets Act'), is questioned.

2. Petitioners in all these writ petitions are the sugar factories located at various places in the State of Andhra Pradesh. Sugarcane is the raw material for these factories. The case of the petitioners is that for the purpose of regulating the supply and purchase of sugarcane required for use in sugar factories and khandasary units and for matters connected therewith, the State Legislature has enacted A. P. Sugarcane (Regulation, Supply and Purchase) Act, 1961 (for short, 'Sugar Regulation Act'). The Sugar Regulation Act takes care of the general and overall development of the sugarcane growers. In furtherance of the object of the Sugar Regulation Act, Section 3 provides for setting up of a Committee called, the A. P. Sugarcane Advisory Committee. Section 4 enumerates the functions of the Committee. They are mainly to advise the government on the regulation of supply and purchase of cane for factories and khandasari units; varieties of cane which are suitable or unsuitable for use in factories and khandasari units; maintenance of good relations between the occupiers of factories and cane growers etc. Under Section 5, the Cane Commissioner, who is appointed in exercise of the powers conferred under Section 9, shall constitute a Cane Development Council for each factory zone. Its functions as enumerated in Section 6 are : to consider and approve the programme of development for the factory zone with the funds at the disposal of the council; to devise ways and means for the execution of development plans such as cane varieties, rotation, cane-seed, sowing programme, fertilizers and manures; to recommend to the local authorities the undertaking of the construction or improvement of roads in the factory zone; to take steps for the prevention and control of cane diseases and pests; to impart technical training to cultivators in matters relating to the production of cane; to administer funds at its disposal for the execution of the development schemes; to lay down general principles in regard to the issue of orders regulating the cutting of cane and to decide disputes relating thereto on receipt of complaints from the cane growers and to perform other functions for the general improvement of the factory zone. Section 8 enables the Council to maintain Funds so as to meet the charges in connection with the performance of its functions. Apart from the Government, factories, cane growers and cane growers co-operative societies are

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the main contributors to the said Fund. Under Section 15, the Cane Commissioner shall declare villages around the factory as factory zone for the purpose of cane supply to the factory. Section 16 regulates the supply and purchase of cane in factory zone. Under sub-section (1), where an area has been declared as the factory zone for a factory, the occupier of such a factory shall purchase such quantity of cane grown in that area and offered for sale to the factory as may be determined by the Cane Commissioner. Sub-section (2) specifically prohibits selling of cane that is grown in one factory zone to the factory or other persons situated in any other factory zones. Under Section 19, the occupier of the factory is bound to pay the price of the cane supplied to him within 14 days from the date of supply. Fixation of price for the supply of sugarcane will be done under the provisions of Sugar Cane Act, 1934, which was enacted with the object to secure fair price to cane growers. There is one more mechanism under which the price is regulated, viz., Sugar Cane (Control) Order, 1966, which was issued in exercise of the powers vested under the Essential Commodities Act, 1955, by the Central Government. Under Clause 3 of this Order, the Central Government, will fix minimum price of the sugar cane, to be paid by the factories for the supply of the cane to them. This minimum price will be fixed at the beginning of each crushing season. It will be paid immediately after delivery of the cane at the factory. After the crushing season is over, the Central Government again fixes final price on the basis of a formula, which is evolved by taking into account various factors. Since the final price could be determined only at the end of the crushing season, the State Government meanwhile announces the price known as 'State Advisory Price'. This price holds good for the period between the declaration of minimum price and fixation of final price. Even the State Advisory Price fixed by State Government is also an amalgam of various factors. Thus, there is a fool-proof formula for the fixation of price, which is with a view to see that no sugarcane grower should suffer undue loss. Coming back to the Sugar Regulation Act, Section 21 empowers the Government to levy tax on the purchase of cane. This tax is essentially used for carrying out the functions stated earlier.

3. Further, it is the case of the petitioners that there is a separate mechanism which will take care of the growth of the sugarcane in the fields. As the recovery of sugar from sugarcane depends upon the time taken for transporting the cane to the factory, qualified persons deputed by the sugar factories periodically monitor the growth of sugarcane in the fields. They use to take samples of the juice contents periodically for the purpose of verifying the percentage of juice in the cane. When the juice contents reach the required stage, harvest permits will be issued by factories for cutting the sugarcane. Thus, in view of the above mechanisms, there is no necessity for any outside mechanism to meddle with either the growth of sugarcane or production of sugar and that, in fact, all these services cannot be provided by the local markets established under the Markets Act. Since the sale and purchase of sugarcane in the State is fully regulated under special enactment called, the Sugar Regulation Act, there is no necessity for the Government to again regulate the said produce under the Markets Act and levy fee under that Act. The contention of the petitioners is that there must be some 'quid pro quo' i.e., correlation between the services rendered by the Government and the fee which is sought to be collected from them under the Markets Act. Since, it is contended that, the sugar cane growers are not deriving any benefit whatsoever under the Markets Act, the Market Committee are not entitled to levy fee upon them. Hence, the writ petitions.

4. Since the legality of certain provisions of Markets Act is questioned, it is convenient to have a cursory look at the relevant provisions of the said Act before dealing with the contentions raised by the petitioners. The Markets Act was a result of long exploratory investigation by experts in the field with a view to provide suitable and regulated market by eleminating middlemen and bring face to face the producer as well as the buyer. Broadly speaking, the Markets Act was brought on to the Statute Book with the very same object. The object and purpose of the A. P. ( Agricultural Produce and Livestock) Market Act, 1966, as seen from the Statement of Objects and Reasons of the Act, is to consolidate and amend the law relating to the regulation of purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection therewith. The intention of the Legislature is clearly deducible from a reading of the Act. Section 2 of the Act gives

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definitions of certain expressions which occur in the Act. Clause (i) defines the expression 'agricultural produce', which means - anything produced from land in the course of agriculture or horticulture and includes forest produce or any produce of like nature either processed or unprocessed and declared by the Government by notification to be agricultural produce for the purpose of the Act. The term 'market' is defined in Clause (vi). It means - a market established under sub-section (3) of Section 4 and includes market yard and any building therein. Clause (xi) defines the expression 'notified area', which means - any area notified under Section 3. Clause (xii) defines the term 'notified market area', which means - any area declared to be a market area by notification under Section 4. Under Section 3, the State Government is given power to declare its intention of regulation the purchase and sale of such agricultural produce, livestock or products of livestock in such area as may be specified in such notifications. After considering the objections and suggestions, if any, the State Government is authorised to publish a final notification under sub-section (3) thereof declaring such area to be a notified area. Sub-section (1) of Section 4 empowers the State Government to constitute a 'market committee' for every notified area which shall be a body corporated having perpetual succession and a common seal. Sub-section (2) entrusts the duty of enforcing the provisions of the Markets Act upon the Market Committees. Sub-section (3) empowers the market committees, as the State Government may from time to time direct, for the purchase and sale of any notified agricultural produce, livestock or products of livestock. It also provides for the establishment of such facilities in the market as may be specified by the Government from time to time by a general or special order. Under sub-section (4), the State Government is authorised to declare by notification the market area to be the notified market area of a particular market for the purposes of the Act. Section 7 deals with trading of notified agricultural produce in the notified area. It stipulates that no person shall, within a notified area, set up, establish or use, or continue or allow to be continued, any place for the purchase, sale, storage, weighment, curing, dressing or processing of any notified agricultural produce or products of livestock or for the purchase or sale of livestock except under a licence granted to him by the market committee. Section 12 is the charging section. It is extracted hereunder :

"12. Levy of fees by the market committee : (1) The market committee shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area at such rate, not exceeding two rupees as may be specified in the bye-laws for every hundred rupees of the aggregate amount for which the notified agricultural produce, livestock or products of livestock is purchased or sold, whether for cash or deferred payment or other valuable consideration.

Explanation-I: For the purposes of this section, all notified agricultural produce, livestock or products of livestock taken out of a notified market area shall, unless the contrary is provided, be presumed to have been purchased or sold within such area.

Explanation-II: ... ... ... ...

... ... ... ...

(2) The fee referred to in sub-section (1) shall be paid by the purchaser of the notified agricultural produce, livestock or products of livestock;

Provided that where the purchaser cannot be identified the fees shall be paid by the seller."

Under sub-section (1) of Section 14, the Market Committee is enjoined with a duty to pay into a Fund, which will be formed under the Markets Act, called the Market Committee Fund, all monies received from the traders in the form of market fee on transactions of sale and purchase of agricultural produce taking place within the notified market area and the said monies are to be credited to the nearest Government treasury or in a Bank with the previous sanction of the State Government. Section 15 enumerates the purposes for which the Market Committee Fund can be utilised. They will be extracted at appropriate time. Under sub-section (1) of Section 16, a common fund, called the Central Market Fund shall be formed and every market committee shall contribute 10% of its annual income to the said Fund. The amounts that are pooled up in this Fund shall be spent out for certain purposes which are set out in sub-section (2) thereof. The above are the salient features of the Markets Act.

5. The meaning of the terms 'tax' and 'fees' can be seen from the report of the Supreme Court

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in Commr., H.R.E. v. L.T. Swamiar, AIR 1954 SC 282. In that report, the Supreme Court explained the two concepts by quoting the definitions given by Latham C.J. of the High Court of Australia in Mathews v. Chicory Marketing Board (60 CLR 263). In the contextual position that is obtaining in this case, it is pertinent to extract hereunder those two definitions (para 43 of AIR) :

"A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. This definition brings out the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. The essence of taxation is compulsion, that is to say, it is imposed under statutory power without the tax-payer's consent and the payment is enforced by law. The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is no element of 'quid pro quo' between the tax payer and the public authority. Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the tax-payer depends generally upon his capacity to pay."

The Supreme Court proceeded further and explained the meaning of the word 'fee', which reads thus (para 44 of AIR) :

"A fee is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay."

In the succeeding paragraphs, after examining the two concepts, the Supreme Court drew a distinction between 'tax' and 'fee', which reads thus (paras 45 and 46 of AIR) :

"A careful examination reveals that the element of compulsion or coerciveness is present in all kinds of imposition, though in different degrees and it is not totally absent in fees. This, therefore, cannot be made the sole or even a material criterion for distinguishing a tax from fee."

"The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden while a fee is a payment for a special benefit or privilege. Fees confer a capacity, although the special advantage, as for example in the case of registration fees for documents or marriage licences, is secondary to the primary motive of regulation in the public interest. Public interest seems to be at the basis of all impositions, but in a fee it is some special benefit accruing to the individual which is the reason for payment in the case of fees; in the case of a tax, the particular advantage if it exists at all is an incidental result of State action."

"As fee is a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should, on the face of the legislative provision, be correlated to the expenses incurred by Government in rendering the services. . . . ."

In a later decision Kewal Krishan v. State of Punjab, AIR 1980 SC 1008 the Supreme Court evolved the following principles for satisfying the tests for a valid levy of market fee on the agricultural produce bought or sold by licencees in a notified market area :

"(1) That the amount of fee realised must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for this purpose.

(2) That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the agricultural produce.

(3) That while rendering services in the market area for the purpose of facilitating the transactions of purchase and sale with a view to achieve the objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and reasonable correlation between the licensees and the transactions.

(4) That while conferring some special benefits on the licensees it is permissible to render

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such service in the market which may be in the general interest of all concerned with the transactions taking place in the market.

(5) That spending the amount of market fees for the purpose of augmenting the agricultural produce, its facility of transport in villages and to provide other facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground that such services in the long run go to increase the volume of transactions in the market ultimately benefiting the traders also. such an indirect and remote benefit to the traders is in no sense a special benefit to them.

(6) That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.

(7) At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above."

But in later decisions, the Supreme Court made it clear that the law as pronounced in Kewal Kishan's case (AIR 1980 SC 1008) (supra) is applicable to the facts of that particular case only and that it does not have bearing upon any other case. The fact that there is considerable change in the view point of the Supreme Court is discernible from the decisions rendered subsequent to Kewal Kishan's case. In Sreenivasa General Traders v. State of A. P., AIR 1983 SC 1246 the Supreme Court had an occasion to again examine the concept of 'quid pro quo' and upon review of the earlier decisions, it held as follows :

"The traditional view that there must be actual quid pro quo for a fee has undergone a sea of change subsequent to decision in AIR 1980 SC 1008. Correlationship between the levy and the services rendered/expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a 'reasonable relationship' between the levy of the fee and the services rendered. Moreover, there is no generic difference between a tax and a fee. Both are compulsory exactions of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person in spite of his unwillingness or want of consent. A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It is now increasingly realised that merely because the collections for the services rendered or grant of a privilege of licence are taken to the consolidated fund of the State and not separately appropriated towards the expenditure for rendering the service is not by itself decisive. It is also increasingly realised that the element of quid pro quo in the strict sense is not a since qua non for a fee."

The law on the point became diluted still further with the passage of time. In the latest decision of the Supreme Court reported in Krishi Upaj Mandi Samiti v. Orient Paper Industries Ltd., (1995) 1 SCC 655 : (1994 AIR SCW 5156) the concept of 'fee' again came up for consideration before the Supreme Court and the Supreme Court has summarised the entire case law on the point and ultimately laid down certain principles at paragraph 21. The relevant portion of the said principles is extracted hereunder (at p. 5175 of AIR) :

"It is not a postulate of a fee that it must have relation to the actual service rendered. However, the rendering of service has to be established. The service, further, cannot be remote. The test of quid pro quo is not to be satisfied with close or proximate relationship in all kinds of fees. A good and substantial portion of the fee must, however, be shown to be expended for the purpose for which the fee is levied. It is not necessary to confer the whole of the benefit on the payers of the fee but some special benefit must be conferred on them which has a direct and reasonable correlation to the fee. While conferring some special benefits on the payers of the fees, it is permissible to render service in the general interest of all concerned. The element of quid pro quo is not possible or even necessary to be established with arithmetical exactitude. But it must be established broadly and reasonably that the amount is being spent for rendering services to those on whom the burden of the fee falls. There is no

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postulate of a fee that it must have a direct relation to the actual services rendered by the authorities to each individual to obtain the benefit of the service. The element of quid pro quo in the strict sense is not necessarily absent in every tax. It is enough if there is a broad, reasonable and general correlationship between the levy and the resultant benefit to the class of people on which the fee is levied though no single payer of the fee receives direct or personal benefit from those services. It is immaterial that the general public may also be benefited from some of the services if the primary service intended is for the payers of the fees."

On a careful perusal of all the decisions of the Supreme Court cited above, one can see radical change in its view point on this aspect. In fact, the law on the principle of 'quid pro quo' has been very much diluted by the pronouncements of the Supreme Court. Whereas in the earliest decision reported in the Commissioner, H.R.E. v. L.T. Swamiar, AIR 1954 SC 282 (supra), it stressed the need to confer some special benefit upon the payer of the fee and made it very clear that levy of fee must be correlated to the expenses incurred by Government in rendering services. But in the subsequent cases, i.e., in Kewal Kishan's case (AIR 1980 SC 1008) (supra) and Srinivasa General Traders' case (AIR 1983 SC 1246) (supra), with the change in the circumstances, the Supreme Court further diluted the concept of fee. In those two reports, while accepting that the fee shall be collected for the services rendered, the Supreme Court, however, held that it is not totally necessary to confer the whole of the benefit on the licensees. It also opined that the element of quid pro quo may not be established with arithmetical exactitude and that it is enough if a good and substantial portion of the amount collected towards fee is spent for rendering services. When it came to the latest decision i.e., Krishi Upaj Mandi Samiti case (1994 AIR SCW 5156) (supra), the Supreme Court construed the word 'fee' and the concept of the principle 'quid pro quo' in a more liberal way. The Supreme Court in this report opined that while conferring some special benefits on the payers of the fees, it is permissible to render service in the general interest of all concerned and that there is no postulate of a fee that it must have a direct relation to the actual services rendered. It finally declared that it is enough if there is a broad, reasonable and general correlationship between the levy and the resultant benefit to the class of people on which the fee is levied though no single payer of the fee receives direct or personal benefit from those services. The above is the law on the point.

6. Let us now come to the merits of the contention raised in this case by duly keeping in mind the law laid down by the Supreme Court. The contention of the petitioners is that Government is not entitled to levy fees upon them when it is not rendering any services whatsoever to them. It is contended that there must at least be some correlation between the services rendered and the fee collected. But, since the levy of fee that is sought to be collected from the petitioners is without rendering any services to them, such levy amounts to unreasonable restriction on their trade practice and is, therefore, violative of their fundamental right guaranteed under the Constitution of India. Similar contention has been raised in Krishi Upaj Mandi Samiti case (1994 AIR SCW 5156) (supra) before the Supreme Court by the petitioner therein which is a paper mill in the State of Madhya Pradesh. It challenged the provisions of M. P. Krishi Upaj Mandi Adhiniyam, 1973, the object of which is analogous to the Markets Act which is impugned in these cases. Under the M. P. Act, the paper mills which purchased bamboos from the State Government under a contract use to take delivery of the same from the forest depots of the Government and transport them directly to factory and, therefore, question of the bamboos entering into the Market yards established under the said M. P. Act does not arise. But, the market committee levied fee on the sale and purchase of bamboos. The paper mill challenged the said levy contending that there is no direct or even indirect benefit conferred by the market committee either on the purchaser or trader of the bamboos and, therefore, the levy of fee under the said Act is unconstitutional. This contention was repelled by the Supreme Court. The Supreme Court noticed that in that case also, as in the present case, the fee levied will go to a common Fund, called the Marketing Development Fund, which will be spent (as provided under Section 44 thereof) for various developmental purposes through out the State for the betterment of the services rendered to the agriculturists in the State. After noticing the purpose for which the market fee is to be utilised, the Supreme Court held that the said

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purposes are in furtherance of the object of the Act, viz., to regulate the buying and selling of agricultural produce and the establishment and proper administration of markets for agricultural produce for the benefit of the agriculturists who are the primary producers of the said produce. The Supreme Court in this context held (at pp. 5179-80 of AIR) :

"The machinery and the facilities for which the market fees are being expended are all necessary to provide the necessary infrastructure to further the object of the Act. But for such infrastructure, the objects of the Act cannot be properly and adequately implemented. The fact that the respondent-Mills may not be the direct beneficiary of any one or some of the said facilities are not made use of by them does not absolve it from payment of the market fees. The said machinery and the facilities are meant for the benefit of all the buyers and sellers of all the agricultural produce within the market area and it cannot be denied that they are so. It is further difficult to appreciate the contention that in the circumstances, the respondent-Mills is not either directly or indirectly a beneficiary of the said machinery and the facilities as a buyer of the bamboos when the purchase is admittedly made in the market area as pointed out above. . . ."

7. The above observations of the Supreme court applies in all force to the case on hand and are complete answer to the contentions raised in this case. As already seen, under Section 12 of the Markets Act, the market committee is empowered to levy fee on the sale or purchase of any notified agricultural produce, livestock or products of livestock. Under sub-section (1) of Section 14, the Market Committee shall, upon receipt of the market fee which is levied under Section 12 of the Act, pay into the fund called 'Market Committee Fund'. The expenditure incurred by the market committees under and for the purpose of carrying out the object of the Markets Act shall be defrayed from out of the said Fund. The purposes for which such Fund may be utilised are enumerated in Section 15. They are extracted hereunder :

"i) acquisition of site for the market;

ii) establishment, maintenance and improvement of the market;

iii) construction and maintenance of buildings necessary for the market and for the health, convenience and safety of the persons, using the market and maintenance of buildings under the control of the market committee;

iv) provision and maintenance of standard weights and measures;

v) pay, pensions, leave allowance, gratuities, compassionate allowances and contribution towards leave allowances, pensions or provident fund of officers and servants employed by the market committee;

vi) payment of interest on loans that may be raised for purposes of the market and the provisions of a sinking fund in respect of such loans;

vii) collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of notified agricultural produce, livestock and products of livestock;

viii) schemes for the extension of cultural improvement of notified agricultural produce, livestock and products of livestock within the notified area, including the grant, subject to the approval of the Government, of financial aid to the schemes for such extension or improvement within such area, undertaken by other bodies or individuals;

ix) propaganda for the improvement of agriculture, livestock and products of livestock and thrift;

x) (xxx xxx xxx) omitted.

xi) promotion of grading services;

xii) measures for the preservation of foodgrains;

xii-a) for the purposes of the Andhra Pradesh Rashtra Karshaka Parishad and Allied Bodies Act, 1987.

xiii) such other purposes as may be specified by the Government by general or special order."

Thus, on a reading of the provisions of Section 15, it is quite obvious that the Market Committees established under the Markets Act are enjoined with a statutory duty of providing marketing facilities to the farmers for the purpose of selling the various types of agricultural products which are grown by them without there being scope for the intervention of middlemen. Thus, the main object of the Act is the elimination of middlemen in the bargaining of agricultural products in the State and securing of reasonable prices

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to the farmers. The preamble of the statute, in fact, reflects this very object of the Act, Clauses (i) to (vi) embedded in Section 15 are enacted for achieving this sole object. In addition to the above object of the Act, the Legislature further intended that the Market Committees established under the Markets Act should also strive for the overall improvement in the standards of agriculture in the State. This object, though not reflected in the preamble of the Statute, which, of course, according to the cannons of interpretation of statutes, is not mandatory, is discernible by a careful reading of Clauses (vii) to (xiii) extracted supra. It is no doubt true that sufficient funds must be placed at the disposal of the machinery created under the Statute for the purpose of carrying out the above objects of the Act. It is in this background, Section 12 is enacted, under which the Market Committees are empowered to levy fees on the sale or purchase of the notified agricultural produce, livestock or products of livestock. Since Government is the proper authority to assess the prevailing conditions of agriculture or various types of crops grown in the State and its standards as it will be having ready made statistical data about the crop-situation in the State, discretion is given to the Government under Section 3 to include or exclude any particular agricultural product as notified agricultural produce so that the funds collected under Section 12 of the Act can be made use of by the Government machinery for the upliftment of that product. The Government, for the purpose of Section 3, will, of course, have to take into account various factors which will have bearing upon the improvement of the particular agricultural product which is sought to be notified under the Act. This discretion vested in the State Government under Section 3 is absolute. The Government in its wisdom is free to include or exclude any agricultural product as notified agricultural produce under the Markets Act, basing upon the overall assessment made with regard to the condition of the particular crop and take suitable measures for the improvement of the same. The contention of the petitioners is that when there exists special enactment which is fully taking care of the interests of cane growers by extending them all the services which are necessary for the growth of cane and progress of the crop, the action of the Government in bringing the cane growers within the purview of the Markets Act and seeking to levy fee under that Act is wholly unconstitutional. In M/s. Subhash Chander Kamlesh Kumar v. State of Punjab (AIR 1990 Punj and Har 259), similar contention was raised and a Full Bench of that Court repelled those contentions holding as follows (para 62 of AIR) :

"It was next contended that the Act made a provision for services which had already been envisaged under Ss. 26 and 28 of the Punjab Agricultural Produce Markets Act, 1961. To that extent there was duplicity and overlapping. It cannot be denied that there is a certain amount of overlapping in the objects sought to be achieved under the two Acts except that under the Punjab Agricultural Produce Markets Act the area of operation of services is the notified market area, under the impugned Act it is additionally and more particularly the rural area. Such an overlapping is unavoidable as both the Acts have for their object better regulations of sale, purchase etc., of agricultural produce. Merely because there is overlapping, in our view, is no reason to hold the latter Act to be ultra vires."

The above observations of the Full Bench of the Punjab and Haryana High Court, which were upheld later by the Supreme Court, is a complete answer to the contention raised by the petitioners herein. Further, as has been observed by the Supreme Court in Krishi Upaj case (1994 AIR SCW 5156) (supra), the services rendered under a particular enactment need not be direct. It is enough if the community as a whole derives 'some' benefit. The Apex Court held that it is not necessary that the fee must have direct relation to the actual service rendered to each individual. It is enough if the machinery and the facilities for which the market fee are levied are meant for the benefit of all the buyers and sellers of all the agricultural products within the notified area. This view is further fortified by the latest Judgment of the Supreme Court in Krishi Utpadan Mandi Samithi v. Ashok Kumar Dinesh Chandra (1996) 10 SCC 100.

8. The bone of contention of the cane growers herein is that the activity of sale and purchase of sugarcane and the transportation of the same is undertaken in accordance with the provisions of the special enactment and there was absolutely no need for the cane grower at any stage to approach the market yards established

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under the Markets Act either for the sale or purchase of the sugar cane and the market yard do not render any service whatsoever to the cane growers in the State and that when the market yards are not providing any benefit or rendering any service worth mentioning to the cane growers, the cane growers in the State are not at all liable to pay market fee under the Markets Act. But, as has been held by the Supreme Court in the above cited cases, collection of fee under the Markets Act need not have direct relation to the service or benefits rendered to the payer of the fee. What is to be seen is whether the machinery created under the Markets Act is providing any service, which need not be a direct service but may well be an indirect service, to the community of the cane growers in general. If it is shown that the cane growers in the State are deriving some benefit under the Act, the collection of fee from the cane growers can be sustainable. In this case, unlike the cases which are cited supra, the Government is able to demonstrate before us that it did take necessary steps for the overall improvement of the sugarcane crop, by producing some governmental orders. Upon perusal of those orders, we have no doubt in our mind to hold that the State Government has taken positive steps from time to time for the benefit of sugar cane crop by spending considerable amounts, defraying the same from the fund which is created under the Markets Act. Those Governmental orders are placed on record. Therefore, we are not ready to accept the contention of the learned counsel for the petitioners that demand of fees under the Markets Act without rendering any direct service to the cane growers amounts to unreasonable restriction upon their trade. For the foregoing reasons, we uphold the collection of fee under the Markets Act from the cane growers in the State.

9. Mr. C. Kodandaram, learned counsel appearing on behalf of some of the petitioners, raised another contention on the issue of publication of notification under Section 3 of the Act. According to him, the impugned G.O. issued under sub-section (4) of Section 4 of the Markets Act, is liable to be struck down as the same was issued without following the procedure laid down in Section 3 of the said Act. He contended that before issuing notification under Section 4 (4) of the Act, the Government is bound to publish draft notification under Section 3 (1) of the Act and then final notification under Section 3 (3) of the Act and that since the impugned notification was issued without issuing draft notification and final notifications as required under Section 3, the same is liable to be struck down. He cited a decision of the Supreme Court in this connection reported in Govindlal v. Agrl. P.M. Committee, AIR 1976 SC 263. It is true that under sub-section (1) of Section 3 of the Markets Act, the Government is required to publish a draft notification declaring its intention of regulating the purchase and sale of such agricultural produce in such areas which shall be specified by it and as per sub-section (2) of Section 3, such notification shall also invite objections from all the persons who are interested stipulating some time therefor. After the expiration of the period specified in the draft notification and after considering such objections and suggestions, the Government may, under sub-Section (3) of Section 3, publish a final notification declaring the area specified in the draft notification to be a notified area in respect of any agricultural produce which is specified in the draft notification. Section 4 empowers the Government to constitute, by issuing a notification, market committee for every notified area. Under sub-section (3) of Section 4, every market committee shall establish in the notified area such number of markets as the Government direct, for the purchase and sale of any notified agricultural produce, livestock or products of livestock. On the establishment of such markets, sub-section (4) of Section 4 empowers the Government to declare by notification the market area and such other area adjoining thereto as may be specified in the notification, to be a notified market area in respect of the notified agricultural produce. The contention advanced before us is that the Government straight away issued the impugned notification under section 4 (4) without complying the requirements under Section 3. But, this contention, in our view, is only assumptive in nature in view of the issuance of G.O.Ms. No. 416, Food and Agricultural (Mktg. II) Department, dated 29-11-1982, as required under sub-section (1) of Section 3 and G.O. Ms. No. 412, Food and Agriculture (Mktg. II) Department dated 25-6-1990 as required under sub-section (3) of Section 3, by the Government declaring their intention to regulate the purchase and sale of 'sugarcane' in the areas notified in Schedule I to the notification issued in G.O. Ms. No. 2095, Food and Agriculture

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(Agrl. IV) Department dated 29-10-1968. On a reading of G.O. Ms. No. 412 dated 25-6-1990, two things are clear. Firstly, by issuing G.O.Ms. No. 416 dated 29-11-1982, the requirement of issuing draft notification under sub-section (1) of Section 3 was duly fulfilled by the Government stipulating a period of 30 days for the receipt of objections, if any. Then, after the expiry of the period stipulated in the said draft notification, G.O.Ms. No. 412 dated 25-6-1990 was issued as required under sub-section (3) of Section 3 and both of them were duly published in official gazettes. In view of the issuance of G.O.Ms. No. 412 dated 25-6-1990, the contention of the petitioners must be held to be incorrect. The learned counsel at this juncture further contends that the so called G.Os. never saw the light of the day and they were never published in the official gazette for the benefit of the general public. It is contended that even the petitioners, whose interests would be vitally affected by virtue of the so called G.Os., were not able to come to know about the existence of the G.Os. It is, therefore, sought to be contended that these G.Os. were manipulated and brought into existence later in order to suit their claim. But, the petitioners are forgetting one crucial factum i.e., that the G.Os. were not only issued by the Government by following the procedure in vogue but also duly published in the official gazette which is deemed to be a public document. When once the G.O. is published in a public document, the presumption under law is that such G.O. is put to the notice of the general public and the public does have knowledge about the said G.O. Merely because the petitioners missed to notice the publication in the official gazettes, it cannot be said that G.O. Ms. No. 416 or G.O.Ms. No. 412 were never issued nor published by the Government at any time.

10. Learned counsel further contended that even assuming for argument sake that G.O. Ms. No. 416 and 312 were published as required under law, still it cannot be said that they have any statutory force inasmuch as there is abnormal delay in between these two G.Os. It is true that G.O.Ms. No. 416 was issued on 29-11-1982 while G.O. Ms. No. 412 was issued on 25-6-1990 i.e., 8 years thereafter. The learned Additional Advocate-General, however, explains the delay stating that the delay was only due to the change in the Government. While the Government which was in power thought it fit to notify the 'sugarcane' as notified agricultural produce under the Markets Act and issued draft notification under Section 3 (1), the subsequent Government which was run by a different political party, kept the matter in cold storage. Thereafter, there was again change in the Government. Ultimately, the notification under Section 3 (3) could be published. In that process, there was delay. The Government which was in power as a matter of policy and after duly taking into account the prevailing conditions in the State, decided to include 'sugarcane' as a notified agricultural produce under the Markets Act. The petitioners cannot attribute any mala fides to such a decision taken by the Government as a matter of policy. Moreover, there is no stipulation anywhere in the statute which prescribes maximum or minimum period within which notification under Section 3 (3) shall be issued. There is no merit in the contention raised by the petitioners.

11. In the result, the writ petitions are dismissed. No costs.

Petitions dismissed.

**AIR 1999 ANDHRA PRADESH 394 "Jaya Satya Marine Exports Pvt. Ltd. v. Union of India"**

**ANDHRA PRADESH HIGH COURT**

Coram : 2 M. S. LIBERHAN, C. J. AND A. S. BHATE, J. ( Division Bench )

Jaya Satya Marine Exports Pvt. Ltd., Petitioner v. Union of India and others, Respondents.

Writ Petns. Nos. 25798, 3986, 11320, 25799, 25806, 31431 and 34133 of 1998, D/- 26 -2 -1999.

Agricultural Produce Cess Act (27 of 1940), S.3, Sch.I, Item 7 - AGRICULTURAL PRODUCE - CESS - Cess - Levy of on fish - Prawns not being fish - Not liable to cess.

It is well established principle of law that subject cannot be taxed or levied with the cess, unless the charging provision clearly imposes an obligation on the assessee. If the meaning of the legislation is clear, the Courts ordinarily would not, by its ingenuity or by articulation, give meaning to the plain words of the legislation and then take - in or out an item specified in the Schedule from the purview of levy. Law with respect to levy has to be considered as is understood by a common man in common parlance known in the commercial world or the word used in day to day

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use by a common man within the Indian conditions. No dictionary meaning or technical meaning or biological or structural or genetic meaning can be imported into the word defining an item leviable for cess in the Schedule. It is the basic principle of applicability of a fiscal legislation, that a person could be taxed only if one comes under the letter of the law, tax and not otherwise i.e., howsoever just apparently it may appear to fall within the spirit of law, or cess cannot be levied or imposed without there being specific words clearly showing the levy by the legislation. Qualitatively prawns and fish are two different commodities. A common man treats fish and prawns as two different articles. Therefore when cess was imposed on the value of export of fish, prawns cannot be subjected to cess. (Paras 11, 13, 14, 18, 19)

Cases Referred : Chronological Paras

Asstt. Commissioner of Sales Tax, Kerala v. P. Kesavan and Co., (1996) 81 ELT 7 3, 15

Indian Cable Co. Ltd. v. Collector of Central Excise, Calcutta, AIR 1995 SC 64 : (1994) 6 SCC 610 : 1994 AIR SCW 4071 3

T.B.R. Exports v. State of A. P., 1994 (1) Andh WR 306 6, 14

M/s. D. H. Brothers Pvt. Ltd. v. Commissioner of Sales Tax, U. P. Lucknow, AIR 1991 SC 1992 : 1991 AIR SCW 2119 3

Commissioner of Wealth Tax v. Hashmatunnisa Begum, AIR 1989 SC 1024 : (1989) 40 ELT 239 : 1989 Tax LR 393 3

C. I. Foods Ltd. v. State of Orissa, (1988) 68 STC 284 (Orissa) 6, 14

Asian Paints India Ltd. v. Collector, AIR 1988 SC 1087 : (1988) 35 ELT 3 3

State of Orissa v. C. I. Foods Ltd., (1982) 50 STC 152 (Orissa) : (1981) 2 STL (Cri) 133 6, 14

Hindustan Aluminium Corpn. Ltd. v. Superintendent, Central Excise, Mirzapur, 1981 Tax LR 2816 (Delhi) : (1981) 8 ELT 642 (Delhi) 3

Indo-China Steam Navigation Co. v. Jasjit Singh, AIR 1964 SC 1140 : 1964 (2) Cri LJ 234 3

1946 App Cas 119 9

1936 App Cas 1 9

Y. V. Ravi Prasad, for Petitioner; B. Adinarayana Rao, S. C., for C. G., for Respondents.

Judgement

M. S. LIBERHAN, C. J. :- These writ petitions are disposed of by this common order.

2. The petitioners are exporting processed or frozen prawns and shrimps. Under the A. P. Agricultural Produce Cess Act, 1940 (hereinafter referred to as 'the Act') cess at the rate of 0.5% on agricultural products given in the Schedule was imposed. Cess is to provide financial assistance to the Indian Council of Agricultural Research, who undertakes the research on agricultural products. It is imposed on the value of export of the agricultural products. In the itinerary of items in Schedule, 'Fish' is subject to cess. The petitioners challenged the levy of cess, inter alia, contending:- Since prawn is not a fish; consequently not liable for cess. No cess can be recovered by the respondents on prawns, having not been provided by legislation.

The learned counsel for the Union of India contended: The word 'fish' is used in broad term. It would include aquatic animals like crab, prawns, etc. Prawns are liable to cess. The prawns are exported after removal of head and legs without any process carried out. Secondly, the petitioners be relegated to an alternative remedy. The revenue authorities can be in better position to determine whether prawns are fish and covered under the Schedule or a particular product would fall under which particular entry in Schedule. Reference was made to dictionary meaning of the shell fish as well as fish defined in Law of Lexicon.

3. The learned counsel relied on the decisions reported in Asst. Commissioner of Sales Tax, Kerala v. P. Kesavan and Co., (1996) 81 ELT 7; Indian Cable Company Ltd., Calcutta v. Collector of Central Excise, Calcutta, (1994) 6 SCC 610 : (AIR 1995 SC 64); M/s. D. H. Brothers Pvt. Ltd. v. Commissioner of Sales Tax, U. P., Lucknow, AIR 1991 SC 1992 : (1991 AIR SCW 1992); Asian Paints India Ltd. v. Collector, (1988) 35 ELT 3 : (AIR 1988 SC 1087); Indo-China Steam Navigation Co. v. Jasjit Singh, (1963) 3 FLT 1395 : AIR 1964 SC 1140 : (1964 (2) Cri LJ 234); Hindustan Aluminium Corporation Ltd. v. Superintendent, Central Excise, Mirzapur, (1981) 8 ELT 642 : (1981 Tax LR 2816) (Delhi) and Commissioner of Wealth Tax v. Hashmatunnisa Begum, (1989) 40 ELT 239 : (AIR 1989 SC 1024).

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4. The learned counsel for the petitioners contended that cess is leviable under Section 3 of the Act which provides that customs duty at the rate of one-half of one per cent ad valorem shall be levied on all articles included in the Schedule, and which are exported from India, with an exception with respect to the articles not produced in India. Twenty one articles are enumerated in Schedule. The relevant item under consideration in the Schedule is item No. 7, which runs as under :

"7. Fish."

5. The learned counsel for the petitioners contends that prawns are not fish as understood in the common parlance known to the trade or to the common man, who is expected to follow the law. The words in a fiscal statute cannot be given an extended meaning.

6. The learned counsel for the petitioners relied on the decisions reported in State of Orissa v. C. I. Foods Limited, (1982) 50 STC 152; C. I. Foods Limited v. State of Orissa, (1988) 68 STC 284 and T. B. R. Exports v. State of A. P., 1994 (1) Andh WR 306.

7. The Legislature with an intent to provide financial aid to the agricultural research provided for the levy of cess only on the scheduled items. Custom authorities have been authorised to collect the cess. Same is required to be paid to the Agricultural Research Institute.

8. Conspectus of law from the judgments cited by the learned counsel for the petitioners emerges :

(1) That the entries in the Schedule in a fiscal statute should be construed in a popular sense, not according to scientific or technical meaning and it is commercial meaning which has to be given to the expression ;

(2) Where two meanings are possible, one which advances the legislative intention should be accepted ;

(3) Views supporting the constitutionality should be accepted ;

(4) That though the revenue authorities are in a better position to appreciate in view of the evidence produced that the article falls under the specified item in the Schedule, yet it was observed, that question, where sufficient evidence is placed in a writ for unambiguous conclusion upon technical matters to be reached by the authorities can be reached in exercise of the writ jurisdiction ;

(5) Everyday use should be understood in common parlance or in the commercial world or in trade circle and should be given a popular meaning which should prevail over a technical meaning ;

(6) Intended meaning to be given to a word as intended by the Legislature; consequently, definition or meaning of it, as provided in dictionary or zoology should not be imported in the fiscal statute.

9. It is well established principle of interpretation of statutes that nothing has to be read in or nothing has to be implied and one has to look fairly at the language used and levy can be imposed if it strictly falls within the provisions of the law. (Reference may be made to 1936 App Cas 1 and 1946 App Cas 119 at 140). Courts would not create ambiguity by interpretation in order to enable the State to levy cess. No benevolent construction in favour of a State can be put on a fiscal statute by hair-splitting.

10. It emerges from the judgments cited by the learned counsel for the petitioners that prawns and fish are two different commodities with biologically different classification. Both are qualitatively different. In common parlance too, fish and prawns as known to person dealing in fish or prawns either in business or for personal consumption are two different items. Where specific named product is included in a Schedule with identity distinct from corpus it came from, no other form can be given a name as given in Schedule. Schedule is not meant to be filled by inferences.

11. It is well established principle of law that subject cannot be taxed or levied with the cess, unless the charging provision clearly imposes an obligation on the assessee. If the meaning of the legislation is clear, the Courts ordinarily would not, by its ingenuity or by articulation, give meaning to the plain words of the legislation and then take - in or out an item specified in the Schedule

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from the purview of levy. Law with respect to levy has to be considered as is understood by a common man in common parlance known in the commercial world or the word used in day to day use by a common man within the Indian conditions. No dictionary meaning or technical meaning or biological or structural or genetic meaning can be imported into the word defining an item leviable for cess in the Schedule. It is the basic principle of applicability of a fiscal legislation, that a person could be taxed only if one comes under the letter of the law and not otherwise i.e., howsoever just apparently it may appear to fall within the spirit of law, tax or cess cannot be levied or imposed without there being specific words clearly showing the levy by the legislation. Levy cannot be supported relying on the spirit of law by the Department. There is no scope for levy by intendment or presumption or by interpretative process or implied levy by process of reading into the plain words. One has to look into the letter of the word subject to levy. Beliefs and assumptions that it included the zoological meaning or genetic affinity cannot be imported into the Schedule for the purposes of levy.

12. There can be no gain-saying that judicial notice can be taken of a fact that a common man treats fish and prawns as two different articles, like wheat or bajra, though both are agricultural produce and may be genetically or zoologically same. It is difficult to assume that a man, not conversant with the dictionary meaning or the zoological meaning or scientific meaning or genetic meaning for whom the law is meant to be followed, would treat the prawn as a fish and on demand by a person, prawn will be supplied with fish and vice-versa.

13. In our considered view, the question of putting a meaning of a fish only would arise if the word 'fish' is capable of two meanings or any implied inclusive meaning or legislature intended. No process is involved to which prawn can be converted into a fish.

14. We are fully in agreement with the judgment rendered in T.B.R. Exports' case (1994 (1) Andh WR 306) (supra) by a Division Bench of this Court wherein it was held that prawns are different articles from fish drawing support from the judgments in C. I. Foods' case ((1982) 50 STC 152) (supra) and C. I. Foods' case ((1988) 68 STC 284) (supra) holding that qualitatively prawns and fish are two different commodities. An attempt was made by the learned counsel for the respondent-Union of India that the prawns and fish were found to be two different commodities, both qualitatively and in common parlance only under the sales tax where the incident of tax is the sale or purchase of a commercial item by a citizen and not under the Agricultural Produce Act, which subjects Agricultural produce exported and incidence of cess is the source of production and its export. Distinguishing feature put-forth by the counsel for Union of India, in our considered view is immaterial, and being not substantial, is of no consequences. Question under consideration is whether in the item defined fish, could prawn be included and subjected to tax under the Sales Tax Act. Levy under any other statutory provision or incidents of levy in the facts of circumstances cannot alter the meaning of item on which cess is levied.

15. It is one of the cherished objects of the law that the multiplicity of the proceedings should be avoided. Even in the judgment relied on by the learned counsel for the respondents in order to support his submission that the matter be relegated to the Department, which can better appreciate whether prawns fall within the Scheduled item of fish or not, in P. Kesavan and Co.'s case (1996 (81) ELT 7) (supra) though it was observed in the facts and circumstances of that case where the question involved was whether an item of strapping, which was subject to sales tax involved any process or inputs putting therein. It was in that context, it was observed that where technical matters are involved in respect of process of manufacturing and there was no evidence before the Court with respect to the process and the imputs in order to come to conclusion that a particular item has been produced by a particular process with a particular input that the matter was relegated to the authority. Yet, we may hasten to add that the Hon'ble Supreme Court was categorical, and observed :

"Where sufficient evidence is placed before the Writ Court for an unambiguous conclusion upon technical matters to be reached by the

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authorities, the Court in exercise of its jurisdiction can come to such a conclusion and not relegate the parties to an alternative remedy before the Department."

16. It is one of the principles that in taxing statutes, substance of the matter should be looked into and the doctrine is to give a quietus at the earliest in tax matters as uncertainty breeds the cord of untrammelled discretion.

17. Here, there is no question of any process involved, muchless technical process or the inputs put in from which the prawns can be converted into fish known in the commercial sense, specially merely by chopping of the head, prawns cannot be said to have become fish. It is not the substance of the material which has been subjected to levy of fee, but it is an item or a thing known by particular name i.e., fish, which has been subjected to levy of cess. By no stretch of imagination or by adopting bionomial theorem, fish can be termed to be prawn. No interpretation is possible by reading the scheme of the Act or the Schedule that the word fish would include prawn. Prawn does not tally with fish. It may be acqua-culture agricultural produce. But, different produces having been produced by the same methodology will not engulf within the meaning of one word i.e., fish. There is nothing suggested which could persuade us to take a view that in the facts and circumstances of this case any other meaning can be given to the fish appearing in the Schedule.

18. For the reasons recorded above, prawns cannot be subjected to cess, unless specifically provided by the legislation. The respondents cannot add or substract or legislate in the absence of any specific legislation imposing cess on the prawns.

19. In view of the observation made above, levying of cess on prawns is quashed and the respondents are injuncted from collecting cess on prawns till a legislation appropriately, in the context of law, levies cess on prawns. The writ petitions are allowed. No order as to costs.

Petitions allowed.

AIR 1999 ANDHRA PRADESH 398 "N. V. Narasimha Rao v. Somepalli Sambaiah"

ANDHRA PRADESH HIGH COURT

Coram : 1 KRISHNA SARAN SHRIVASTAV, J. ( Single Bench )

N. V. Narasimha Rao, Petitioner v. Somepalli Sambaiah and others, Respondents.

Election Petition No. 12 of 1995 and E. A. No. 326 of 1995, D/- 29 -1 -1999.

(A) Representation of the People Act (43 of 1951), S.83 - Conduct of Election Rules (1961), R.94(A) - ELECTION - Election petition - Affidavit supplied to returned candidate not containing attestation as required under S. 83(3) read with R. 94(A) - Thus allegations of corrupt practices in petition not being pleaded in conformity with statutory requirements - Liable to be struck off. (Para 15)

(B) Representation of the People Act (43 of 1951), S.83 - ELECTION - Election petition - Allegations that votes cast validly in favour of election petitioner but declared invalid - And votes validly cast in his favour counted in favour of returned candidate - Lacking in material particulars - Such absence of pleading material facts amounts to disobedience of mandatory provisions u/S. 83(3), (5) - On basis of such allegations no cause of action could be said to have arisen for setting aside the election. (Para 19)

Cases Referred : Chronological Paras

N. Indrakaran Reddy v. A. Kamaladhar, E. A. No. 557 of 1997 in E. P. No. 3 of 1996, D/- 21-8-1998 (AP) 13

M. Ranga Reddy v. Indrasena Reddy, 1997 (5) Andh LD 330 : 1997 (2) Andh WR 456 12, 13

Manohar Joshi v. Nithin Bhaurao Patil, AIR 1996 SC 796 : 1996 AIR SCW 145 9, 10

Dr. (Smt.) Shipra v. Shantilal Khoiwal, AIR 1996 SC 1691 : 1996 AIR SCW 1772 9, 10, 11, 12, 14

Harcharan Singh Joshi v. Hari Kishan, AIR 1996 SC 3350 : 1996 AIR SCW 2715 11, 14

Narain Chand Prashar v. Prem Kumar, AIR 1993 HP 84 18

F. A. Sapa v. Singora, AIR 1991 SC 1557 : 1991 (3) SCC 375 : 1991 AIR SCW 1492 12

Mithilesh Kumar Pandey v. Baidyanath Yadav, AIR 1984 SC 305 9, 10

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Smt. Sahodrabai Rai v. Ram Singh Aharwar, AIR 1968 SC 1079 : 1968 All LJ 782 9, 10

Ch. Subbarao v. Member, Election Tribunal, AIR 1964 SC 1027 9, 10

V. Brahmaiah, for Petitioner; M. Chandra-sekhara Rao, G. P., for G.A.D., for Respondents.

Judgement

ORDER :- This is an application under Section 87 of the Representation of the People Act, 1951 read with Order 6, Rule 16 and Section 151 of the Code of Civil Procedure for striking out the pleadings and dismissing the election petition No. 12/1995, inter alia, on the ground that the affidavit accompanying the election petition has not been sworn before the Magistrate of I Class or Notary or Commissioner of Oaths as prescribed under Rule 94-A of the Conduct of Election Rules in Form No. 25 read with Section 81(3) of the R. P. Act, 1951 and the copy of the affidavit served on the petitioner does not contain proper attestation and the allegations of corrupt practices made in Paras 7 to 10 suffer from material irregularity and are vague.

2. It is not disputed before me that the petitioner had contested the Legislative Assembly Elections from 110 Chilakaluripet assembly segment on behalf of the Indian National Congress (I) Party with the election symbol 'Hand' while the first respondent (petitioner in E. P. 12/1995) had contested the said election on behalf of the Telugu Desam Party with the election symbol 'Cycle'. The other respondents had also contested the said election. The polling was held on 1-12-1994. The petitioner was declared elected by the Returning Officer, that is Respondent No. 20 in the night of 1-12-1994. He had won the election by 131 votes. The first respondent had lost the election as also the other respondents.

3. The first respondent has filed E. P. 12/1995 seeking declaration of the election of the petitioner as void, for inspection, scrutiny and recounting of the ballot papers in 110 Chilkaluripet assembly constituency and declaring him as duly elected from the said constituency. The first respondent has alleged in the election petition that on account of various corrupt practices committed by the petitioner and his supporters with his knowledge and consent during the election period, his electoral prospects were materially affected with the result that he lost the election. He has set out in detail the corrupt practices alleged to have been committed by the petitioner in Paras 7 to 10 of the election petition. It is alleged that there was large scale misuse of official machinery to secure victory of the petitioner. A large number of supporters of the first respondent in various villages were arrested two days prior to the poll to prevent those persons from participating in the election process as they were influential persons in their villages. The police had joined hands with the petitioner in furthering his winning chances. The petitioner had visited the village Eviruvaripalem of Chilakaluripet Mandal and had promised the villagers that he would arrange for laying a road from that village to Gorantlavaripalem if the voters vote for him. He had engaged lorries bearing No. ADV 2722 and AP 017 1188 belonging to Dhanalakshmi Cotton Industries, Chilakalurpet on 24-11-94 and had transported earth to be used in the construction of the road. This act of the petitioner had induced the voters of the said village to vote for him. The petitioner had visited the villagers and had promised the villagers that free clothes would be distributed to them and immediately thereafter, sarees and dhothis were distributed through P.D.S. under the Government Scheme. This was done to induce the illiterate rural voters and to make them understand that free clothes were distributed only at the instance of the petitioner. The Mandal Revenue Officer of Chilkaluripet had cooperated with the petitioner in timing for the said distribution. The Village Administrative Officer namely Sri N. Rajeshwara Rao of Village Nadendla in Chilakaluripet constituency who was a public servant openly and actively campaigned for the petitioner with him and the local Member of Lok Sabha namely Sri Kasu Krishna Reddy and had urged the voters to vote for his party in the elections. It is also alleged that during the counting of votes, the counting officials as also the Returning Officer, that is Respondent No. 20, had deliberately declared as invalid votes validly cast in favour of the first respondent in spite of protests and this was done by the Respondent No. 20 with a view to help the petitioner in improving his winning chances. It has been lastly alleged that during the counting process of the 7th and the 8th rounds, the votes validly cast in favour of the first respondent were bundled out and counted in favour of the petitioner in spite of protests by his counting agents and the Respondent No. 20 had

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brushed aside the objections raised by the first respondent. The results of the 7th and the 8th rounds were not displayed on the board with a view to mislead the counting agents of the first respondent. The Respondent No. 20 by his proceedings URC No. Nil dated 10-12-94 had rejected the request of the first respondent for recounting of the 7th and the 8th rounds of counting. The said mistakes had materially affected the case of the first respondent, as the petitioner was declared elected by a margin of 131 votes only.

4. It is a matter of record that the Respondents Nos. 2 to 4 and 6 to 19 did not make appearance in the Court in spite of due service of notices and, therefore, they were set ex parte on 28-4-1995. The 5th respondent could not be served and the notice sent to her had been returned with the endorsement that no such person was available in the village. The contesting respondents Nos. 1 and 20 did not file any counter.

5. The petitioner who was arrayed as the first respondent in E. P. No. 12/1995 has filed E. A. 326/1995 for rejecting the election petition on the ground that along with the election petition, an affidavit in Form No. 25 as required to be filed in accordance with Rule 94-A of the Conduct of Election Rules has not been filed because it has not been sworn before the Magistrate or Notary or Commissioner of Oaths and the copy of the affidavit supplied to him has not been duly certified as the true copy of the affidavit. The election petition is not in conformity with the mandatory requirements of Section 83 of the R. P. Act. The affidavit is no affidavit in the eye of law. The allegations of corrupt practices are vague. The verification is not proper because the election petitioner has not disclosed the source of information regarding the correctness of the allegations made in Paras 7 to 12 of the election petition. In para 7, it is not stated as to when the official machinery was misused, who misused the official machinery and in what manner it has been misused. The names of the persons arrested, the date on which they were arrested, the date on which they were released on bail and in what manner the arrested persons were prevented from participating in the election have not been stated in the election petition. Postal acknowledgement evidencing the submission of representation to the Chief Election Commissioner, that is the Returning Officer, on 13-12-1994 has not been filed. It is not stated specifically as to how the petitioner was responsible for the alleged arrest of the said persons. The date of the visit of the petitioner to Evurivaripalm has not been mentioned in Para 8 of the petition. The names of the villagers to whom the alleged promises have been made and which voter being influenced by such promise had voted in favour of the petitioner have also not been mentioned in the petition. The amount of hiring charges of the vehicles, the names of the persons who paid the hiring charges, names of the coolies engaged and the source of information have not been stated in para 8 of the petition. Similarly, the date of issuance of order of the Government for distribution of dhothis and sarees to white card-holders, the time of distribution of janata cloth in pursuance of the Government order, the dates on which the clothes were distributed have not been supplied in the petition. The names of the voters to whom the sarees or Dhothies have been distributed have not been given in the election petition. It is alleged that the Village Administrative Officer was a part time employees and was not a public servant. There is no reference regarding the particular code of conduct which has been breached by the Village Administrative Officer. Similarly, the allegation that the Lok Sabha Member Shri Kasu Krishna Reddy had accompanied the petitioner during the election campaign to Nandyal village and had induced the voters to vote for Indian National Congress (I) Party is very vague. The ballot papers contained the serial numbers. The serial numbers of the alleged votes validly cast in favour of the first respondent but declared invalid have not been given in para 11 of the election petition. It has also not been stated as to in which round of counting and at what table the alleged defect was detected. The number of such votes has also not been mentioned. The allegations that the 20th respondent did not maintain the counting result chart on the board properly and that the counting of the 8th round was taken out without finalising the 7th round are vague and irrelevant. The serial number of the ballot papers through which the votes cast in favour of the first respondent were counted in favour of the petitioner, the table at which that was done, the round of counting in which it was done and the names of the counting agents etc., have not been supplied in the election petition. The allegations have been made on the basis of

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doubt. Similarly, the allegation that the invalid votes polled in favour of the petitioner were declared valid is vague because no such allegation has been made in the complaint lodged before the Returning Officer, that is respondent No. 20 on 12-10-1994. The petitioner, therefore, prays that paras 7 to 12 of the election petition should be struck out and the election petition be dismissed with costs.

6. The petitioner has also filed a recrimination petition which is yet to be numbered.

7. The contesting first respondent, that is the election petitioner in E. P. 12/1995 did not file any counter to E.A. 326/95. The other respondents also did not contest this application.

8. I have heard Sri Movva Chandra Sekhara Rao, learned senior counsel appearing on behalf of the petitioner and Sri V. Brahmaiah Chowdary, learned counsel for the first respondent.

9. After discussing the law laid down in the cases of Ch. Subbarao v. Member, Election Tribunal, AIR 1964 SC 1027; Smt. Sahodrabai Rai v. Ram Singh Aharwar, AIR 1968 SC 1079 : (1968 All LJ 1079); Manohar Joshi v. Nithin Bhaurao Patil, AIR 1996 SC 796 : (1996 AIR SCW 145) and Mithilesh Kumar Pandey v. Baidyanath Yadav, AIR 1984 SC 305, it has been held in the case of Dr. (Smt.) Shipra v. Shanti Lal Khoiwal etc., AIR 1996 SC 1691 : (1996 AIR SCW 1772) at page 1694 (of AIR) :

"The concept of substantial compliance with statutory provisions cannot be extended to overlook serious or vital mistakes which shed the character of a true copy so that the copy furnished to the returned candidate cannot be said to be a true copy. Verification by a Notary or any other prescribed authority is a vital act which assures that the election petitioner had affirmed before the notary etc., that the statement containing imputation of corrupt practices was duly and solemnly verified to be correct statement to the best of his knowledge or information as specified in the election petition the affidavit filed in support thereof; that reinforces the assertions. Thus affirmation before the prescribed authority in the affidavit and the supply of its true copy should also contain such affirmation so that the returned candidate would not be misled in understanding that imputation of corrupt practices was solemnly affirmed or duly verified before the prescribed authority. For that purpose, Form 25 mandates verification before the prescribed authority. The objection appears to be that the returned candidate is not misled that it was not duly verified. The concept of substantial compliance of filing the original with the election petition and the omission thereof in the copy supplied to the returned candidate as true copy cannot be said to be a curable irregularity. Allegations of corrupt practices are very serious imputations which, if proved, would entail civil consequences of declaring that he became disqualified for election to a maximum period of six years under Section 8-A, apart from conviction under Section 136(2). Therefore, compliances of the statutory requirement is an integral part of the election petition and true copy supplied to the returned candidate should as a sine qua non contain the due verification and attestation by the prescribed authority and certified to be true copy by the election petitioner in his/her own signature. The principle of substantial compliances cannot be accepted in the fact situation.

The plea that the election petition cannot be dismissed under Section 86 at the threshold on account of the omission on the part of the Registry of the High Court to point out the same as per its procedure, cannot countenanced. Lapse on the part of the Registry is not an insurance to deny to the returned candidate the plea that the attestation of the affidavit and its certification to be a true copy is an integral part of the pleadings in the election petition. Sections 81, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read, if the Court finds on an objection being raised by the returned candidate as to the maintainability of the election petition, the Court is required to go into the question and decide the preliminary objection. In case the Court does not uphold the same, the need to conduct trial would arise. If the Court upholds the preliminary objection the election petition would result in dismissal at the threshold, as the Court is left with no option except to dismiss the same."

10. In the case of Dr. (Smt.) Shipra (AIR 1996 SC 1691) supra it has been observed that in the case of Ch. Subba Rao (AIR 1964 SC 1027) (supra); Smt. Sahodrabai Rai (AIR 1968 SC 1079) (supra); Manohar Joshi (AIR 1996 SC 796) (supra) and Mithilesh Kumar Pandey (AIR 1984 SC 305) (supra) :

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"though the affidavit of the election petition contained the allegation of corrupt practices and true copies were served, the omissions in the copies were not of material facts which become an integral part of the election petition or the pleadings. Therefore, this Court had not insisted upon the strict standard of the scrutiny as required under Section 86 of the Act. In none of the cases, the question has arisen whether copy of the affidavit supplied to the respondent without the attestation portion contained in it (though contained in the original affidavit) can be considered to be true copy?."

11. In the case of Harcharan Singh Joshi v. Hari Kishan, AIR 1996 SC 3350 : (1996 AIR SCW 2715), the Apex Court has observed that the copy of the affidavit supplied to the respondent did not contain the affirmation by the Oath Commissioner. Relying on Dr. (Smt.) Shipra's case (AIR 1996 SC 1691) (supra), the Bench of three Judges of Apex Court in this case has held that the defect is not a curable defect and, therefore, confirmed the order of dismissal of Election Petition on this ground, because it was sustainable in law.

12. Relying on the case of F. A. Sapa v. Singora, (1991) 3 SCC 375 : (AIR 1991 SC 1557) and Dr. (Smt.) Shipra's case (AIR 1996 SC 1691) (supra), a learned single Judge of this Court has held in the case of M. Ranga Reddy v. Indrasena Reddy, 1997 (5) Andh LD 330 that :

". . . . . . .failure to supply true copy as required under Section 83(1)(c) of the Act by the election petitioner to the returned candidate is fatal to the election petition. When once an objection is filed under Section 86(1) of the Act, the Court has no option but to dismiss the election petition, if satisfied that the election petition is not in confirmity with Section 83(1)(c) of the Act read with Rule 94(A) of the Rules."

13. I had also an occasion to deal with the similar question in the case of N. Indrakaran Reddy v. A. Kamaladhar in E. A. No. 557 of 1997 in E. P. No. 3 of 1996, D/- 21-8-1998 and was in complete agreement with the view expressed by the learned single Judge of this Court in M. Rangareddy's case (1997 (5) Andh LD 330) (supra) and the allegations of corrupt practices were ordered to be struck off as copy of the affidavit was not found to be the true copy of the original affidavit.

14. Testing the facts of the case on hand on the touch stone of the law laid down in Dr. (Smt.) Shipra's case (AIR 1996 SC 1691) (supra) and quoted with the approval in the case of Harcharan Singh Joshi (AIR 1996 SC 3350) (supra), I find that a copy of the affidavit supplied to the returned candidate, i.e., the petitioner, does not contain the attestation as required under Section 83(3) of the R. P. Act read with Rule 94(A) of the Election Conduct Rules. The petitioner was not supplied with such verification by the competent authority who had attested the original affidavit filed along with the election petition certifying it to be true copy. It appears only to be signed by the Respondent No. 1 under the heading 'True copy' leaving blanks above it, though in the original affidavit, it bears signature and seal of the Section Officer (OS) and Commissioner of Oaths, High Court of Andhra Pradesh, Hyderabad.

15. For the foregoing reasons, paragraphs 7 to 10 of the Election Petition, E. P. No. 12 of 1995, in which allegations of corrupt practices have been made are liable to be struck off, because they are not pleaded in confirmity with Form 25 read with Rule 94(A) of the Rules and Section 83(1) of the R. P. Act inasmuch as there is material defect in the true affidavit, which is an integral part of the Election Petition.

16. The Election Petitioner, i.e. Respondent No. 1, has not mentioned the serial number of numbers of such ballot papers about which it has been alleged that votes were validly cast through them in his favour, but were declared as invalid. Similarly, it has not been mentioned as to in which round of counting and at which table, the alleged defect, irregularity or dishonesty was detected. The source of information, of declaring such valid votes alleged to have been cast in favour of the first respondent but declared as invalid, has also not been mentioned. On perusal of complaint, Annexure III, dt. 10-12-1995, it appears that it was lodged after counting was over and before the declaration of result. This complaint lacks material facts and particulars relating to violation of procedure in respect of ballot papers.

17. In paragraph 12 of the Election Petition, though it has been alleged that during the counting process, at 7th and 8th rounds, votes validly cast in favour of first respondent were bundled up

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and counted in favour of the petitioner, but serial numbers of ballot papers in question have not been mentioned in this para. Similarly, it has also not been mentioned at which table this mischief had been done as also in which round of counting. On perusal of the contents of this paragraph, it appears that the allegations regarding counting of votes are based on 'doubt'.

18. The Election Agents or Counting Agents in all counting stations are supposed to be possessed of ample opportunity to examine the ballot papers at the time of scrutiny, rejection and acceptance. In respect of each ballot paper, the Election Petitioner or in his absence, his election agent or his counting agent should be in a position to set out precisely their objections for acceptance or rejection of the ballot papers. In order to find out the genuineness of the grievance, it is only when the ballot paper numbers are given with respect to those ballot papers, with respect to which there is any grievance that the same can be scrutinised. Absence of such information which the petitioner alone should have known or should be deemed to know, any inspection of the ballot paper would be merely roving or fishing enquiry, which precisely is prohibited under Section 83(1)(a) of the R. P. Act vide Marin Chand Prashar v. Prem Kumar, AIR 1993 AP 84.

19. From what is pointed in the preceding paragraphs, it appears that the allegations made in paragraphs 11 and 12 of the Election Petition lack in material particulars and absence of pleading material facts amounts to disobedience of mandatory provisions under Section 83(3)(a) of the R. P. Act; with the result that, on the basis of allegations made, no cause of action appears to have arisen for setting aside the election of the petitioner.

20. In result, paragraphs 7 to 10 of the Election Petition in E.A. No. 3 of 1995 are ordered to be struck off. As no cause of action has arisen on account of allegations made in paragraphs 11 and 12 of the Election Petition, it deserves to be dismissed. Accordingly the Election application, E.A. No. 326 of 1995 is allowed and as a sequel to that, E.P. No. 12 of 1995 stands dismissed. However, in the circumstances of the case, I leave the parties to bear their own costs.

Order accordingly.

**AIR 1998 ANDHRA PRADESH 142 "Velpur Gram Panchayat v. Asst. Director of Marketing, Guntur"**

**ANDHRA PRADESH HIGH COURT**

Coram : 1 B. K. SOMASEKHARA, J. ( Single Bench )

Velpur Gram Panchayat and another, Petitioners v. Asst. Director of Marketing, Guntur and others, Respondents.

W. P. No. 6636 of 1997, D/- 7 -8 -1997.

(A) A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.30, S.4 - AGRICULTURAL PRODUCE - PANCHAYAT - Scope - Overriding effect under S. 30 - Conspicuous absence of expression "the law for the time being in force" in S. 30 - Indicates that it had no prospective intendment to prevent future laws to be overriden by pesent law.

A.P. Panchayat Raj Act (13 of 1994), S.104.

The conspicuous absence of the expression 'the law for the time being in force' in S.30 of the Agricultural Markets Act is indicative that it had no prospective intendment to prevent the future laws to be overriden by the present law as the expression 'the law for the time being in force' will speak of past tense, present tense and present continuous tense and not the future tense as it is populously stated that the law is not static and it is dynamic and it is for the needs of the people and the progress of the society and the necessity of the polity to bring about the law in a given situation and for the purpose and benefit of the society. It cannot be forgotten that there are many obsolete or dead laws which are to yield to the new laws, however, such matter depends upon the facts and circumstances of each case to be tested in the light of the laws which are passed subsequently as in the case of Panchayat Raj Act. The overriding effect contemplated under S. 30 of the Agricultural Markets Act has got definite parameters viz., that if there is any other law when the Market Committee may come into force for establishment, maintenance or regulation of a market or the levy of fee therein that was not to be made applicable to any market established under the Act nor would affect in any way the powers of the market in respect of such a market to mean thereby that no such law would affect any market constituted by virtue of S. 4 of the Act and would not affect the powers of the market committee in respect of such a market constituted under the said provision. Therefore, in order to

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attract S. 30, it must be first established that a market had been established in accordance with S. 4 of the Act. Moreover, S. 30 has no repugnancy to any subject matter of the nature for all the time, and it is only incidental and subject to the conditions laid down therein. It is also restrictive only to such laws which provide for establishment, maintenance and regulation of a market and not the entire law, and the whole or like the Panchayat Raj Act. (Paras 10, 11)

Section 30 has to be read with S. 4 of the Act to mean that such an overriding effect is subject to the conditions laid down in S. 4 and nothing beyond that. When no law like Panchayat Raj Act was in force on that day, the law makers while enacting Markets Act could not have anticipated as to what would happen in future if there is any other law regulating such a market or the marketing under specific statutory powers incorporated therein. It cannot be forgotten that the purpose and the object behind Markets Act was to be envisaged at the time when it was brought into force and not for all the time. (Para 12)

(B) A.P. Panchayat Raj Act (13 of 1994), S.130 - PANCHAYAT - Scope - Area or place in occupation of authorities in market committee - Control of Gram Panchayat not excluded for purpose of its powers under Act.

A simple meaning of S. 130 is that nothing in the Act, rule, bye-law or regulation with reference to the Act, empowers the Gram Panchayat to collect any licence fee or impose condition for permission in respect of any place in the occupation or under the control of State or Central Government or of a Mandal Parishad or Zilla Parishad or of a Market Committee constituted under the Agricultural Markets Act. The reasons could be that there may be properties or places under the occupation or control of not only the market committee, but also the State Govt., Central Govt., Mandal Parishad, Zilla Parishad etc., regarding which no permission is necessary to be obtained from the Gram Panchayat. Presuming that a market committee or any such authority is permitted by law or otherwise within the gram panchayat area, and by virtue of that any property or any place or the area is in the occupation or control of such authorities, the Gram Panchayat cannot impose the condition to obtain permission or to obtain licence. Beyond that the provision does not speak anything. There is no indication in this provision that it excludes the Gram Panchayat from any control over such area or the place in the occupation of such authorities in the market committee for the purpose of its powers under the provisions of the Panchayat Raj Act. (Para 14)

(C) A.P. Panchayat Raj Act (13 of 1994), S.104 - PANCHAYAT - DOCTRINES - Gram Panchayat under Act - Cannot be said to be local Government - However it is "self Government" - Market Committee constituted under Agricultural Markets Act have no jurisdiction over Gram Panchayat or for purposes of having markets - Holding markets within Gram Panchayat area - Is within exclusive jurisdiction of Gram Panchayat and not that of Agricultural Market Committee.

Constitution of India, Art.243(d).

A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.30, S.4.

Doctrines - Generalia specialibus non derogant.

It cannot be said that Gram Panchayat in the sense to be understood under the Panchayat Raj Act is a local Government, and on the other hand, constitutionally it is called self-Government. In fact, 'Local Authority' is defined under S. 3(17) of the General Clauses Act, to mean that a Municipal Committee, District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund. No such import can be brought with reference to the Gram Panchayat within the meaning of the Constitution and the Panchayat Raj Act. The expression "self-Government" although incorporated under Art. 243(d) of the Constitution, is not defined in any of the enactments in question. Therefore it becomes a political expression understood in administrative law to be a Government which can rule itself and it is beyond the meaning of autonomy. (Para 15)

The expression 'self Government' from the latin gubernaculum means "the system of polity in a State; that form of fundamental rules and principles by which a nation or State is governed,

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or by which individual members of a body politic are to regulate their social actions. A constitution either written or unwritten, by which the rights and duties of citizens and public officers are prescribed and defined, as a monarchical Government, a republican Government, etc. (Para 16)

The meaning of local authority is restricted and exclusive of the meaning of self-Government. A local authority and local self-Government are differen1t in form, intent and the Governments. A local authority like the munipality or as in the present case Agricultural Market Committee will be statutory authorities, whereas a Gram Panchayat as in the present case by virtue of Art. 243(d) would be a self-Government or may be a local self-Government, but not a local authority. In that view of the matter, to put it in substance, a Gram Panchayat as a self-Government is a sovereign body having both constitutional and statutory status, to not only govern itself but to govern its subjects within its territory. The meaning of Panchayat Raj is akin to a territorial kingdom, however, within the democratic intent and subject to the provisions of the Panchayat Raj Act and the Constitution. Therefore, it cannot be said that a market committee constituted under the Agricultural Markets Act has any jurisdiction over the gram Panchayat or for the purposes of having the markets. (Para 16)

When two authorities have got similar powers to have the market within a particular area, the question is not whether which is the special authority or the special law under which it is functioning. When the Gram Panchayat has got powers to have and regulate its own markets of its own, auto-Government or the self-Government, there cannot be any special law to take away such a power as a special subject unless provided or saved under the latter Act. (Para 17)

When there are two enactments dealing with the same subject-matter, the latter law prevails. Even on that count, it is the Panchayat Raj Act which prevails over the Agricultural Markets Act in relation to the subject-matter of markets. Therefore to hold the markets or cattle markets or weekly bazar like shandy for sale and purchase of cattle within the Gram Panchayat area it was within the exclusive jurisdiction of Gram Panchayat and not that of Agricultural Market Committee. (Para 18)

Cases Referred : Chronological Paras

1997 (1) ALT 629 (FB) 17

1997 (4) ALD 560 13

AIR 1977 AP 147 (FB) 12

AIR 1963 SC 1890 16

AIR 1961 Punj 1 (FB) 15

Giridhar Rao, for Petitioners; Govt. Pleader for Agrl. for Respondent No. 1. P. Venkateswarlu, SC for Agrl. Market Committee for Respondent No. 2. Mrs. Nanda Ramachandra Rao, for Respondent No. 3.

Judgement

ORDER :- The petitioner No. 1 is a Gram Panchayat of Velpur, Atchampet Mandal, Guntur District and petitioner No. 2 is a successful bidder in the auction conducted by petitioner No. 1 for the cattle shandy or weekly bazaar to be held from 1-4-1997 to 31-3-1998. The 1st respondent is the Assistant Director of Marketing, Guntur, 2nd respondent is the person-incharge of Agricultural Market Committee, Krosur Mandal, Guntur District and 3rd respondent is a member of Zilla Parishad Territorial Constituency Krosur Mandal. It is pleaded that Velpur Gram Panchayat had been running cattle shandy within the Gram Panchayat area for the last 20 years or more by holding public auction. It is contended by the petitioners that by virtue of S. 104 of A. P. Panchayat Raj Act (for short 'the Act') all the public markets vest in the Gram Panchayat and it is the duty of the Gram Panchayat to provide places for use as public markets and further more the Panchayat is entitled to collect fees on animals brought for sale and sold in such markets by virtue of S. 104(2)(d) of the Act. Several other provisions are also pointed out from the Act to show the powers of the Gram Panchayat to collect the licence fee and the power to prevent sale in our open public roads etc. It is also contended that all the income accruing from such above mentioned sources of Gram Panchayat revenue form part of Gram Panchayat funds. It has been the practice to sell the right to have public markets by public auction by granting licences for a period of one year from 1st April to 31st March and accordingly it was done in favour of the 2nd petitioner. It appears that by virtue of such public auction, the petitioner No. 2 become successful

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bidder, paid the bid amount, the bid was accepted by the Gram Panchayat by its resolution on 25-3-1997 and proceedings No. RoC 1/97 dated 25-3-1997 were passed permitting the 2nd petitioner to collect the fee for the period from 1-4-1997 to 31-3-1998. He paid Rs. 19,500/- towards the total bid amount and therefore he is entitled to have the weekly shandies in that Gram Panchayat area.

2. It appears that respondent No. 3 made a representation to the Hon'ble Minister for Panchayat Raj and Rural Division and his representation was sent to respondent No. 1 who in turn forwarded it to respondent No. 2 directing the petitioner-Gram Panchayat not to conduct auction for the period from 31-3-1997 and therefore, respondent No. 2 issued the impugned orders in Rc. No. 31/97 dated 27-3-1997 which was served on the petitioner No. 1 on 29-3-1997 directing him not to conduct auction for cattle shandy for the subsequent period beyond 31-3-1997 and also to shift the cattle shandy presently functioning at Velpur Gram Panchayat to the Marketyard at Krosur.

3. It is contended that by virtue of the provisions of the A. P. (Agricultural Produce and Live Stock) Markets Act (for short 'Agricultural Markets Act') and by virtue of specific provisions of S. 7(6), unless all the steps are gone into, no market can be held within a particular area of the Gram Panchayat and therefore in view of the rights of the 2nd petitioner to hold cattle shandy as per the public auction and the resolution of the Panchayat, such proceedings issued by 2nd respondent are said to be illegal, arbitrary and cannot be enforced. It is also contended that the impugned proceedings are outcome of the malice in law and malice in fact. It is also contended that such proceedings are issued without notice or opportunity to the petitioners and therefor violative of the principles of natural justice. It is also contended that the impugned proceedings are violative of Articles 14, 19(1)(g) and 300(A) of the Constitution of India. Therefore, the petitioners have sought for appropriate directions in the nature of mandamus or any other order to declare the impugned proceedings dated 27-3-1997 as null and void and to set aside the same.

4. On behalf of the respondents, 2nd respondent has only filed a counter. The impugned proceedings are justified both in law and facts. It is contended that originally a notified area had been declared under S. 3(3) of the Agricultural Markets Act under G.O. Ms. No. 586 dated 28-6-1976 for Sattenapalli Taluq comprising of Sattenapally, Phirangipuram, Medikondur, Pedakurapadu, Krosur, Bellamkonda, Rajupalem, Muppalla and Achampet mandals of Guntur District and a Market Committee had been constituted for such notified area by the Government which was notified in the gazette dated 25-11-1976. After establishment of the Market Committee, the Government has declared Market area and notified market area in respect of the said markets under G.O. Ms.No. 3 dated 3-1-1977. As per the said G.O. the entire area within the limits of Gram Panchayat of Krosur was declared as Market area and 16 K.M. radius around the Krosur was declared as notified Market area as far as Krosur Market is concerned. The Government issued new notified area in G.O. Ms. No. 419 dated 26-7-1993 for the area comprising Krosur, Achampet, Bellamkonda, Rajupalem and Pedakurapadu Mandals and subsequently the Market Committee, Krosur was constituted and the Market Committee established market yard at Krosur declaring the limits of the market as per S. 4(3)(c) of the Agricultural Markets Act by its resolution dated 31-1-1995. The proposals for declaring the market area in respect of Krosur Market and 25 K.M. radius around the office of the Market Committee, Krosur as 'Notified Market area' have been submitted to the Director of Marketing on 24-2-1995 and for notification to be made by the Government in that regard under S. 4(4) of the Agricultural Markets Act. It is contended that such an area is within the market area notified and therefore the Market Committee, Krosur is entitled to regulate the notified Agricultural Products and Live Stock and products of live stock within the said notified market area as it was being regulated earlier. It is contended that the proceedings issued by respondent No. 1 which is implemented by respondent No. 2 has been in accordance with law as the Gram Panchayat had no powers or jurisdiction to regulate such markets. It is contended that the relevant provisions of the Act has nothing to do with the directions of holding markets in the declared area or notified area as it is within the exclusive powers of the Market Committee. The plea of the 1st petitioner

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that the right to hold weekly bazaar or cattle shandies in the Gram Panchayat area has been sold out to the 2nd petitioner is denied. It is contended that such proceedings are no doubt issued after receipt of the impugned orders from respondents 1 and 2. The right of the 2nd petitioner to hold markets or weekly shandies by virtue of such auction in his favour is challenged. Such proceedings are said to be repugnant and inconsistent with the provisions of both the Acts in question. It is contended that the Gram Panchyat will not be in a position to provide basic facilities as is required and as could be provided by the Market Committee to the markets. It is also denied that holding of cattle shandy at a distance of six kilo metres from Velpur serves no public good and the impugned order is malice in law and malice in fact. The proposed shifting of cattle shandy is justified for the purpose of public at large. It is contended that the petitioners were not entitled to any notice before passing such proceedings, much less, an opportunity of being heard and the contention that the impugned proceedings are violative of the principles of natural justice is denied. As a whole, the respondents have contended that the petitioners have no right to seek any relief in this writ petition.

5. Although the respondents have denied or challenged the public auction and the right to have weekly shandies within the gram panchayat area of Velpur, they have denied the proceedings issued by the petitioners alleging that such proceedings are malice to be got up or brought out after the impugned proceedings were issued. This Court is not convinced that such proceedings have been got up or brought up after the impugned proceedings were issued. The resolution was passed on 25-3-1997 and the 1st petitioner issued the proceedings Ro. C.No. 1/97 on the same date granting rights to the petitioner No. 2 to collect the fees for cattle shandy from 1-4-1997 to 31-3-1998 in terms of the conditions of the auction regarding which the petitioner deposited an amount of Rs. 19,500/- under challan dated 27-3-1997. The impugned proceedings are dated 27-3-1997. The petitioners have clearly pleaded that it was served only on 29-3-1997 regarding which there is no denial or material produced to contradict. Therefore, by the time the impugned proceedings were served on the petitioners, the right to collect the fees for weekly shandies had been completed in favour of petitioner No. 2 by petitioner No. 1. There is nothing to indicate from the records that any such proceedings were brought out either hurriedly or with the knowledge of the impugned proceedings.

6. The impugned proceedings are issued by respondent No. 2 which reads thus :

" THE AGRICULTURAL MARKET COMMITTEE, KROSUR

From To

Shri Shafillah Khan The Divl. Panchayat

Dessignation : Officer, Guntur

Person-incharge

Station : Krosur-522 410

Re. No. 31/97 Dated: 27-3-1997

Sir,

Sub : Cattle Shandy functioning at Velpur Gram Panchayat under Atchampet Mandal- Shifting of Shandy to the Market Yard, Krosur non-conducting of auction entrusting the right to organised shandy at private premises requested.

Ref : (1) Representation of Sri Gottimukkala Balaram Krishnam Raju with endorsement of the Hon'ble Minister for Panchayat Raj and Rural Division, Hyderabad dt. 12-3-1997.

(2) Lr. No. 374/97 dt. 20-3-97 Assistant Director of Marketing, Guntur.

I am to inform you that in the representation received with endorsement of the Hon'ble Minister for Panchayatraj and Rural Division with reference second, necessary direction were given to shift the cattle shandy presently functioning at private premises at Velpur Gram Panchayat to the Market Yard, Krosur. As per the Provisions of 7(6) of the A. P. (AP and LS) Market Act, transaction of notified commodities live stock should not be held outside the market yard.

It was learnt that as per usual practice, you are entrusting the right to conduct cattle shandy to the highest bidder in open auction. In view of the steps now being taken to centralise the trade to the Market yard fourthwith, I request you not to

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conduct auction for subsequent period beyond 31-3-1997.

Yours faithfully,

Sd/- Person-incharge

Agricultural Market Committee Krosur"

7. Basically such proceedings were isssued on the representation made by respondent No. 3 to the Hon'ble Minister for Panchayat Raj and Rural Division and on the instructions of the 1st respondent by letter No. 374/97 dated 20-3-1997. Barring this, no other material is produced by the respondents as to the genesis of such proceedings. The impugned proceedings clearly prevent the petitioners from having the cattle shandy in Velpur Gram Panchayat with a direction to shift it to the Market yard at Krosur. Barring reference to S. 7(6) of the Markets Act prohibiting the transaction out side the market yard, no other reason is given in the impugned proceedings. The second part of the impugned proceedings is only a hearsay based without verification of the matter or enquiry into such serious matter by the concerned authorities including respondents 1 and 2. No provision under the Agricultural Markets Act giving such powers to the authorities is mentioned therein. Therefore, on the face of it, the impugned proceedings are arbitrary, not supported by any legal basis and also violative of the principles of natural justice and it has affected the rights of the petitioners in the matter of holding weekly shandies and collecting fees by petitioner No. 2 for the benefit of 1st respondent. There is no doubt that the impugned proceedings have emanated only because the Hon'ble Minister for Panchayat Raj and Rural Division forwarded the representation of respondent No. 3 in regard to his allegation without further examination or enquiry in the matter. Therefore, primarily the impugned proceedings cannot be supported in law. However, the right of the petitioners to have weekly shandies within the area of Velpur Gram Panchayat is being seriously questioned by the respondents on the ground of legality, propriety and the jurisdiction in the light of the provisions of the Agricultural Markets Act. Mr. Giridhar Rao, learned Counsel for the petitioners and Mr. P. Venkateswarlu, learned Standing Counsel for respondent No. 2 have done their best in support of their respective contentions. They have not spared any pains in dealing with the serious questions in the case. Notwithstanding the legality, propriety or otherwise of the impugned proceedings and the right of the petitioners in regard to the weekly shandies in the Gram Panchayat area of Velpur on facts as above, interesting questions have arisen to be resolved in this writ petition viz. : Whether the petitioner No. 1, Velpur Gram Panchayt can be prevented from having the markets or agricultural markets within the area over which the jurisdiction of Panchayat extends, and whether the Provisions of the Agricultural Markets Act override the provisions of the Panchayat Raj Act?

8. The Agricultural Markets Act came into force on 29-11-1966 when it was published in the A. P. Gazette as required under S. 1(3) of the Act. This Act is intended to consolidate and amend the law relating to the regulation of purchase and sale of agricultural produce, livestock and products of livestock and the establishment of market in connection therewith. Before the Panchayat Raj Act came into force, A. P. Gram Panchayats Act, 1964 was in force in addition to other enactments regarding Mandal Praja Parishads, Zilla Praja Parishads and Zilla Pranalika etc., in 1986 and also A. P. Local Bodies Electoral Reforms Act, 1989 and all these are came to be repealed under S. 276 of the Panchayat Raj Act. In other words both the Agricultural Markets Act and also Gram Panchayats Act, 1964 were simultaneously in force. Uncontrovertedly, before the Panchayat Raj Act came into force, the Agricultural Markets Act was operative for the area covered by Velpur Gram Panchayat comprising several villages regarding several notifications had been issued as above, and the Agricultural Markets Act had overriding effect by virtue of S. 30 of the Act which reads :

"Nothing in any law providing for the establishment, maintnence or regulation of a market or the levy of fees therein shall apply to any market established under this Act or affect in any way the powers of a market committee, in respect of such market".

9. In substance in so far as the establishment, maintenance or regulation of market or levy of the fees to any market established under the Act, no other law had the operation or would affect the provisions under the Act in relation to such subjects meaning thereby even the Gram Panchayats Act which was in force as on that date

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had no operation in regard to such subjects in view of the overriding effect under the said provision. In otherwords, it was the exclusive realm or the power of the authorities under the Agricultural Markets Act to deal with such subjects supra which should include holding of weekly shandies or weekly bazaars etc. It must be emphatically recorded that but for the Panchayat Raj Act, the respondents were totally justified in preventing the petitioners from having such a weekly shandy. It is because of the Panchayat Raj Act which came into force on 30-5-1994, we are examining the effect of the provisions of the Agricultural Markets Act vis-a-vis the latter Act.

10. Mr. Venkateswarlu, the learned Standing Counsel for the respondent No. 2 pointed out from the provisions of Agricultural Markets Act that it is the exclusive region of the Market Committee constituted under the provisions of the Act to establish, to hold and to regulate the markets in such area declared according to certain provisions notwithstanding any provision in any law for the time being in force under S. 30 of the Agricultural Markets Act which include any future law also. It may be difficult to accept such a contention. The expression in S. 30 as above is not a sweeping effect as it has not dealt with tense in grammar. It has not used the expression 'the law for the time being in force'. Therefore, the expression 'in any law' mentioned in the provision should be understood as any law which was in force as on the date when such an Act was in force as no law can contemplate the future laws and in anticipation no law can override the future laws. In order to note the effect of the overriding provision in a statute, the provisions of the latter Act like the Panchayat Raj Act have to be examined. The conspicuous absence of the expression in S. 30 of the Agricultural Markets Act 'the law for the time being in force' is indicative that it had no prospective intendment to prevent the future laws to be overridden by the present law, as the expression 'the law for the time being in force' will speak of past tense, present tense and present continuous tense and not the future tense as it is populously stated that the law is not static and it is dynamic and it is for the needs of the people and the progress of the society and the necessity of the polity to bring about the law in a given situation and for the purpose and benefit of the society. It cannot be forgotten that there are many obsolete or dead laws which are to yield to the new laws, however, such matter depends upon the facts and circumstances of each case to be tested in the light of the laws which are passed subsequently as in the case of Panchayat Raj Act.

11. The overriding effect contemplated under Section 30 of the Agricultural Markets Act has got definite parameters viz., that if there is any other law when the Market Committe may come into force for establishment, maintenance or regulation of a market or the levy of fee therein that was not to be made applicable to any market established under the Act nor would affect in any way the powers of the market in respect of such a market to mean thereby that no such law would affect any market constituted by virtue of Section 4 of the Act and would not affect the powers of the market committee in respect of such a market constituted under the said provision. Therefore, in order to attract Section 30, it must be first established that a market had been established in accordance with Section 4 of the Act. Moreover, Section 30 has no repugnancy to any subject matter of the nature for all the time, and it is only incidental and subject to the conditions laid down therein. It is also restrictive only to such laws which provide for establisment, maintenance and regulation of a market and not the entire law, and the whole or like the Panchayat Raj Act, which is going to be examined as to the powers in regard to market etc.

12. Mr. Giridhar, the learned Advocate is right in relying upon a full Bench pronouncement of this Court in M. S. Murty v. State, AIR 1997 AP 147 in support of his contention that there cannot be any market to be regulated by the market committee unless all the five incidents are gone into in accordance with Section 4 of the Agricultural Markets Act. The implication of the provision Section 4 for the constitution of the market committee and the market area etc., and to markets within the area of the market committee can be found in para 6 of the pronouncement and to be repeated usefully to read as under at page 150 :

"Thus, to clarify the concepts and the different terminologies used in the Act, it may be pointed out that the notified area is the largest geographical and physical unit. There may be a single market committee which is a body corporate and it

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operates over the entire notified area. The market committee has to set up one or more markets within the area of its operation as may be directed by the Government. After the directions have been issued by the Government, the market committee has to establish a market or markets in accordance with the directions of the Government and for each market it has to fix, under Section 4(3)(c), the limits of the market and the limits of the market area referred to as the 'market area'. Under Section 4(4), the market area and such other area adjoining thereto as may be specified by the Government in the notification issued under that Section becomes the notified market area. Thus, the largest physical unit is the notified area is the notified market area pertaining to each market established by the market committee. Within are notified area is the market area which defines the limits of every market and within the market area are the actual markets where the notified agricultural produce is brought or sold and where facilities have to be provided by the market committee for buying and selling these notified commodities. It is obvious that all these different five steps have to be completed before the machinery set up under the Act starts functioning."

Section 30 has to be read with Section 4 of the Act to mean that such an overriding effect is subject to the conditions laid down in Section 4 and nothing beyond that. When no law like Panchayat Raj Act was in force on that day, the law makers while enacting Markets Act could not have anticipated as to what would happen in future if there is any other law regulating such a market or the marketing under specific statutory powers incorporated therein. It cannot be forgotten that the purpose and the object behind Markets Act was to be envisaged at the time when it was brought into force and not for all the time. Therefore, now the only question is whether such a power of the market committee by virtue of Section 4 of the Act can be taken to have continued or remained after the Panchayat Raj Act came into force.

13. The Panchayat Raj Act came into force on 30-5-94. It was intended to provide for the constitution of Gram Panchayat, Mandal Praja Parishad and Zilla Praja Parishads, for the matters connected therewith or incidental thereof. In the statement of objects and reasons, the purpose behind the bringing of such a legislation has been enumerated and declared after a lot of deliberation and after a decision of the Cabinet Sub-Committee and an Expert Committee, and in view of the constitutional amendment, the law was enacted. The real basis for enacting such a law was due to Constitution (Seventy-third Amendment) Act, 1992 with a view to mainly strengthen and revitalise the panchayat raj bodies so that they can subserve the teeming millions that live in the rural area. By virtue of such 73rd amendment of the Constitution, a special Chapter IX regarding the Panchayats from Article 243 to Article 243-O were incorporated, and similarly Chapter IX-A with reference to Municipalities was also incorporated. Article 243(d) defines 'Panchayat' as an institution of self-Government constituted under Article 243-B, for the rural areas. Notwithstanding any legislation like Panchayat Raj Act, such a panchayat could be constituted as a self-Government for a rural area by the Government. Article 249 of the Constitution was not merely intended to pass a resolution by the States in regard to panchayats, but it by itself provided the machinery for constitution of the panchayats to be self- Government in accordance with Article 243-B of the Constitution. Therefore, a Panchayat so constituted under the said Article has a constitutional status, but not merely a statutory status. However, by virtue of Article 243-G, the legislature of a State was empowered to pass the law to endow the panchayat with such powers and authority if necessary to function as an institution of self-Government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats for the preparation of plans for economic development and social justice, for the implementation of schemes for economic development and social justice etc., in relation to the matters listed in the Eleventh Schedule. That is a clear indication of the special powers given for a panchayat to be a self-Government under the Constitution. Article 243-H has empowered the State to make any law to authorise the Panchayat to levy, collect and appropriate such taxes, duties, tolls and fee in accordance with such procedure etc., to make it a self-Government and to be more independently economic. Among such powers, a gram panchayat under Article 243-G has invested the powers to the

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Panchayat to have markets and fairs. There is an indication of the constitutional powers vested in the Gram Panchayat to have markets and fairs as part of self-Government. Mr. Venkateswarlu, learned Advocate for respondent No. 2 has relied upon a recent pronouncement of this Court in Gram Panchayat, Kota v. A.P.S.R.T.C., Nellore, 1997 (4) ALD 560 in support of his contention that Article 243-G of the Constitution does not confer upon the Gram Panchayat an exclusive power to provide for or to carry out the activities, and that it was not intended to impose curb on trade by individuals or even institutions in that village. It is true that the precedent while dealing with such a question has laid down the law as follows :

"Reading Article 243-G along with Eleventh Schedule, no conclusion could be drawn that the power was conferred upon the Gram Panchayat in an exclusive manner to provide for or carry out the aforesaid activities. No infirmity can also be inferred to be arising from the said provisions on the statutory body like the Road Transport Corporation to restrain from making any arrangements or providing any facilities for similar activities to be carried on in the village. The idea behind the entire provision is to lay wide open the field for the Gram Panchyat to carry on various activities for the purpose as stated therein. This provision of the Constitution is clearly not intended to impose any curb or restriction on trade and business to be carried out by individuals or even institutions in that village. This submission made by the learned Counsel for the petitioner, therefore, is also found to be devoid of any substance."

The background in which such a legal expression was made by the Court was in the light of the controversy that A.P.S.R.T.C. can have a shop or market within its building or bus-stand etc. While referring the provisions of the Road Transport Corporation Act, 1950 it was pointed out that the Corporation was vested with the power to sell or otherwise transfer any property. Moreover, the question whether the Corporation itself was trading while having the shops as such was also dealt with. Reference to Section 46 of the Gram Panchayat Act was also made, and it was held that it was an enabling provision for carrying out the requirements of the village in respect of matters viz., clauses (i) to (xxvii) of the provision for development and promotion of fairs in the panchayat area etc., and not as a restrictive clause at all. In that light, it was laid down that in the nature of the enabling provision as such, the panchayat could make provisions for any one or more activities as laid down in clauses (i) to (xxvii), and there was no infirmity produced on the Corporation to provide for any facility in the bus stand which could leave open the stall holders to carry on any such work. In no manner, this decision comes to the assistance of the contention of the learned advocate for the respondent No. 1. The above questions of this case never arose or decided in the precedent. The learned Government Pleader raises the same contention as that of respondent No. 2, which this Court is not able to appreciate or accept under the circumstances.

14. Now the primary question is whether the Gram Panchayat has got powers under the Act to establish, control and regulate a market within its area. Section 46 as an enabling provision empowers the Gram Panchayat to provide for, control of fairs, jatras and festivals. The general powers and functions of the panchayat by virtue of Section 45 are enumerated in Schedule I of the Act and at item No. 22, markets and fairs are one of such items within the general powers of the Gram Panchayat. Section 104(1) empowers the Gram Panchayat to provide places for use as public markets and, with the sanction of the Commissioner, close any such market or part thereof. (The permission of the Commissioner is needed only to close the market and not to establish a market). Section 104(2)(d) empowers the Gram Panchayat to collect fee on animals brought for sale into or sold in such markets. The executive authority of the Gram Panchayat has got executive authority in respect of public markets as laid down in Section 107 as follows :

"Powers exercisable by executive authority in respect of public markets. The executive authority may expel from any public market any person who or whose servant has been convicted of disobeying any bye-laws for the time being in force in such market, and may prevent such persons from further carrying on by himself or his servants or agents, any trade or business in such market, or occupying any shop, stall or other place therein and may determine any lease or tenure which such person may possess in any shop, stall or place."

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The Government can classify the markets as public or private markets situated in a village as Mandal Parishad Markets, Gram Panchayat Markets etc. by virtue of Section 112 of the Act. The Gram Panchayat has got control over private markets also in relation to collection of fee and licence fee by virtue of Sections 105 and 108 of the Panchayat Raj Act. These provisions read together in addition to Chapter IX of the Constitution of India and Schedule XI item No. 22, in categorical and unmistakable terms makes the Gram Panchayat a self-Government having power to establish markets, control them and regulate them, including the power to impose fine on any sale or exposure of public or private animal or article without permission, and the fine prescribed is Rs. 10/- for such a violation under item 110 of Schedule IV, which is part of Section 207 of the Panchayat Raj Act. Thus, a panchayat, as a self-Government is a sovereign body not only to regulate, but also to punish in case of violation. Mr. Venkateswarlu, the learned Advocate has strongly relied upon Section 130 of the Panchayat Raj Act to draw support to his contention that all such powers (stated supra) and the constitutional implication is subject to the provisions of the Agricultural Markets Act in view of the exemption given to market committee from paying any licence fee to the Gram Panchayat. Simpliciter Section 130 reads as follows :

"Government and Market Committees not to obtain licences and permission :- Nothing in this Act or in any rule, bye-law or regulation made thereunder shall be construed as requiring the taking out of any licence or the obtaining of any permission under this Act or any such rule, bye-law or regulation in respect of any place in the occupation or under the control of the State or Central Government or of a Mandal Parishad or Zilla Parishad or of a Market Committee constituted under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (16 of 1966) or in respect of any property of the State or of any property belonging to such Mandal Parishad or Zila Parishad or Market Committee."

A simple meaning of the provision is that nothing in the Act, rule, bye-law or regulation with reference to the Act, empowers the Gram Panchayat to collect any licence fee or impose condition for permission in respect of any place in the occupation or under the control of State or Central Government or of a Mandal Parishad or Zilla Parishad or of a Market Committee constituted under the Agricultural Markets Act. The reasons could be that there may be properties or places under the occupation or control of not only the market committee, but also the State Government, Central Government, Mandal Parishad Zilla Parishad etc., regarding which no permission is necessary to be obtained from the Gram Panchayat. Presuming that a market committee or any such authority is permitted by law or otherwise within the Gram Panchayat area, and by virtue of that any property or any place or the area is in the occupation or control of such authorities, the Gram Panchayat cannot impose the condition to obtain permission or to obtain licence. Beyond that, the provision does not speak anything. This Court is not able to find out any indication from this provision that it excludes the Gram Panchayat from any control over such area or the place in the occupation of such authorities in the market committee for the purpose of its powers under the provisions of the Panchayat Raj Act.

15. The provisions under the Panchayat Raj Act totally speak in tune with the intendment of the Constitution that a Gram Panchayat should be a self-Government. That is how so many powers are conferred not only to regulate but also to impose and expect obedience by inflicting penalty. In other words, it has got the tinge and the fibre of a sovereign status. That is how the law relating to Gram Panchayat etc., has been styled as "The Andhra Pradesh Panchayat Raj Act, 1994", (Emphasis added) and in fact it is a panchayat raj, and not a panchayat area. It has got the implication of a territorial sovereign power for exercising to achieve the real purpose behind the enactment enumerated in the objects and reasons. Thus, undoubtedly it is a self-Government. Neither in Chapter IX of the Constitution nor in the provisions of the Panchayat Raj Act it is found that a Gram Panchayat is a local Government. Local Government is not defined either in the Agricultural Markets Act or in the Panchayat Raj Act, but Municipality is defined under Section 2(viii) of the Agricultural Markets Act to mean that municipality is governed by the law relating to municipalities for the time being in

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force in the State and it includes the Municipal Corporation of Hyderabad. Advisedly, the Panchayat Raj Act is made not applicable to the areas governed y municipalities etc., which is categoric under Section 1(2), while extending to the whole State of Andhra Pradesh, except such areas mentioned in clauses (a) to (e). Therefore, the Gram Panchayat area is quite independent and distinctive of such areas enumerated under Section 1(2)(a) to (e) of the Panchayat Raj Act. It is true that Agricultural Markets Act extends to the whole of Andhra Pradesh, however, subject to the areas covered under Sections 3 and 4 of the Act. If we read the two enactments and provisions together as above, the area of the market committee is restrictive whereas the area of the Gram Panchayat is beyond for the purposes of various activities, including markets or marketing. It may be possible that in a Gram Panchayat area there may be a market of the market committee established under Sections 3 and 4 of the Agricultural Markets Act, however, subject to the control and power of the Gram Panchayat, not only for establishment but also for regulation and control. Mr. Venkateswarlu, also referred to Section 29 of the Agricultural Markets Act which deals with payment of compensation in respect of markets in areas within the jurisdiction of other local authorities to contend that if there is any market within the jurisdiction of the local authority it can be compensated as per the provision to indicate that a market committee can have its markets in the Gram Panchayat area and compensate it according to the provisions. This Court is not convinced with such an import in the Section and the rule meaning. It is difficult to understand the contention that Gram Panchayat in the sense to be understood under the Panchayat Raj Act is a local Government, and on the other hand, constitutionally it is called self-Government. In fact, 'Local Authority' is defined under Section 3(17) of the General Clauses Act, to mean that a Municipal Committee, District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund. No such import can be brought with reference to the Gram Panchayat within the meaning of the constitution and the Panchayat Raj Act. The learned advocate has relied upon the Full Bench decision of the Punjab High Court in Kishan Singh v. State of Punjab, AIR 1961 Punj 1 in support of his contention that village panchayat, which is a statutory body is local authority, and therefore, State under Article 12 of the Constitution of India. A careful reading of the decision shows that such expression was made in the light of the background in which the question was considered whether the provisions East Punjab Holdings (Consolidation and Prevention of Fragmentation) (Second Amendment Validation) Act, 1960 was to be considered to make a village panchayat a local authority, a statutory body for the purpose of Article 12 of the Constitution. Neither there is any pari materia with any provision therein nor a relation with the provisions of Chapter IX of the Constitution and also the provisions of the Panchayat Raj Act. It cannot be forgotten that every law, statute etc., has to be understood within its own meaning, unless it has a pari materia bearing with similar meaning in any other Act brought about for similar purposes and circumstances. This Court is not able to accept such a contention to draw support from the pronouncement in Kishan Singh's case (supra). The expression "self-Government" although incorporated under Article 243 (d) of the Constitution, is not defined in any of the enactments in question. Therefore it becomes a political expression, understood in administrative law to be a Government which can rule itself and it is beyond the meaning of autonomy.

16. The expression 'self Government' from the latin gubernaculum means "The system of polity in a State; that form of fundamental rules and principles by which a nation or State is governed, or by which individual members of a body politic are to regulate their social actions. A constitution either written or unwritten, by which the rights and duties of citizens and public officers are prescribed and defined, as a monarchical Government, a republican Government, etc. The sovereign or supreme power in a state expresses its will and exercises its functions; or the framework of political institutions, departments, and offices, by means of which the executive. legislature and administrative business of the State is carried on" (under the word 'GOVERNMENT' at page 695 of Black' Law Dictionary, sixth edition, 1990). The expression 'self-Government' understood in that context is a soveriegn Government to rule by

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itself. Self-Government as a noun means control of one's own (political) affairs, and self-Government as an adjective means having control over oneself, specifically having self-Government (page 842, Penguins English Dictionary). 'Self-Government' means "self-rule, self-determination, home rule, heteronomy, dominion rule, colonial Government, colonialism, neo colonialism, provisional Government, coalition Government" (Item 612, page 475 of the Original Roget's Roget's International Thesaurus, fifth edition). The Supreme Court in Valjibhai Muljibhai Soneji v. State of Bombay, AIR 1963 SC 1890 was considering the meaning of the expression 'local authority', and it held that a State Transport Corporation was not a local authority although it could acquire the land by virtue of the provisions of the Land Acquisition Act. Reliance was taken from Section 3 (17) of the General Clauses Act, for the purpose of knowing the meaning of the expression 'local authority'. Therefore, the meaning of local authority is restricted and exclusive of the meaning of self-Government. A local authority and local self-Government are different in form, intent and the Governments. A local authority like the muncipality or as in the present case Agricultural Market Committee will be statutory authorities, whereas a Gram Panchayat as in the present case by virtue of Article 243(d) would be a self-Government or may be a local self-Government, but not a local authority. In that view of the matter, to put it in substance, a Gram Panchayat as a self-Government is a sovereign body having both constitutional and a statutory status, to not only govern itself but to govern its subjects within its territory. The meaning of Panchayat Raj is akin to a territorial kingdom, however within the democratic intent and subject to the provisions of the Panchayat Raj Act and the Constitution. Therefore, it is difficult to think that a market committee constituted under the Agricultural Markets Act has any jurisdiction over the Gram Panchayat or for the purposes of having the markets as in the present case.

17. Mr. Venkateswarlu, has not left the matter at this stage. He has made great efforts to demonstrate that Agricultural Markets Act is a special law, and Panchayat Raj Act is a general law, and by virtue of the doctrine of Generalia specialibus non derogant, as laid down by a Full Bench of this Court in M. Sambasiva Rao v.Osmania University, 1997 (1) ALT 629 (FB) the Agricultural Markets Act prevails over the Panchayat Raj Act. The Full Bench in M. Sambasiva Rao's case (supra) while dealing with such a concept has clearly laid down that while applying the doctrine of prevailing of a special law over a general law, the subject-matter has to be examined, and it was held that AICTE being a special law in a particular category would overrule the UGC Act, being the general law. Mr. Venkateswarlu draws support from such an expression that marketing being a special subject, having a special law under the Agricultural Market Committee, and particularly in view of Section 30 with overriding effect should be taken to prevail over the provisions of the Panchayat Raj Act. This Court is not able to find out such a distinction between the two laws in relation to the one being special over the other. Both the enactments deal with the same question of marketing within a particular area, declared to be the area under Section 4 to have the markets within it by the Marketing Committee constituted under Section 3 of the Agricultural Markets Act. When two authorities have not similar powers to have the market within a particular area, the question is not whether which is the special authority or the special law, under which it is functioning. When the Gram Panchayat has got powers to have and regulate its own markets of its own, auto-Government or the self-Government, there cannot be any special law to take away such a power as a special subject unless provided or saved under the latter Act.In M. Sambasiva Rao's case (supra), the Full Bench of this Court held that when there are two enactments dealing with the same subject-matter, the latter law prevails. Even on that count, it is the Panchayat Raj Act which prevails over the Agricultural Markets Act in relation to the subject-matter of markets. Therein it is indicated like judicial notice. The Legislature takes notice of the existing law while making a subsequent law, and when an alternative authority is contemplated and vested with certain powers, it must be presumed that the Legislature has taken legislative notice of the existing law in relation to the same subject-matter, and when it projects the same subject-matter in the latter Act, it should be taken to have determined to vest with the latter authority

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with the same power thereby depriving the earlier authority of such a power, otherwise there would be scope for conflict of power and conflict of authorities.

18. With all the skirmishes and confabulations of so many matters involved in the simple question in the present case, it is very very clear that to hold the markets or cattle markets or weekly bazar like shandy for sale and purchase of cattle it was within the exclusive jurisdiction of petitioner No. 1 and not that of respondent No. 2. The petitioner No. 1 has rightly entrusted the marketing of the weekly shandy in favour of petitioner No. 2. It is not a case to decide whether entrustment of marketing by weekly bazaar or shandy to petitioner No. 2 is legal or justified. The impuged proceeding is concerned only with the jurisdiction and powers of the Gram Panchayat to have such markets within its limits in the face of the Marketing Committee having come into existence in that area. Although there are some notifications as above, including the village in question within the area of the Marketing Committee under Section 3 of the Agricultural Markets Act, there is nothing to indicate that any such notification has come into existence subsequent to the Panchayat Raj Act coming into force, even assuming that such markets could be constituted within the panchayat area.

19. In the result, the writ petition is allowed and the impugned proceedings of respondent No. 2 is quashed. No costs.

Petition allowed.

**AIR 1998 ANDHRA PRADESH 212 "Kurnool Dist. Rice Millers Association v. Agrl. Market Committee"**

**ANDHRA PRADESH HIGH COURT**

Coram : 2 B. SUBHASHAN REDDY AND S. R. NAYAK, JJ. ( Division Bench )

The Kurnool Dist. Rice Millers Association and others etc., Petitioners v. The Agrl. Market Committee, and others, Respondents.

Writ Petns. Nos. 11375, 11392 of 1990, 3812 of 1991 and 2796 of 1997, D/- 22 -1 -1998.

A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.12(1), S.12(2),.A.P. (Agricultural Produce and Live Stock) Markets Rules (1969), R.74(1) - AGRICULTURAL PRODUCE - Market fee - Liability to pay - When arises.

In view of the Rule position and the interpretation of the same by the Supreme Court the legal position with regard to liability to pay market fees is clear to the effect that :

(i) if there is a sale or purchase of agricultural produce, livestock or products of livestock within a market area for the first time, the market fees is liable to be paid;

(ii) it is the purchaser who is liable to pay the market fees and only if the purchaser cannot be identified, then the seller can be obligated to pay the said market fees;

(iii) the agricultural produce, livestock and products of livestock which are carried by any means and entering into the area of a market committee, cannot be subjected to pay the market fees for the second time if proof is produced before the officers of the market committee of the market fees having been paid in another market committee; and

(iv) even at the check posts, the same procedure has to be followed as referred to above in clause (iii).

AIR 1983 SC 1246, Foll. (Para 3)

Cases Referred : Chronological Para

AIR 1983 SC 1246 (Foll.) 2

D. Sudhakara Rao and K. Venkataramaiah, for Petitioners; P. Harinatha Gupta, Gulam Destageer, Govt. Pleader, for Agrl. Co-operative, for Respondents.

Judgement

B. SUBHASHAN REDDY, J.:- In this batch of writ petitions, the complaint is that even though there is no sale or purchase within the area of a market committee, they are being harassed and subjected to pay the market fee again and again. Under Section 12(1) of A. P. (Agricultural Produce and Livestock) Markets Act, 1966, the market committee is obligated to levy the fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area at the rate specified. There is a presumption under Explanation I to the above section that all notified agricultural produce, livestock or products of livestock taken out of a notified market area shall, unless the contrary is proved, be presumed to have been purchased or sold within such area. Sub-section (2) of Section 12 places an obligation on the purchaser to pay the said market fees and only if purchaser cannot be identified, then the market fees shall be paid

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by the seller. The scope of relevant rule, which falls for consideration, is Rule 74(1) of A. P. (Agricultural Produce and Livestock) Markets Rules, 1969. The said rule explains the extent of the liability to the effect that if the fees leviable under sub-section (1) of Section 12 on notified agricultural produce, livestock or products of livestock, if paid to a market committee within the State shall not be collected by another market committee when such notified agricultural produce, livestock or products of livestock are brought into the notified market area of another market committee for the purpose of processing, pressing, packing, storage, export and on sales effected in the course of commercial transactions between the licensed traders, and the licensed traders and consumers subject to production of such evidence as may be prescribed in the bye-laws about the payment of market fees from where it was brought.

2. A reading of the above rule leaves no doubt that if there is no transaction of sale or purchase within the market area and if the goods are brought from outside and or in transit passing through the area of another market committee, they cannot be subjected to payment of market fees again. Since there is a presumption under Explanation I to sub-section (1) of Section 12 of the Act, such persons carrying the notified agricultural produce, livestock or products of livestock shall have to produce evidence to the effect that they are being brought from outside the market area and on production of such evidence, the officers of the market committee cannot insist upon payment of market fees again. What is relevant and pertinent is a transaction of sale or purchase within the market area for the first time and then market fees is compulsorily leviable, but no market fees can be collected if they had already suffered market fees of another market committee. In Sreenivasa General Traders v. State of A. P., AIR 1983 SC 1246, several questions arose with regard to prohibition contained in Section 7(6) against purchase or sale of notified agricultural produce, livestock and products of livestock in notified market area outside the market in that area, as also the liability of trader to pay market fees in respect of transactions of sale or purchase in notified area and the Supreme Court upheld the said provisions even if the transaction is carried on from their business premises in the notified market area, but outside the market in that area. The Supreme Court also dealt with the argument with regard to quid pro quo and held that establishment of a regulated market for the purchase or sale of notified agricultural produce, livestock or products of livestock is itself a service rendered to persons engaged in the business of purchase or sale of such commodities. Dealing with Section 12(1) of the Act and also proviso to Rule 74(1) of A. P. (Agricultural Produce and Livestock) Markets Rules, it was held by the Supreme Court that Rule 74(1) read with the proviso means that if the notified agricultural produce, livestok or products of livestock is sold within the market maintained by a market committee, it is liable to pay market fees on each such sale made within the market yard, but market committee is not entitled to levy market fees for the second time, if the agricultural produce, livestock or products of livestok had already suffered market fees elsewhere regardless of the second sale in the market area, but outside the market yard.

3. Varied complaints are made in the writ petitions that even at the check posts, the vehicles, both bullock-carts and motor vehicles carrying the agricultural produce, livestock or products of livestock are being hauled-up and the market fees is extracted under threat and coercion. In view of the rule position and the interpretation of the same by the Supreme Court, the legal position with regard to liability to pay market fees is clear to the effect that :

(i) that if there is a sale or purchase of agricultural produce, livestock or products of livestock within a market area for the first time, the market fees is liable to be paid;

(ii) it is the purchaser who is liable to pay the market fees and only if the purchaser cannot be identified, then the seller can be obligated to pay the said market fees;

(iii) the agricultural produce, livestock and products of livestock which are carried by any means and entering into the area of a market committee, cannot be subject to pay the market fees for the second time if proof is produced

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before the officers of the market committee of the market fees having been paid in another market committee; and

(iv) even at the check-posts, the same procedure has to be followed as referred to above in clause (iii).

4. The writ petitions are disposed of accordingly. No costs.

Order accordingly.

**AIR 1997 ANDHRA PRADESH 113 "Bhavani Commission and General Merchant, M/s. v. State of A. P."**

**ANDHRA PRADESH HIGH COURT**

Coram : 2 M. N. RAO AND V. RAJAGOPALA REDDY, JJ. ( Division Bench )

M/s. Bhavani Commission and General Merchant and etc, etc., Petitioners v. State of A.P. and others, Respondents.

Writ Petns. Nos. 9066, 9072, 9090, 10039, 12699, 13841, 14005, 15180, 16527, 17677, 18906, 19021, 21944 and 21987 etc, etc., of 1994 and 640 992, 1212, 3049, 4993, 7220, 5294, 21736 and 29744-45 etc. etc., of 1995 and 398, 1434, 2034 and 2799 etc, etc., of 1996, D/- 18 -3 -1996.

A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.32, S.33 - AGRICULTURAL PRODUCE - G. O. Ms. 190 Agri. and Coop. (Market I) Deptt.Dt. 6-4-1994 requiring commission agents to make deposit - Not violative of Arts. 14, 19(1) (g) - Does not suffer from vice of absence of material to substantiate its issue G. O. issued after consultation and negotiations with trade interests, commission agents etc. Prior notice unnecessary - No violation of principles of natural justice - No necessity to follow procedure under Section 33(4), (5).

Constitution of India, Art.14, Art.19(1)(g).

The G. O. Ms. 190 Agriculture and Cooperation (Marketing I) Department dated 6th April, 1994 was issued by the State Government of Andhra Pradesh in exercise of its regulatory power under Section 32 of the Andhra Pradesh Agricultural (Produce and Livestock) Markets Act, 1966. The G.O. requires deposit of Rs. 20,000 /- in respect of commission agents whose annual turn-over is rupees ten lakhs and Rs. 5,000/- as deposit in the case of other whose annual turn-over is less than Rs. ten lakhs but prescribing a uniform deposit of Rs. 1,000/- in the case of all commission agents dealing in vegetables.

The plight of the growers in securing reasonable prices for their produce, the financial difficulties they experience and the extent of influence commission agents wield over the growers are not only matters of common knowledge but also topics for empirical studies by several commissions. The State Government have taken into consideration the situation obtaining in various notified market areas in the State and in order to protect the interests of the growers and being conscious of the fact that dispensing with the institution / of commission agency would create a sudden vaccum and as there is no effective alternative at present, came out with the impugned order, that too after consulting, the representatives of the trade comprising merchants associations and associations of commission agents. Senior Officials at the higher level - of the rank of Joint Directors of Agriculture - also studied the matter in detail find after considering their views, the present impugned order was issued. It is only at the request of the Joint Action Committee which represented the interest of the Commission Agents the impugned G. O., came to be issued. Taking into consideration the various

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factors the Government imposed- restrictive measures in order to curb unhealthy practices of suppression of transactions minimising the risk of default in payment of sale proceeds and ensuring security of payment to the farmers. Thus it cannot be said that the impugned G.O., was afflicted with the infirmity of absence of objective material warranting formation of opinion in regard to the requirement of deposit as a necessary condition to permit the commission agents to carry on business. (Para 8)

The classification of the commission agents find fixation of amount of deposit on basis of their annual turnover satisfy the conditions necessary for saving an impugned action from successful challenge founded on Article 14 viz., the classification must be founded on an intelligible differentia distinguishing persons or things grouped together from those left out of the group and that the differentia must have rational relation to the object sought to be achieved. That the Government could have thought of a more rational measure for ensuring the interests of the farmers can never be a ground to test the legality of the action. (Para 9)

It is not necessary to follow the procedure prescribed in sub-sections (4) and (5) of Section 33 while exercising the regulatory power under Section 32 of the Act. The dictionary meaning of the word rule is not synonymous with the technical -expression 'rule' occurring in Section 33 of the Act. The power of Government "to make rules" for carrying out the purposes of the Act is explicitly incorporated in Section 33. The regulatory power under Section 32 is a comprehensive one; it transcends the ambit of rule making power under Section 33.

While it is not possible for the Government to prohibit an agent from operating in the market yard by making a rule tinder Section 33, the same can be achieved by exercising the power to prohibit under Section 32. It is also important to notice that non-compliance with the rules entails penal consequences under sub-section (3) of Section 33, but the same does not appear to be the case with regard to any contravention of any regulatory measures taken under Section 32. The regulatory power is supplemental to the power to make rules. The requirement of deposit in the G. O., is in addition to the conditions prescribed and the fees payable as per the licences issued by the market committees. Thus it is not necessary to amend Section 7(1) and Rule 48 dealing with the power of the market committees to issue licences and renewal of licences. The power to regulate encompasses the power to prohibit. Therefore it cannot be said that the G. O. made under Section 32 has the indirect effect of driving away the small commission agents from their business in an arbitrary manner in violation of the fundamental rights guaranteed under Articles 14 and 19 (1)(g) of the Constitution. (Para 10)

Since the G. O. is the result of series of prior negotiations carried on by the authorities with the trade interests, commission agents and merchants associations, G. O. is not afflicted with a serious legal infirmity in that it was not preceded by a notice to the commission agents. Consequently there is no violation of the principles of natural justice. (Para 12)

Cases referred: Chronological Paras

AIR 1992 AP 284 : (1992) 1 Andh LT 183 4, 7, 8

AIR 1986 SC 1506 4, 13

AIR 1985 SC 660 12

(1985) 85 Law Ed 2d 64 : 471 US 84, United States v. Madison D. Locke 9

AIR 1983 SC 1246 4

(1967) 1 WLR 409 : (1967) 1 All ER 544, Birmingham and Midland Motor Omnibus Co. Ltd. v. Worcestershire County Council 11

AIR 1959 SC 300 4, 13

AIR 1955 SC 191 : 1955 Cri LJ 374 9

1896 AC 88 : 73 LT 449 : 12 TLR 46, Municipal Corporation of the City of Toronto v. Virgo 11

(1888) 13 AC 446 : 59 LT 41 : 4 TLR 426, Slattery v. Naylor 12

Judgement

M. N. RAO, J. :- Whether the G. O. Ms. No. 190 Agriculture and Co-operation (Marketing-I) Department dated 6th Aril, 1994 issued by the State Government in exercise of its regulatory power under Section 32 of the Andhra Pradesh Agricultural

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(Produce and Livestock) Markets Act, 1966 (for short "the Act") was in breach of the equality clause enshrined in Article 14 of the Constitution of India, is the central question for our consideration in this batch of writ petitions filed by licenced Commission Agents carrying on business in various market areas in the State of Andhra Pradesh by virtue of the licences granted under Section 7(1) of the Act by the concerned Market Committees?

2. By the impugned G.O., all the Agricultural Market Committees in the State have been directed to follow the following procedure for issue of licence to commission agents for their functioning as such :

"1) A sum of Rs. 20,000/- (Rupees Twenty thousand only) is prescribed as security deposit for the commission agents with turnover of Rs. 10.00 lakhs (Rupees ten lakhs only) and above Rs.5,000/- (Rupees Five thousand only) in respect of commission agents with turnover of less than Rs. 10.00 lakhs (Rupees Ten lakhs only).

2. The security deposit in respect of commission agents dealing in vegetables is fixed uniformly at the rate of Rs. 1,000/- (Rupees one thousand only).

3. Commission Agents applying for fresh licences shall declare their likely turnover per annum and deposit the amount accordingly. If in the course of the year the turnover exceeds the limit furnished by them, they shall deposit additional amount immediately after receipt of the notice from the Market committee, failing which their licences shall be liable to be cancelled.

4. The security deposit in respect of old licences will be collected in two instalments. The amount of deposit shall be determined, based on the turnover of the preceding year. In the event of change in the quantum of turnover the licensee shall deposit the additional amount demanded by the Agricultural Market Committed and no licence shall be renewed unless the additional amount is deposited.

5) The Director of Marketing is requested to take necessary action in the matter accordingly."

3. A Commission Agent is defined by Rule 2 (viii) of the Andhra Pradesh (Agricultural Produce and Live Stock) Markets Rules, 1969 (for short "the Rules") as one "who on behalf of another person and in consideration of a commission makes or offers to make a purchase or sale of any agricultural produce, livestock or products of live-stock or does or offers to do anything necessary for completing or carrying out such purchase or sale and includes 'adatya'. Unless he is granted a licence by the Market Committee in a notified area under Section 7(1) of the Act, a commission agent cannot carry on the business. Government is empowered under Section 3 to notify an area for purposes of regulating the purchase and sale of agricultural produce, livestock or products of livestock. A market committee, by virtue of Section 4, shall be constituted by Government for every notified area and every market committee is a body corporate clothed with a distinct legal personality. Section 12 empowers every Market Committee to levy fees at a rate not exceeding 2% on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area. What are the duties of commission agents are specified in Rules 64 to 68. The regulatory power of Government as incorporated in Section 32 of the Act is in the following terms :

"32. Power of the Government to regulate or prohibit commission agents :- Where, in the opinion of the Government, it is considered necessary so to do, they may, by notification, regulate or prohibit the commission agents operating in the market :

Provided that nothing in this section shall prevent the market committee from issuing licences to commission agents operating in the market until the issue of notification under this section."

Instead of leaving matters for interpretative process by courts as to whether the regulatory power comprehends the power to prohibit, Section 32 makes the position explicit by conferring power on Government to regulate or prohibit commission agents operating in the markets. It is made clear in the proviso

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that the regulatory power of Government shall not prevent the market committees from issuing licences to commission agents until the Government issues notification exercising its regulatory power. Exercise of regulator power by Government shall not operate as a condition precedent for market committees to issue licences to commission agents operating in the markets.

4. Before adverting to the contentions urged to the writ petitions, we feel it appropriate to state synoptically the events leading to the issuance of the impugned G.O. In the year 1989, the State Government issued G.O. Ms. No. 289 dated 2nd May, 1989 under Section 32 of the Act directing that "in agricultural market yards where commission agents are permitted, no new licences need be given in future for functioning as commission agents unless it is a case of transfer of business by way of inheritance etc." This G.O., was challenged by a number of commission agents by filing writ petitions in this Court contending that the same was violative of the guaranteed fundamental right under Article 19(1)(g) of the Constitution. Opposing the writ petitions, the State Government had taken two main pleas in the counter-affidavits viz., that the impugned order way aimed at improving the lot of the growers of agricultural produce by eliminating commission agents who are middle men and also to eradicate the malpractices resorted to by some of the middlemen in the notified market areas. A Division Bench of this Court, relying upon the rulings of the Supreme Court in Arunachala Nadar v. State of Madras, AIR 1959 SC 300, Karan Singh v. State of Madhya Pradesh, AIR 1986 SC 1506 and Sreenivasa General Traders v. State of Andhra Pradesh, AIR 1983 SC 1246, upheld the legality of G.O. Ms. No. 289 dated 2-5-1989 in Ade Babu Rao v. State of A. P., (1992) 1 Andh LT 183 : (AIR 1992 Andh Pra 284), Easwara Prasad, J., who spoke for the Division Bench, observed (At p. 290, para 19 of AIR) :

"In dealing with this question, we should advert to the fact that the provisions of Section 32 of the Act authorise the State not only to regulate but as well to prohibit the commission agents from operating in the market area. Even assuming that the petitioners are not the persons responsible for the misconduct alleged in the counter-affidavit, we do not find justification to hold that the policy to eliminate middlemen in gradual stages, shall be annulled in these proceedings."

The Special Leave Petitions filed against the above decision were withdrawn by the Commission Agents when the State Government agreed to re-examine the issue of licences.

5. Although it was the objective of the State Government to eliminate Commission agents, it was felt that dispensing with the system abruptly would create a vaccum and as there was no machinery to fill the vaccum immediately, the State Government issued G.O. Ms. No. 1178 Food and Agriculture Department dated 11-9-1992 permitting the commission agents to function in market yards imposing certain restrictions - inter alia prescribing security deposit of Rupees 50,000/- and licence fee of Rs. 1,000/- Challenging the validity of G.O. Ms. No. 1178 dated 11-9-1992, several commission agents filed writ petitions in this Court and representations were made by the Merchants' Associations and Chambers of Commerce requesting the Government to withdraw that G.O., and also threatening to go on strike if their demand was not conceded. Stating these facts, the counter-affidavit avers in paragraph 8 :

"In fact, the Joint Action Committee of Commission Agents Association in a meeting held on 27-3-1993 with the Director of Marketing have agreed to fix the security deposit at Rs. 20,000 / - instead of Rs. 50,000/ for commission agents except those dealing in vegetables and at Rs. 10,000/- to those dealing in vegetable trade."

Thereafter, the State Government issued the impugned G.O., requiring deposit of Rupees 20,000/- in respect of commission agents whose annual turn-over is rupees ten lakhs and Rs. 5,000 / - as deposit in the case of others whose annual turnover is less than Rs. ten lakhs but prescribing a uniform deposit of Rs. 1,000/- in the case of all commission

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agents dealing in vegetables. Because of the modifications brought about by the impugned G.O., all the writ petitions in which the legality of G.O. Ms. 1178 dated 11-9-1992 was at issue have become infructuous.

6. The arguments founded upon Article 14 of the Constitution of India and urged by Sri Gangaiah Naidu for some of the petitioners run along these lines : There was no material in existence before the Government warranting exercise of regulatory power under Section 32 of the Act culminating in the impugned G.O. There is no nexus between the fixation of different amounts of deposits and the object sought to be achieved. In classifying commission agents into those dealing in vegetables and those dealing in other commodities, a discriminatory attitude was displayed by the Government. Before prescribing the amounts to be deposited as a condition to carry on the business of commission agents, the objections of the petitioners have not been heard. The procedure prescribed in sub-sections (4) and (5) of Section 33 making rules after previous publication for a period not less than one month and laying of the rules on the floor of the House respectively - must be followed by the Government while exercising its regulatory power under Section 32. Issue of licences and their renewal being matters covered by sub-section (1) of Section 7, Rule 48 of the Rules and the bye-laws of the market committees, without amending them suitably, no regulatory power touching upon the subject of licences can be exercised by the State Government under Section 32. M/s. Jaya Kumar and Niranjan Reddy, while supplementing the arguments of Sri Gangaiah Naidu, have urged that as power to issue licences is covered already by the Rules, no residuary power was left with the Government to issue any notification under Section 32 in respect of licences to commission agents.

7. In opposition to these submissions, the learned Government pleader for Agriculture as well as M/s. Rammohan Raj and Setturama Reddy, Standing Counsel for the Market Committees, have urged that in view of the earlier Bench Judgment of this Court in Ade Babu Rao (AIR 1992 Andh Pra 284) (supra) upholding the legality of G.O. Ms. No. 289 by which the market committees were directed not to issue licences to commission agents, all the contentions advanced for the petitioners in the present batch of writ petitions deserve to be rejected. After the Supreme Court upheld the constitutionality of the Agricultural Market Committees Acts enacted by several States, it is not open to any commission agent to contend that any regulatory measure by way of prescribing deposit as a condition to carry on business as a commission agent is either arbitrary or illegal. The present measure was the result of negotiations carried on by the Merchants' Associations with the State Government and, therefore, it is not open to any commission agent to plead that abruptly onerous conditions were imposed. In fact, the associations which represented the commission agents in the talks with the Government have agreed for the condition of deposit of Rs. 20,000/-.

8. The events leading to the filing of the present batch of writ petitions, as noticed supra, clearly belie the plea of the petitioners that no material was in existence warranting formation of opinion by the Government to issue the impugned G.O. The plight of the growers in securing reasonable prices for their produce, the financial difficulties they experience and the extent of influence commission agents wield over the growers are not only matters of common knowledge but also topics for empirical studies by several commissions - the Royal Commission, the Central Banking Enquiry Committee, the All India Rural Credit and Survey Committee appointed by the Government of Madras and the Fourteenth Report of the Law Commission of Andhra Pradesh - which have been adverted to by the Division Bench in Ade Babu Rao (AIR 1992 Andh Pra 284) (supra). The file placed before us by the learned Government pleader shows that the State Government have taken into consideration the situation obtaining in various notified market areas in the State and in order to protect the interests of the growers and being conscious of the fact that dispensing with the institution of commission agency would create a sudden vaccum and as there is no

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effective alternative at present, came out with the impugned order that too after consulting the representatives of the trade comprising merchants associations and associations of commission agents. Senior Officials at the higher level - of the rank of Joint Directors of Agriculture - also studied the matter in detail and after considering their views, the present impugned order was issued. It is only at the request of the Joint Action Committee which represented the interests of the Commission Agents the impugned G.O., came to be issued. In insisting upon the requirement of deposits, the Government had taken note of the fact, as disclosed from the file, that past experience has shown that the commission agents used to obtain two or three licences in the names of different persons with the same partners and staked claims for allotment of valuable land or shops in the market yards. There were also complaints of concealment of transactions. All these factors induced the Government to impose restrictive measures in order to curb unhealthy practices of suppression of transactions, minimising the risk of default in payment of sale proceeds and ensuring security of payment to the farmers. The counter-affidavit clearly points out the need for imposing restrictions on commission agents :

"In view of the need to eliminate the commission agents gradually from the market yards to achieve the objective of Markets Act and in view of general complaints from the farmers that the commission agents are not paying the sale proceeds on the same day, there is every need to impose some restrictions on commission agents. The security deposit was fixed so as to utilise the amount for payment to the farmer in case the commission agent failed to make payment of the sale proceeds to minimise hardships to the farmers."

We, therefore, find little merit in the assertion that the impugned G.O., was afflicted with the infirmity of absence of objective material warranting formation of opinion in regard to the requirement of deposit as a necessary condition to permit the commission agents to carry on business.

9. The impugned G.O., classifies commission agents into two categories : (i) commission agents dealing in vegetables; (ii) commission agents dealing in other commodities. A uniform rate of Rs. 1,000/- is fixed as security deposit for commission agents dealing in vegetables. In respect of others, depending upon their turnover, different rates of security deposit are prescribed Rs. 20,000/- for those whose annual turnover is in excess of Rs. 10 lakhs and Rs. 5,000/- for those with less than Rs. 10 lakhs annual turnover. We do not find any merit in the contention that there is no nexus between the fixation of different rates of deposit and the object sought to be achieved. Depending upon the volume of business transacted by the commission agents as disclosed by their annual turnover, the rates are fixed. Commission agents dealing in vegetables are treated as a separate class since the turnover in vegetable trade is far less than the turnover in respect of other commodities. The condition as regards the deposit was imposed with the objective of ensuring the interests of the farmers. If for any reason, the commission agents fail to make payments to the producers, their interests can be safeguarded by ensuring payments to them from the deposit amounts. The two conditions necessary for saving an impugned action from successful challenge founded on Article 14 viz., the classification must be founded on an intelligible differentia distinguishing persons or things grouped together from those left out of the group and that the differentia must have rational relation to the object sought to be achieved [See : Budhan Choudhry v. State of Bihar, AIR 1955 SC 191] are fully present in the instant case. If the impugned order had not classified commission agents on the basis of the volume of trade, it might have been open to successful challenge on the ground of violation of Article 14 of the Constitution. That the Government could have thought of a more rational measure for ensuring the interests of the farmers can never be a ground, in our view, to test the legality of the present action. It is not open to this Court to examine whether in what respects better results could be achieved by the executive in the working of

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a legislative enactment and that is purely within the domain of the executive discretion. If the impugned action does not transgress the permissible legal limits, this Court will not interfere. [See : U. S. v. Locke, (1985) 85 L. Ed. 2d., 64 : 471 U. S. 84].

10. We now come to the question whether the procedure prescribed in sub-sections (4) and (5) of Section 33 must also be followed while exercising the regulatory power under Section 32 of the Act ? We do not think so. One of the meanings of the word "regulate" as given in the English Readers Dictionary is control by means of a system or by rules'. In the Chambers Dictionary, one of the meanings of the expression "regulate" is 'to adjust by rule'. The Webster Dictionary gives one of the meanings of the word "regulate" as 'govern or direct according to rule'. The word 'rule' appearing in the dictionary meaning of the word 'regulate' only implies restriction. It is not synonymous with the technical expression 'rule' occurring in Section 33 of the Act. The power of Government "to make rules" for carrying out the purposes of the Act is explicitly incorporated in Section 33. Subsection (2) says that without prejudice to the generality of the power conferred by subsection (1) viz., "to make rules for carrying out the purposes of this Act", such rules may provide for the specific situations mentioned in clause (i) to (xxvii). Clause (viii) mentions the forms in which and the conditions under which the Market Committees can grant licences or renew the same under Section 7. Clause (x) concerns with the conditions under which the Market Committee can issue licences to commission agents. The nature of regulatory power under Section 32 is quite distinct and different from the power to make rules under Section 33. The regulatory power under Section 32 is a comprehensive one; it transcends the ambit of rule making power under Section 33. While it is not possible for the Government to an agent from operating in the market yard by making a rule under Section 33, the same can be achieved by exercising the power to prohibit under Section 32. It is also important to notice that non-compliance with the rules entails penal consequences under sub-section (3) of S. 33 but the same does not appear to be the case with regard to any contravention of any regulatory measures taken under Section 32. That the regulatory power is supplemental to the power to make rules is also evident from the proviso to Section 32, which says that "noting in this section shall prevent the market committee from issuing licences to commission agents operating in the market until the issue of notification under this section. "'The requirement of deposit in the impugned G. O., is in addition to the conditions prescribed and the fees payable as per the licences issued by the market committees. The contention that Section 7(1) and Rule 48 dealing with the power of the market committees to issue licences and renewal of licences must be amended suitably, before enforcing the impugned G. O. , is untenable.

11. A century ago, the Privy Council in Municipal Corporation of the City of Toronto v. Virgo, 1896 AC 88 had considered the question whether under a power to pass bye-laws, for "regulating and governing" hawkers etc., a Municipal Council may prohibit the hawkers from plying their trade ? Lord Davey, speaking for the Judicial Committee, opined :

"No doubt the regulation and governance of a trade may involve the imposition of restrictions on its exercise both as to time and to a certain extent as to place where such restrictions are in the opinion of the public authority necessary to prevent a nuisance or for the maintenance of order. But their Lordships think there is marked distinction to be drawn between the prohibition or prevention of a trade and the regulation or governance of it, and indeed a power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed".

The aforesaid view of the Privy Council was followed by the Court of Appeal in Birmingham and Midland Motor Omninus Co. Ltd., v. Worcestershire County Council, (1967) 1 WLR 409. While interpreting Section 65(1) of the Highways Act, 1959 which empowered the Highway authority to regulate the movement of traffic in a certain manner, it was held that the Dower to regulate traffic did not

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encompass the power to prohibit. Lord Denning M. R., ruled : ,

". . . . . When a highway authority simply sends the traffic round a round about or a short diversion, they can fairly be said to be regulating the movement of traffic'. But if it forces the traffic to go one-and-three-quarter miles out of its way, it ceases to be regulating the traffic. It is equivalent to prohibiting it."

12. In .K. Ramanathan v. State of Tamil Nadu, AIR 1985 SC 660, Section 3(2)(d) of the Essential Commodities Act, by which power is conferred on the Central Government to make orders 'for regulating by licences, permits or otherwise, the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity', fell for consideration. While stating that "the power to regulate implies the power to check and may imply the power to prohibit under certain circumstances, as where the best or only efficacious regulation consists of suppression. It would therefore appear that the word 'regulation' cannot have any inflexible meaning as to exclude 'prohibition', the Court quoted with approval the opinion of the Privy Council in Slattery v. Naylor, (1888) 13 AC 446 :

"A rule or bye-law cannot be held as ultra vires merely because it prohibits where empowered to regulate, as regulation often involved prohibition. "

When the legal position is thus fairly clear that the power to regulate encompasses the power to prohibit, it is impossible to countenance the contention advanced for the petitioners that the impugned order made under Section 32 of the Act has the indirect effect of driving away the small ' commission agents from their business in an arbitrary manner in violation of the fundamental rights guaranteed under Articles 14 and 19(1)(g) of the Constitution. The impugned order has not prohibited the commission agents from carrying on their trade although such power is conferred on the Government. By classifying commission agents other than those dealing in vegetables into two categories - those whose annual turnover is more than rupees ten lakhs and those with less than rupees ten lakhs and prescribing different rates of security deposits, the impugned order has taken care to protect the interests of the small commission agents. Had it been the intention of the Government to prohibit the commission agency it would have straightway, done so in exercise of its power to prohibit under Section 32.

13. When the institution of commission agency was abolished pursuant to a specific power conferred under Section 32-A of the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, the Supreme Court while sustaining the action in Karan Singh v. State of M. P. AIR 1986 SC 1506, ruled citing the precedents in Arunachala Nadar (AIR 1959 SC 300) (supra) that the abolition of the system of commission agency was not violative of Article 19(1)(g) and that the same being in the interests of general public, was protected by Article 19(6) of the Constitution.

14. Violation of principles of natural justice is one of the contentions urged for the petitioners. It is contended that the impugned order is afflicted with a serious legal infirmity in that it was not preceded by a notice to the petitioners. We see no merit in this contention. As already stated supra, the impugned order was the result of series of negotiations carried on by the authorities with the trade interests, commission agents and merchants associations. What would have been the position had there been no such prior consultations is a question outside the realm of the present writ petitions and, therefore, although to some extent this aspect was urged, we decline to express any opinion.

15. For these reasons, rejecting all the contentions advanced for the petitioners, we sustain the legality of the impugned G.O. All the writ petitions are accordingly dismissed. No costs.

16. After the judgment is pronounced, Sri Gangaiah Naidu, Counsel for the petitioners, has made an oral application for leave to appeal to the Supreme Court. We have decided the questions raised in this batch of writ petitions on the basis of binding precedents

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and well settled principles of law and so we are of the view that no substantial questions of law of general importance arise nor the questions involved, in our opinion, need be decided by the Supreme Court. The request for leave is, therefore, rejected.

Petitions dismissed.

**AIR 1995 ANDHRA PRADESH 126 "G. Pullaiah v. Govt. of A. P."**

**ANDHRA PRADESH HIGH COURT**

Coram : 1 B. SUBHASHAN REDDY, J. ( Single Bench )

G. Pullaiah, Petitioner v. Govt. of A.P. and others, Respondents.

Writ Petition No.2438 of 1993, D/- 21 -1 -1994.

A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.1- APPLICABILITY OF AN ACT - GOVERNOR OF STATE - AGRICULTURAL PRODUCE - Applicability - Act is applicable to entire A.P. State including all scheduled areas therein - Only Governor in exercise of his powers under Sch. V of Constitution of India can make it in-applicable to scheduled area/s - Court cannot issue writ to Governor to make regulation reserving market committees in scheduled areas for tribals.

Constitution of India, Art.226, Art.361, Art.153.

Scheduled Tribe - Reservation of constituency for representative posts - Not a ground to reserve posts of Market Committee in absence of notification by Governor.

Market Committee - Constituted in Tribal areas - Fact that representative posts in said area are reserved for S.T. - Is no ground to reserve posts of Committee for S.T. in absence of notification by Governor.

Governor - Writ cannot be issued against.

If only the Government wants to modify or curtail the applicability of any statute in scheduled areas, the general statute cannot be made applicable. But, it cannot be said that the general law is inapplicable in scheduled areas unless the notification or its applicability in scheduled areas is issued by the Governor. All statutes which are enacted in a

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State are operative in the State as mentioned in the said statute including the scheduled areas and, if only the Governor in exercise of his legislative powers under Schedule V of Constitution of India feels that the applicability or particular statute causes hardship to the tribals, then he can issue a notification modifying the statute or making the said statute inapplicable in entirety in the scheduled area/s. As such the Markets Act, 1966 is applicable to the entire State of Andhra Pradesh including all schduled areas therein. (Para 2)

Under Schedule V of Constitution, the Govenor alone has to exercise the powers and is the law making body or authority, and his powers are legislative in nature. In the instant case, the Governor did not make any special regulations regarding the agricultural market committees constituted in scheduled areas. However much the High Court feels that there should have been the benefit of reservation to the scheduled tribes even in the agricultural market committees in scheduled areas, this court does not possess any right or power to issue any direction to the Govenor to frame such beneficial regulation in favour of the scheduled tribes. It is for the Governor alone to take decision in that regard and there cannot be any compulsion from the courts to make legislation in that regard. The Constitution places limitations on three wings of the democracy. Legislature, Judiciary and Executive and each has to function within confined limits and cannot and should not transgress the same. As the High Court is not having either legislative power or issue directions to legislature on a particular aspect, the High Court cannot issue a writ to the Governor to make any regulation. Further, the Governor has also got a constitutional immunity from being amenable to the jurisdiction of the Court by virtue of Art.361 of Constitution. Thus the High Court declined to issue a writ or direction to the Governor to invoke V Schedule to Constitution and issue notification that tribals alone should be appointed as office-bearers of Agricultural Market Committee on the analogy that all the representative posts covering the said area having 40% tribal population have been reserved for Scheduled tribes. (Para 3)

Cases Referred : Chronological Paras

AIR 1992 SC 1546 : 1992 Lab IC 1692 : 1992 AIR SCW 1711 3

AIR 1990 SC 1251 : 1990 Lab IC 1019 3

Kannabhiran for T. Jagadish, for Petitioner; The Advocate General, for Respondent No.1 to 3; M.R.K. Choudhary, for Respondent No. 4.

Judgement

ORDER :- This writ petition has been filed seeking a declaration that for the Market Committees of Bhadrachalam and Boorgampahad of Khammam District, only non-tribal should be appointed as Chairman. The matter arises under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966, hereinafter referred to as 'the Markets Act'. Under rule making powers, rules have been framed titled "Andhra Pradesh (Agricultural Produce and Live-stock) Market Rules, 1969 which are hereinafter referred to as the 'Market Rules'. The Markets Act is intended to regulate the purchase and sale of agricultral produce, live stock and products of livestock and the establishment of markets therefor. The prime object of the Markets Acts is to eliminate middlemen so that the owner and grower of the livestock gets the maximum price for the commodity. By a notification, market committees are constituted fixing the respective strength thereof. The composition of the market committee should consist of the growers of agricultural produce, owners of livestock, President of the Co-operative Marketing Society, Officers of Agricultural or Animal Husbandry Department, the Chairman of the Municipality or Sarpach of Gram Panchayat concerned and licenced traders in the notified area. The committee is constituted by nomination by Government. It is stated that several agricultural market committees were constituted by nominating members of the committee including the Chairman thereof including that of Boorgampahad. In so far a Boorgampahad is concerned, the Agricultural Market Committee was constituted by appointing Chairman and

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members thereof vide C. O. Ms. No.122, dated 25-2-1993 and they assumed charge of their office on 10-3-1993. As such, no relief can be granted in so far as Boorgampahad Agricultural Market Committee is concerned. The relief sought for in this writ petition has to be considered only with regard to Bhadrachalam Agricultural Market Committee is concerned. Writ petition was admitted on 2-4-1993 and interim stay was granted, as such no committee was constituted in so far as Bhadrachalam Agricultural Market Committee is concerned. Mr. Srimanthula Krishnajuna Rao filed an impleadment petition in WPMP No.15359/93 stating that being a politician of that area, he is espousing the cause of the non-tribals in that area and further that he being a tribal is expecting himself to be appointed as the Chairman of the said committee. The impleadment petition was ordered on 10-9-1993. Government has also filed a counter.

2. Mr. Kannabhiran, the learned counsel appearing for Mr. T. Jagadish, learned counsel for the petitioner, submits that inasmuch as the Bhadrachalam Agricultural Market Committee is situated within the notified tribal area, as 40% of the population are tribals, the Parliamentary Constituency covering the said area, the Assembly Constituency covering the said area, the local authorities be it Zilla Praja Parishad, Mandala Praja Parishad or Panchayat pertaining to the said area, have been reserved for Scheduled Tribes and that on the same analogy, Bhadrachalam Market Committee also ought to have been reserved to be filled up by tribal candidates. The 1st contention is that the general laws made are not operative in the scheduled areas unless a notification to that effect is issued by the Governor in exercise of his powers under Schedule V of Indian Constitution. But, this argument has got no force as, if only the Government wants to modify or curtail the applicability of any statute in scheduled areas, the general statute cannot be made applicable. But, it cannot be said that the general law is inappliable in scheduled areas unless the notification of its applicability in scheduled areas is issued by the Governor. All statutes which are enacted in a State are operative in the State as mentioned in the said statute including the scheduled areas and, if only the Governor in exercise of his legislative powers under Schedule V of Indian Constitution feels that the applicability of particular statute causes hardship to the tribals, then he can issue a notification modifying the statute or making the said statute inapplicable its entirity in the scheduled area/s. As such, I, hold that the Markets Act, 1966 is applicable to the entire State of Andhra Pradesh including all scheduled areas therein.

3. The next contention which is vital is that even assuming that Markets Act, 1966 is applicable in the scheduled areas, it was incumbent upon the Governor to issue notification making a provision for constitution of Agricultural Market Committees in tribal areas, only by nominating from among tribals and not to allow the participation of any non-tribals. The basis for this argument is that when a Parliamentary Constituency, Assembly Constituency, the Mandala Praja Parishads and Zilia Praja Parishads are reserved for the persons among scheduled tribes, there is no reason or justification to deny the said benefit to the tribals in so far as the agricultural market committees are concerned. It is contended that safeguards not only with regard to the reservations to the elective posts mentioned above were made, but also were made with regard to alienations of the lands, application of Moneylenders Act etc. for scheduled areas and the tribals being gullible persons, it is better that their community people govern the Agricultural Market Committee also and induction of non-tribals to manage the Agricultural Market Committees within tribal area will be detrimental to the interests of the tribals and will not further or better the interests of the tribals. A reading of Schedule V appended to the Constitution is necessary to dwel upon this argument. Legislative power is conferred power is conferred upon the Parliament and the State Assemblies in Schedule VII with 3 lists; list I pertaining to the Parliament exclusively, List II pertaining to the Assemblies exclusively and List III concurrent list from which legislation can be made either by the Parliament or the State Legislative Assemblies

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as contemplated under Art.246 of the Constitution of India. Under clause 5 of the Vth Schedule to Constitution, the Governor is conferred, with exclusive power to issue notification that any particular Act of Parliament or of the Legislature of the State shall not apply to a scheduled area or any part there in the State or shall apply to a scheduled area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and that the same can also be made with retrospective effect. The Governor is conferred with the power of making regulations covering every aspect in a tribal are including the enumerated subjects regarding transfers of land, allotment of lands and carrying of business of moneylending in scheduled area. While making such regulations, the Governor can repeal or amend any Act or Parliament or of the legislature of the State or any existing law which is for the time-being applicable to the area in question. Two fetters, of course, have been placed on the rights of the Governor, namely, that (1) the regulation made shall be assented to by the President; and (2) the same shall be made in consultation with the Tribes Advisory Council for enforcement of the Same. But the same is applicable only when the regulation is made seeking to amend or repeal the existing law or the Act made by the Legislature or Parliament. In the instant case, admittedly, the Governor did not exercise any such power either amending or annulling the Markets Act, 1966 in so far as its application to tribal areas is concerned. As such, the Markets Act, 1966 had been in operation without any amendments thereto. But the argument is that when reservation has been made for scheduled tribe candidates for all the representative posts, there is no reason not to make such a beneficial provision for the Agricultural Market Committee also. But the authority to make such a regulation or to issue a notification, as the case may be, is only the Governor under Schedule V of Indian Constitution. The Governor under Schedule V exercises his power in his capacity as Governor and as the enumerated authority under Schedule V and not as a general power exercised under Article 163 of the Constitution of India. In so far as the powers exercised by the Governor under Art.163 of Indian Constitution are concerned, they are all the decisions taken by the Council of Ministers headed by the Chief Minister and the Governor as a Constitutional head assents to the same. Essentially, those functions are the functions discharged by the Council of Ministers headed by the Chief Minister and are not comparable to the powers of the Governor under Schedule V. Under Schedule V, the Governor alone has to exercise the powers and is the law making body or authority, and his powers are legislative in nature. In the instant case, the Governor did not make any special regulations regarding the Agricultural Market Committees constituted in schedule areas. However much this court feels that there should have been the benefit of reservation to the scheduled tribes even in the Agricultural Market Committees in scheduled areas, this Court does not possess any right or power to issue any direction to the Governor to frame such beneficial regulation in favour of the scheduled tribes. It is not for the Governor alone to take decision in that regard and there cannot be any compulsion for the courts to make legislation in that regard. The Constitution places limitations on three wings of the democracy i.e. Legislature, Judiciary and Executive and each has to function within confined limits and cannot and should not transgress the same. As this court is not having either legislative power or issue directions to legislature on a particular aspect, I cannot issue a writ to the Governor to make any regulation. Further, the Governor has also got a constitutional immunity from being amenable to the jurisdiction of the court by virtue of Art.361 of Constitution. In Mullikarjuna Rao v. State of A.P., AIR 1990 SC 1251 : 1990 Lab IC 1019, the Supreme Court was dealing with the order passed by the Administrative Tribunal when the said Tribunal issued directions to frame rules in a particular manner and disapproving the said action of the Tribunal, the Court held "The Special Rules have been framed under Art.309 of the Constitution. The Power under Art.309 of the Constitution to frame rules is the legislative power. This power under the Constitution has to be exercised by

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the President or the Governor of a State, as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislature under Art.309 of the Constitution. The Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The courts cannot assume to itself a supervisory role over the rule-making power of the executive under Art.309 of the Constitution." In the latest judgment of the Supreme Court in State of J. and K. v. A.R. Zakki AIR 1992 SC 1546 : 1992 Lab IC 1692, the Supreme Court held that a writ of mandamus cannot be issued to the Legislature to enact a particular legislation. Same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation. The Supreme Court held that as the power of legislation vests in the legislature and as the executive is empowered to make subordinate legislation and as the rule-making power is legislative in nature, no writ can be issued to legislate in a particular manner. As such, I hold that the prayer sought for by the writ petitioner to issue a writ or direction to the Governor to invoke V schedule to Constitution and issue notification that tribals alone should be appointed as office bearers of Agricultural Market Committee cannot be granted. This court is only empowered to test in statute or regulation with regard to its legislative competence or its conformity with fundamental rights and should it find that there is no legislative competence to make any statute or regulation or when it violates any of the fundamental rights, this court can strike down the same. But, in no event this Court can issue a direction to frame a statute or rule or regulation in a particular manner.

4. The power of nomination regarding members and chairman of Agricultural Market Committees is vested in the State Government. It is stated by the writ petitioner that he made representation to the State Government during the month of January, 1991 to nominate only tribals in the Agricultural Market Committees situated in schedule areas. The Government filed a counter empthatically denying filing of any such application by the writ petitioner. As yet, the new market committee for the Bhadrachalam has not been constituted. It is stated that because of the pendency of this writ petition and the subsistence of interim orders, the said steps have been stalled, and as such, Special Officer is manning the said Agricultural Market Committee. As it is stated by the Government that no application was filed by the writ petitioner, no relief can be granted to the writ petitioner in the instant case. However, while constituting the Agricultural Market Committee and nominating the Chairman and members thereof to Bhadrachalam Market Committee, it is left to the State Government to consider as to whether there should be any trial representation in the said committee.

5. The writ petition is dismissed and the interim order is vacated. No costs.

Petition dismissed.

**AIR 1994 ANDHRA PRADESH 259 "Md. Jaheeruddin v. Govt. of A.P."**

**ANDHRA PRADESH HIGH COURT**

Coram : 2 S. NAINAR SUNDARAM, C.J. AND SYED SHAH MOHAMMED QUADRI, J. ( Division Bench )

Md. Jaheeruddin, Petitioner v. Govt. of A.P. and others, Respondents

AND

S. Dayanand and etc., Appellants v. Md. Jaheeruddin and others, Respondents.

Writ Petn. No.16495 of 1993, W.A. Nos.22, 23 and 24 of 1994, D/- 11 -2 -1994.

(A) A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.5, S.6 - AGRICULTURAL PRODUCE - Constitution of Market Committee - Members cannot be appointed one by one - Provisions of S.5, S.6 are mandatory - Constitution of Committee in a truncated form - Would be illegal.

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Market - Market Committee - Members cannot be appointed one by one.

Section 5(1) does not contemplate the appointment in jitters or in piecemeal. The Government is not authorised to appoint members one by one to constitute the Market Committee. A reading of S. 5(1 )(i) itself makes this abundantly clear inasmuch as it enjoins that not less that 2/3rd of the members shall be appointed from the category of growers. Sub-section (3) of S. 5 provides, the term of office of the members appointed under sub-sec. (1) shall be three years from the date of appointment. If the members of the Committee are allowed to be appointed in instalments the term of the members of the Market Committee will vary from member to member. There can be no reconstitution of the Committee as such on the expiry of the term of the office of the members of the Market Committee as contemplated under S. 6 of the Act. In such a case what could happen is there can only be filling up of the vacancies as and when the term of office of members appointed on different dates would expire. There is no provision in the Act providing for filling up of vacancies of the members on the expiry of the term of their office because sub-sec. (8) of S. 5 provides for filling up of the vacancies in the office of the member for the remainder of the term of the member whose vacancy was to be filled in. The proviso to sub-sec. (8) of S. 5 enjoins that no vacancy shall be filled in if the remainder of the term of the outgoing member is less than three months. Further S. 9 provides, inter alia, that a meeting of Market Committee shall be called on receipt of requisition from one-third of the total members of the Market Committee. If the piecemeal appointments of members of the Committee is permitted, provisions of sub-sec. (8) and proviso thereto as also S. 9 would be rendered nugatory. It follows therefore that the provisions of S. 5(1) and S. 6 dealing with composition of the agricultural Market Committee or the reconstitution of Market Committee are mandatory and the violation of those provisions renders the composition invalid and illegal. (Paras 17, 18)

Even after the amendment in 1981 that the provisions with regard to composition of Market Committee and the obligation of the government to appoint the members of the Committee as a whole and all at once, are not, in any way, affected. (Paras 23, 24).

(B) Constitution of India, Art.226 - WRITS - Andhra Pradesh (Agricultural Produce and Live Stock) Markets Act, 1966, S.5 - Locus standi - Petition challenging Constitution of Market Committee - Trader doing business in relevant market area has locus standi to file petition. (Para 28)

(C) Constitution of India, Art.226 - WRITS - Delay and laches - Dismissal of petition on that count - Considerations - Petition challenging Constitution of Market Committee filed belatedly - No question of rights accruing to respondents arises - Relief to petitioner not liable to be refused for delay.

Writ jurisdiction - Delay and laches - Not ground to refuse relief - If no right has accrued to defendant.

In exercising discretionary jurisdiction under Art. 226 of the Constitution, the paramount consideration for the High Court is to render justice; justice not only to the petitioner but also to the parties to the petition. The ultimate question will be whether the delay or laches on the part of the petitioner are such as to confer a right on the opposite party on account of such delay or laches. If so, would it be unjust to exercise the jurisdiction in favour of the petitioner, so as to divest the other party of the right accrued to him on account of such delay or laches. This has to be decided on the facts and circumstances of each case. (Para 36)

In the case of a petition challenging Constitution of Market Committee no right as such can be said to have accrued to the respondents on account of the delay in filing the writ petition or laches on the part of the petitioner.

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It would not therefore be a just and proper exercise of jurisdiction to deny the petitioner the relief which he is otherwise entitled to on the jejune ground of delay or laches. (Para 37)

(D) Constitution of India, Art.226 - WRITS - Futile writ - What is not - Illegal order - Writ to quash it - Not to be denied on possibility that subsequent legal order can be passed by statutory authority - Writ issued in such cases not futile writ.

AIR 1970 Punj and Har 462 (FB), Dissented from.

One of the limitations imposed by the Courts on their power to issue the writ is : where the grant of writ would be futile, the Court will decline to issue any writ. But where at statutory authority has acted in violation of law, the High Court in its extraordinary jurisdiction under Art. 226 of the Constitution will not only correct the mistake but it is bound to do so if the facts and circumstances of the case justify. The possibility that a legal order can be issued by a statutory authority subsequently if the impugned illegal order is quashed cannot be a ground to decline to issue the writ to quash an illegal order. Indeed the very purpose of issuing the writ is to correct the illegalities committed by the authorities and to make them act according to law.

AIR 1970 Punj and Har 462 (FB), Dissented from. (Para 38)

CasesReferred : Chronological Paras

AIR 1980 SC 112 32

(1980) 1 APLJ 120 21

AIR 1979 SC 1628 31

AIR 1974 SC 259 : 1974 Lab IC 165 35

AIR 1974 SC 2271 : 1974 Lab IC 1431 30

AIR 1971 A P 353 4, 5, 7, 19, 23, 24, 25

AIR 1970 SC 470 : 1970 Lab IC 402 33

AIR 1970 SC 898 34

AIR 1970 PunjHar 462 (FB) (Diss. from) 39

AIR 1960 A P 431 41

AIR 1958 SC 578 26

G. Gangaiah Naidu, for Petitioner and Appellants; Advocate General, P.M. Gopala Rao, A.V. Krishna Koundikya (for Appelant in W.A. No. 23/94); N. Bhaskara Rao, N. Satyanarayana and D. Sethusami (S.C. for A.M.C.), for Respondents.

Judgement

SYED SHAH MOHAMMED QUADRI :- These three writ appeals and the writ petition out of which the appeals arose raise the same question of law, therefore, they are heard together and are being disposed of by a common judgment. In this judgment, the parties will be referred to as they are arrayed in the writ petition.

2. The petitioner claims to be a trader within the meaning of cl. (xvi) of S. 2 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short "the Act") within the notified market area of the Agricultural Market Committee, Hyderabad-respondent No. 15. He challenges the re-constitution of the Market Committee under Sec. 6 read with Sec. 5 of the said Act. He says that having fixed the total number for the Hyderabad Agricultural Market Committee as 18, in G.O.Ms. No. 465 dated 26-3-1992, the Government of Andhra Pradesh, the 1st respondent herein, reconstituted the committee in violation of the provisions of S. 5(1) of the Act; in the category of 'growers' 10 persons were appointed as against 12; no member is appointed under cl. (ii) of sub-sec. (1) of S. 5; and only 3 persons are appointed in the category of 'traders' under clause (iv) of sub-sec. (1) of Sec. 5 of the Act, thus the composition of the Market Committe respondent No. 15, is in violation of S. 5 of the Act. He, therefore, prays for a writ of certiorari to call for records relating to G.O.Ms. No. 1295, Food and Agriculture (Marketing-I) Department, dt. 3-10-1992 and to quash the same as illegal and arbitrary.

3. He also filed W.P.M.P. No. 20846 of 1993 praying this Court to suspend operation of the impugned G.O.Ms. No. 1295 dated 3-10-1992, pending disposal of the writ petition.

4. It appears that Rule Nisi and service of notice in W.P.M.P. No. 20846 of 1993 could not

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be effected on the respondents. So the petitioner sought permission in W.P.M.P. No. 22723/93 for substituted service for publishing in any local newspaper; that petition was ordered on 17-12-1993 and publication was made in the issue of the 'ENADU' on December 20, 1993. Thereafter W.P.M.P. No. 20846/93 came up for hearing on 30-12-1993. A learned single Judge of this Court observing that the point raised in the Writ Petition is covered by the judgment of a Division Bench of this Court in Donda Rama Rao v. Government of A.P., AIR 1971 Andh Pra 353 granted interim suspension of the impugned G.O. giving liberty to the 1st respondent to constitute a fresh committee in accordance with the provisions of Section 5 of the Act. On the very next day i.e. 31-12-1993 respondents 3 and 13 filed W.P.M.P. No. 26126/93 praying this Court to set aside the interim order of suspension granted by this Court on 30-12-1993. After hearing the parties therein, the learned single Judge made the interim order absolute being of the view that there was no much difference in the language of Section 5 of the Act as it stood in the year 1971 and it stands on the date of passing of the order of the learned single Judge, insofar as the provision relates to composition of the Market Committee. Aggrieved by the said orders of the learned single Judge, respondent No. 13 filed Writ Appeal No. 22/94; respondent No. 3 filed Writ Appeal No. 23/94 and respondents 1 and 2 filed Writ Appeal No. 24/94. When the Writ Appeals came up before us, we withdrew the Writ Petition to our Court, with the consent of the parties, to dispose it of along with the Writ Appeals. That is how these cases have come up before us.

5. Respondent No. 13 alone filed a counter affidavit in the Writ Petition. It is stated by him that the petitioner has no locus standi to file the Writ Petition; his brother and others earlier filed W.P. No. 3126/93 questioning the impugned G.O. Criminal prosections are pending against the petitioners therein and at their instance the present Writ Petition is filed. After assumption of the office by the members of the committee appointed under the impugned G.O., the petitioner and his brother and other petitioners in the earlier Writ Petition brought pressure on the members to withdrew prosecution against them. When they did not agree for that course of action, they made one Ramachandra Reddy to file W.P. No. 1430/ 92, but that Writ Petition was subsequently withdrawn. The Writ Petition is malicious and that the writ petitioner has no right to file the Writ Petition. It is filed after an year and two months from the date of assumption of office, therefore, it is belated and liable to be rejected on that ground. It is further stated that Donda Ramarao's case (AIR 1971 Andh Pra 353) (supra) was decided on the basis of Section 5 as it stood in 1971 and that after amendment of the said provision in 1980 by Ordinance 11 of 1980, which was replaced by Act 6 of 1981, there has been substantial change in the provisions and the ratio in that judgment does not apply to the facts of this case. The appointment of members of the Committee was made in accordance with law and as the Government has discretion to fix the strength between 15 and 18, it appointed 15 persons as members of the Committee of the 15th respondent. Ten persons were appointed from the category of 'growers' from out of the panel submitted by the Director of Marketing; three persons are appointed from the category of 'traders' and two persons are nominated as institutional members. The quorum of the Market Committee is 10, the number of persons appointed is 15, therefore, the functions of the committee can be properly carried on. It is also stated that in G.O. Ms. No. 591 dated 20-11-93 vacancy caused due to the death of one Venkaiah was filled up. The petitioner filed W.P. No. 1854/93 questioning the additional appointment. In the circumstances it is prayed that the Writ Petition be dismissed.

6. The petitioner filed a reply affidavit reiterating that he has locus standi to file the Writ Petition and in the circumstances mentioned therein, the delay has been explained and further submitted that composition of the Committee is in violation of Section 5(1) of the Act.

7. Mr. Gangaiah Naidu, the learned counsel for the Writ Petitioner and the 1st

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respondent in the writ appeals, urged before us that composition of the Agricultural Market Committee under the impugned G.O. is in violation of the provisions of Section 5(1 )(i) of the Act and that this point is squarely covered by a judgment of this Court in Donda Rama Rao's case (AIR 1971 Andh Pra 353) (supra), therefore, the impugned G.O. is liable to be quashed by this Court. In view of this legal position, submits the learned counsel, the relief in the Writ Petition cannot be denied to the petitioner on the ground of locus standi or laches; the petitioner is a trader within the meaning of the Act and carries on his business in the notified market area, as such he has a right to question illegal constitution of the market committee and that in view of the filing of the earlier Writ Petitions by different categories of persons who are equally interested in the valid composition of the Agricultural Market Committee, there are no laches on his part in filing the Writ Petition.

8. Mr. P. M. Gopala Rao, the learned counsel for the 13th respondent and appellant in W.A. No. 22/94, has contended that the provisions of Section 5 of the Act have undergone many changes and the Government can constitute a Committee appointing any number of persons, more than 15 but less than 18, as contemplated by sub-section (1) of Section 5 of the Act so there is no illegality in the impugned G.O. He further submits that in any event the petitioner has no locus standi to file the Writ Petition and that on the ground of laches also the Writ Petition is liable to be dismissed.

9. The contention of the learned Advocate-General appearing for respondents 1 and 2 in the Writ Petition and the appellants in W.A. No. 24/94, is that composition of the Agricultural Market Committee is in accordance with Section 5(1)(i) of the Act and that the Government have appointed three more members to fill up the vacancies in G.O. Ms. No. 591 dated 20-11-1993, so from the date of that order there is a full-fledged committee, as such there is no case for the petitioner to complain that the Committee is not in accordance with the provisions of Section 5(1)(i) of the Act. His further submission is that if the impugned G.O. is quashed, the Government have power to appoint the very same 18 persons under Section 5 of the Act, therefore, issuance of a Writ will become futile and that this Court will not issue any futile writs. He also pleaded that on the ground of laches alone the petitioner be nonsuited.

10. In view of the above contentions the following two questions arise for consideration :-

(1) Whether composition of the Agricultural Market Committee under the impugned G.O. satisfies the requirements of Section 5(1 )(i) of the Act; if not, is the Writ Petition liable to be dismissed on the ground of locus of the petitioner or laches?

(2) Whether issuance of the Writ prayed for to quash the impugned G.O. would amount to issuing a futile writ as the Government can reconstitute the Agricultural Market Committee under Section 6 read with Section 5 of the Act.

First we shall take up the first question.

11. The Act is promulgated with a view to regulate purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection therewith. For that purpose Section 3 of the Act authorises the Government to declare the area called 'notified area' for purposes of the Act. Section 4 of the Act mandates the Government to constitute an Agricultural Market Committee for every notified area which would be a body corporate by such name as the Government may specify in the said notification, having perpetual succession, and a common seal with power to acquire, hold and dispose of property and having the capacity to sue and be used by its corporate name. Section 5 deals with composition of Market Committee. The first limb of sub-section (1) of Section 5, provides that the Government may fix such number of members for every Market Committee which shall not be less than 15 and not more than 18. Rule 5 of the Andhra Pradesh (Agricultural Produce and Livestock)

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Markets Rules, 1969, framed under Section 33 of the Act, enjoins that in respect of a Market Committee having annual income of rupees two lakhs or above, the members of the Committee shall be 18 and in respect of the Market Committee having annual income of less than rupees two lakhs, the number of members shall be 15. Exercising the power under Section 5 and Rule 5, referred to above, the Government have issued orders in G.O. Ms. No. 465 Food and Agriculture (Marketing I) Department, dated 26-3-1992 fixing the number of members for each Market Commitee in the State in the Annexure to the said G.O. Insofar as the Agricultural Market Committees of Hyderabad and Guntur are concerned, the strength of the members is fixed as 18. It is admitted by the learned counsel appearing for the parties that the annual income of the Agricultural Market Committee of Hyderabad - respondent No. 15, is about rupees two crores; the income being more than rupees two lakhs, under Rule 5 the strength can be fixed only at 18 and accordingly the Government in the said G.O. No. 465 dated 26-3-1992 have rightly fixed the strength at 18.

12. Insofar as the composition of a Market Committee is concerned, the second limb of sub-section (1) of Section 5 of the Act, requires the Government to appoint not less than 2/3rd of the members after consultation with the Director of Marketing from among the categories of growers of agricultural produce and owners of livestock and products of livestock in the notified area as specified therein. So under Section 5(1)(i), 12 members will have to be appointed by the Government; under Section 5(1)(ii) one member has to be appointed by the Government from among the Presidents and persons, if any, for the time time being performing the functions of the President of the Co-operative Marketing Societies having their areas of operation within the notified area, or in the absence of such societies, members have to be appointed as specified in clause (iv). Clause (iii) of sub-section (1) of Section 5 specifies two categories (a) one representative of the Agricultural Department or the Animal Husbandary Department, to be appointed by the Government and (b) the Chairman of the Municipality or the Sarpanch of the Gram Panchayat as the case may be within whose jurisdiction the office of the Market Committee is situate. In cases of Market Committees of Hyderabad, Visakhapatnam and Vijayawada, the proviso to this clause mentions that the person nominated by the Corporations may represent the Corporation. Thus two members have to be appointed under this clause. Clause (iv) also specifies two categories of traders from which the remaining members have to be appointed by the Government after consultation with the Director of Marketing. The categories are- (a) small traders whose annual turnover of trade in the notified area does not exceed rupees two lakhs; and (b) other traders in the notified area.

13. Under the impugned G.O. the composition of the Market Committee is: under the growers category 10 members have been appointed, under the category of President of Co-operative Societies, nobody has been appointed; under the category of representative of Agricultural Department or Animal Husbandry Department, one member; under the category of Municipality or Gram Panchayat, one member and under the category of traders, three members. Thus 15 members have been appointed as against 18 members contemplated under the Rules and the strength fixed by the Government in G.O. Ms. No. 465 dated 26-3-1992.

14. Does the appointment of the truncated body under the impugned G.O. satisfy the requirements of Section 5? Before we proceed to answer this question, we consider it useful to refer to the extracts from books on Administrative Law:

"Almost all administrative powers are statutory they owe their existence to, and the limitations on their use are determined by, Act of Parliament. A person or body acting under statutory powers can do only those things permitted by the statute to be done, and cannot do those things forbidden to be done; that is the ultra vires doctrine. That doctrine is applied by the Courts, which are therefore in a position of importance and influence in determining the scope and the

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validity of the exercise of administrative powers. "\*

\* Administrative Law by David Foulkes, Fifth Edition, Chapter VI, page 165.

"When the question arises whether a public authority is acting lawfully or unlawfully, the nature and extent of its power or duty has to be found by seeking the intention of Parliament as expressed or implied in the relevant Act.

............................................

Non-observance of a mandatory condition is fatal to the validity of the action. But if the condition is held to be merely directory, its non-observance will not matter for this purpose."\*\*

\*\* Administrative Law by H.W.R. Wade, 6th Edition, page 239.

"Where the statute confers a power to be exercised subject to specified conditions, it must be deemed to have been prohibited to exercise the power or to do an act which could be done in exercise of that power, except in accordance with the provisions of the Act and the conditions and limitations imposed by it. "\*\*\*.

\*\*\* Administrative Law by Durga Das Basu, Second Edition, page 182.

15. Keeping the above principles in mind we shall examine the relevant provisions of the Act to find out whether requirements of Section 5(1 )(i) of the Act are mandatory or merely directory.

16. Often the question arises before this Court as to whether action of the public authority is lawful or unlawful. This Court, in such contingencies is obliged to seek out the nature and extent of the power of the public authority, and that could be legitimately done by looking into the intention of the Legislature as expressed or implied in the relevant Act. Powers conferred by the Act will have to be exercised to serve the purpose for which they are conferred. The purpose will be evident either explicitly or impliedly, when the working of the provisions of the Act is done in a harmonious manner. A working that dislocates and defeats the very intendment of the Act will not be permitted, or to put in other words must be held to have been prohibited. In that view, compliance with a provision of the Act must be held to be mandatory.

17. A cogent and harmonious reading of "provisions of Section 5(1) as well as other provisions of the Act, leaves us in no doubt that Section 5(1) does not contemplate the appointment in jitters or in piecemeal. The Government is not authorised to appoint members one by one to constitute the Market Committee. A reading of Section 5(1)(i) itself makes this abundantly clear inasmuch as it enjoins that not less than 2/3rd of the members shall be appointed from the category of growers.

18. Sub-section (3) of Section 5 provides, the term of office of the members appointed under sub-section (1) shall be three years from the date of appointment. If the members of the Committee are allowed to be appointed in instalments the term of the members of the Market Committee will vary from member to member as such member will be appointed for three years from the date of his appointment, which would obviously be not in terms of or in accord with the scheme of the provisions of the Act. There can be no reconstitution of the Committee as such on the expiry of the term of the office of the members of the Market Committee as contemplated under Section 6 of the Act. In such a case what could happen is, there can only be filling up of the vacancies as and when the term of office of members appointed on different dates would expire. There is no provision in the Act providing for filling up of vacancies of the members on the expiry of the term of their office because subsection (8) of Section 5 provides for filling up of the vacancies in the office of the member for the remainder of the term of the member whose vacancy was to be filled in. The proviso to sub-section (8) of Section 5 enjoins that no vacancy shall be filled in if the remainder of the term of the outgoing member is less than three months. Further Section 9 of the Act provides, inter alia, that a meeting of Market Committee shall be called on receipt of

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requisition from one-third of the total members of the Market Committee. If the piecemeal appointments of members of the Committee is permitted, provisions of sub-sec. (8) and proviso thereto as also S. 9 would be rendered nugatory. From the above discussion it follows that the provisions of S. 5(1) and S. 6 of the Act dealing with composition of the agricultural Market Committee or the reconstitution of Market Committee are mandatory and the violation of those provisions renders the composition invalid and illegal. Consequently we hold that the reconstitution of the agricultural Market Committee of Hyderabad, in violation of the composition prescribed under sub-sec. (1) of S. 5, in a truncated form by the impugned G.O. is invalid and illegal.

19. A Division Bench of this Court has taken the same view, though for different reasons, in Donda Ramarao's case (AIR 1971 Andh Pra 353) (supra). In that case the order of the Government constituting a Market Committee under S. 5(1)(i) of the Act was questioned as being in violation of the said provisions. The appointment of some of the members was found to be bad in law while the appointment of other members was admittedly valid in law. One of the contentions urged before the Division Bench was that piecemeal exercise of power by the Government under S. 5(1) of the Act was not contemplated and that if any one of the appointments was found to be bad then all the appointments must go, so that the Government must exercise its power in accordance with law. This submission found favour from the Division Bench, though it was contended by the Government Pleader that it was not necessary to quash the entire G.O. and that it must at least be upheld to the extent of the appointments found to be valid in law. The Division Bench observed (at p. 356 of AIR):

"It follows that the Government cannot appoint less than half the members from growers. If they do, they would be acting in contravention of the provisions of S. 5( 1 )(i) of the Act. The Government obviously cannot also appoint less than half the members in the first instance and reserve to itself the power to appoint the rest at a later stage. If, in a case, the Court holds that the appoint of some members is bad and proceeds to uphold the appointment of others who may be less than half the total strength, the Court, in effect, would be permitting the Government to appoint less than half the members in the first instance and the rest at a later stage. This would be against the provisions of S. 5(1)(i). We are therefore convinced that the power under S. 5(1)(i) must be exercised as a whole and all at once."

20. However, Mr. P. M. Gopala Rao, sought to distinguish that judgment on the ground that the amendments have completaly changed S. 5 and that the same result does not follow from the amended provision of the Act. To examine this contention it would be necessary to notice the amended as well as unamended provision, which are extracted hereunder:

As it originally stood. As amended by A.P. Act 6 of 1981with effect from 2-12-1980.

1. Every market committee shall consist of such number of members, being not more than sixteen as the case may be fixed for it by the Government and shall be constituted in the following manner:- 1. Every market committee shall consist of such number of members, being not less than fifteen and not more than eighteen, as may be fixed for it by the Government by notification,and shall be constituted in the following manner:-

(i) not less than one half of the members to be appointed by the Government after consultation with the Director of Marketing, from among the growers of agricultural produce and the owners of livestock and products of livesstock in the notified area. (i) not less than two thirds of the members to be appointed by the Government after consultating with the Director of Marketing from among the following categories of growers of agricultural produce and the owners of livestock and products of livestock in the notified area, namely-----

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(a) growers of agricultural products who are small farmers of dry lands.

(b) growers of agricultural products other than small farmers of dry lands.

(c) growers of agricultural products who are small farmers of wet lands.

(d) growers of agricultural products other than small farmers of wet lands, and

(e) the owners of livestock and products of livestock.

(ii) one member to be appointed by the Government from among the Presidents and persons, if any, for the time being performing the functions of the Presidents of the Cooperative Marketing Societies having their area of operation within the notified areas in the absence of such societies to be elected as specified in clause (iv). (ii) one member to be appointed by the Government from among the Presidents and persons, if any, for the time being performing the functions of the President of the Cooperative Marketing Societies having their areas of operation within the notified area in the absence of such societies, to be elected as specified in clause(iv).

(iii)(a) One representative, having jurisdiction over the notified area, of the Agricultural Department or the Animal Husbandry Department to be appointed by the Government. (iii)(a) One representative, having jurisdiction over the notified area, of the Agricultural Department or the Animal Husbandry Department to be appointed by the Government.

(b) the Chairman of the Municipality or the Sarpanch of the Gram Panchayat as the case may be within whose jurisdiction the office of the market committee is located. (b) the Chairman of the Municipality or the Sarpanch of the Gram Panchayat as the case may be within whose jurisdiction the office of the market committee is located.

Provided that in the case of the Municipal Corporation of Hyderabad such person as may be nominated by the Corporation. Provided that in the case of the Municipal Corporation of Hyderabad and Visakhapatnam Municipal Corporation, such person as may be nominated by that Corporation, may represent the Corporation.

(iv)the remaining members to be elected in the prescribed manner by the persons licensed under sub-section (1) of Section7 in the notified area from among themselves. (iv) the remaining members, to be appointed by the Government after consultation with the Director of Marketing, from among the traders belonging to the following categories, namely:

(a) small traders whose annual turnover of trade in the notified area does not exceed rupees two lakhs.

(b) other traders in the notified area.

EXPLANATION I:

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For the purpose of this sub-section the term 'small farmer of dry lands shall mean a farmer holding a total extent of not more than 4.04686 hectares (ten acres) of dry land, and the term, 'small farmer of wet lands', shall mean a farmer holding a total extent of not more than 2.02343 hectares (five acres) of wet lands and the term 'trader' shall mean a person licensed under sub-section (1) of Section 7 of the notified area.

EXPLANATION II:

In computing the extent of land held by a farmer for the purpose of this sub-section, 0.404686 hectares (one acre) of wet land shall be deemed to be equal to 0.809372 (two acres) of dry land.

2. Every Market Committee shall elect two of its members other than those mentioned in Clause (iii) of sub-section (1) to be respectively chairman and Vice-Chairman thereof. 2. Every Market Committee shall have a Chairman and Vice-Chairman, to be appointed by the Government after consultation with the Director of Marketing from among its members specified in Clauses (i) and (iv) of sub-section (1).

21. We shall revert to the comparison of the extracted provisions presently. Here we wish to point out that the constitutional validity of S. 5(1) as it stood before amendment was questioned in Chandramouli v. Government of Andhra Pradesh, (1980) 1 APLJ 120. A Division Bench of this Court allowed the writ petition and held S. 5(1) to be unconstitutional. Thereafter, on 2-12-1980 S. 5(1) was amended by Ordinance 11 of 1980 which was subsequently replaced by Act 6 of 1981. Sections 5 and 6 of the Act were repealed, but were again inserted by Act 24 of 1991 and the same remain unamended so far.

22. From a perusal and comparison of the amended and unamended provisions of sub-secs (1) and (2) of S. 5 of the Act it is clear that in sub-sec. (1) the number of members have been enhanced from 12 to 15 and from 16 to 18. In clause (i) of sub-sec. (1) the categories of growers have been specified in the amended provision. So far as clauses (ii) and (iii) are concerned, there is no change.

23. In Clause (iv) before the provision was amended the remaining members were to be elected in the prescribed manner from the category of traders, but the amended provisions provide for appointment of members from the traders category by the Government and the categories of traders have been specified. Insofar as sub-section (2) is concerned, the Chairman and the Vice-Chairman of the Market Committee had to be elected under the unamended provision, but the amended provision provides for appointment of Chairman and Vice-Chairman by the Government after consultation with the Director of Marketing from among the members of the Committee in the categories of growers and traders. Thus it is seen that the provisions with regard to composition of Market Committee and the obligation of the government to appoint the members of the Committee as a whole and all at once, are not, in any way, affected. The judgment in Donda Ramarao's case (AIR 1971 Andh Pra 353) (supra) was rendered by the Division Bench on 20-3-1970 and the said amendments were carried out in 1980. Had the Legislature intended to effect a change from the law laid down by this Court in Donda Ramarao's case (supra) it would have done so by providing for piecemeal appointments, but it has not chosen to do so.

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24. For the aforesaid reasons we are of the view that the amendment of sub-secs. (1) and (2) of S. 5 of the Act does not alter the position and that the ratio of the judgment in Donda Ramarao's case (supra) applies to the appointment of the members of the Committee even under the amended S. 5(1) of the Act.

25. We may also add here that a notification identical with the impugned notification was issued by the Government appointing 15 members to the Market Committee of Guntur as against the strength of 18 fixed by the Government under S. 5 of the Act. That notification was questioned in W.P. No. 16347 of 1992. Following the judgment of our High Court in Donda Ramarao's case (AIR 1971 Andh Pra 353) (supra), a learned single Judge of this Court allowed the writ petition and quashed the notification impugned therein on April 29, 1993. We are informed that the Government have issued a fresh notification with regard to the said Market Committee.

26. Reliance is placed by the respondents on the judgment of the Supreme Court in Express Newspaper Ltd. v. Union of India, AIR 1958 SC 578, in support of the contention that even if there is no specific provision to reconstitute the Board on the resignation of one of the members, the Supreme Court has upheld the reconstitution in that case, so also in the instant case in the absence of any specific power to appoint members of the Market Committee piecemeal, we should uphold the impugned G.O. In that case the decision of the Wage Board was challenged as illegal and void, inter alia, on the ground that reconstitution of the Board was ultra vires and unauthorised under the Act. There what happened was: One of the members of the Board originally appointed resigned; the resignation was accepted by the Central Government by a notification issued in that behalf and by the same notification another person was appointed as a member and thus the Wage Board was reconstituted. The Supreme Court repelled that contention pointing out to the fact that under Section 8 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, the Central Government had power to constitute a Wage Board and that having regard to S. 14 of the General Clauses Act, it must be construed that that power may be exercised from time to time as the occasion arose. So the reconstituting the Board on the resignation of one of the members being accepted, was held to be valid. In our view this case has no application to the facts of the case on hand. Constitution or composition of the Board in that case at the initial stage was valid. It was only on acceptance of resignation of one of the members, the Board was reconstituted by appointing another person his place. But in the instant case the very composition of the Board is contrary to the statutory provisions viz. S. 5(1) of the Act.

27. Now in view of the finding recorded on the first point, the second aspect that arises for consideration is whether we should deny the petitioner the relief prayed for on the ground that he has no locus or on the ground of laches.

28. Insofar as the question of locus is concerned, the petitioner is a trader within the meaning of S. 2(xvi) of the Act and is carrying on business in the notified market area of respondent No. 15. The issuance of licence/renewal of licence to him and conducting of business in the notified area by him are under the control of the market committee; he is therefore very much interested in the proper constitution of the Market Committee. If the composition of the Market Committee is not legal he would be vitally affected and would therefore be entitled to question the same. We have no hesitation in holding that the petitioner has locus to file the writ petition.

29. Now coming to the aspect of the delay the impugned G.O. was issued by the Government on 3-10-1992, the writ petition was filed by the petitioner on 1-11-1993, after a year and a month of issuing of the G.O. The explanation submitted by the petitioner is that immediately after the issuance of the G.O. Writ Petition No. 14030/92 was filed by one of the traders carrying on business in the same market area. That writ petition was

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withdrawn on 1-3-1993. Thereafter another trader, said to be the brother of the petitioner, filed W.P. No. 3126/93 on March 15,1993. It is stated that the prosecution of the second writ petition was being delayed, so apprehending that the petitioner in the said writ petition was also colluding with the respondents he filed the present writ petition on 1-11-1993. In short, the explanation of the petitioner is when the validity of the G.O. was under challenge in the High Court he did not consider it necessary to file one more writ petition, but when the writ petition challenging the G.O. was either withdrawn or not properly prosecuted, instead of standing-by and waiting for the result, he filed the writ petition. This is the explanation of the petitioner. Be that as it may. Even assuming that there is delay of a year, is the writ petition liable to be dismissed on that ground?

30. The learned Advocate-General relied on the judgment of the Supreme Court in P. S. Sadasivaswamy v. State of Tamil Nadu, AIR 1974 SC 2271. In that case the appellant challenged the relaxation of the Rules in favour of his junior, which was done 14 years before. That writ petition was dismissed on the ground of delay. In the writ appeal filed against the judgment in the writ petition also, the petitioner was unsuccessful. Confirming the judgment of the High Court of Madras, the Supreme Court observed that such a person must approach the Court at least within six months or at the most a year of promotion of his juniors.

31. In Ramana v. The International Airport Authority of India, AIR 1979 SC 1628, the Supreme Court having found that acceptance of tenders of the 4th respondent therein and the contract resulting from such acceptance was invalid and arbitrary being violative of Art. 14 of the Constitution proceeded to consider whether any relief can be granted to the appellant therein in view of the delay in seeking the relief. The Supreme Court found that the appellant had no real interest in the result of the litigation but had been put up another person for depriving the 4th respondent therein of the benefit of the contract secured by him. Having noticed how the said third person had been unsuccessfully questioning the acceptance of the contract in favour of the said 4th respondent, set up the appellant therein to challenge the impugned action, considered the question of delay and held that the delay as well as the fact that the appeal was not bona fide and declined to grant the relief to the appellant.

32. In Ashok Kumar v. Collector, Raipur , AIR 1980 SC 112, validity of notice inviting objections was questioned long after the nominations have been received and final list of candidates was published, but just before the date of election. The High Court dismissed the Writ Petition on the ground of laches. The Supreme Court observed that the principle governing the exercise of jurisdiction under Art. 226 for issuing the writs, viz., when there is no satisfactory explanation for the inordinate delay, the High Court may reject the petition should it find that the issuance of a writ would lead to public inconvenience and interfere with the rights of others, will also apply to a case in which validity of election to a local authority was challenged. But the Supreme Court made it clear that the question whether in a given case the delay involved is such that it disentitled a person under Art. 226 is a matter within the discretion of the High Court which as in all matters of discretion, has to exercise it judiciously and reasonably having regard to the surrounding circumstances.

33. Rabindra Nath v. Union of India, AIR 1970 SC 470. In that case changes were made in the seniority list of Income-tax Officers, as a result of the change in the Seniority Rules. A petition attacking the changes was filed 15 years after the Rules were promulgated and given effect to in preparing the seniority list. The Supreme Court held that each person ought to be entitled to sit back and consider that his appointment and promotion effected long time ago would not be set aside after the lapse of a number of years and that it would be unjust to deprive the officers of the rights which had accrued to them and declined to grant the relief.

34. Tilokchand Motichand v. H. B. Munshi, AIR 1970 SC 898. In that case His

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Lordship Hidayatullah, Chief Justice, in a concurring judgment observed that the Supreme Court will not and should not inquire into belated and stale claims or take note of evidence of neglect of one's own rights for a long time and that the party claiming Fundamental Rights must move the Court before other rights come into existence. The action of courts should not harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court.

35. In R. S. Deodhar v. State of Maharashtra , AIR 1974 SC 259, a Constitution Bench of the Supreme Court has observed that the rule which says that a Court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercising of discretion, and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. The question is one of discretion to be exercised on the facts of each case. It was further observed that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there was reasonable explanation for the delay; and that the Supreme Court which has been assigned the role of a sentinal on the qui viva for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay and the like.

36. From a reading of the above decisions the position that emerges is that in exercising discretionary jurisdiction under Art. 226 of the Constitution, the paramount consideration for the High Court is to render justice; justice not only to the petitioner but also to the parties to the petition. The ultimate question will be whether the delay or laches on the part of the petitioner are such as to confer a right on the opposite party on account of such delay or laches. If so, would it be unjust to exercise the jurisdiction in favour of the petitioner, so as to divest the other party of the right accrued to him on account of such delay or laches. This has to be decided on the facts and circumstances of each case.

37. In the instant case no right as such has accrued to the respondents on account of the delay in filing the writ petition or laches on the part of the petitioner. The impugned G.O., as pointed out above, has been under challenge in one proceeding or the other. In the circumstances of the case, we are of the view that it would not be a just and proper exercise of jurisdiction to deny the petitioner the relief which he is otherwise be entitled to from this Court in this writ petition on the jejune ground of delay or laches.

38. Now coming to the last contention of the learned Advocate-General that no writ will be issued by this Court which would be a futile writ. So far as the principle is concerned there can hardly be any dispute. One of the limitations imposed by the Courts on their power to issue the writ is : where the grant of writ would be futile, the Court will decline to issue any writ. But where a statutory authority has acted in violation of law, the High Court in its extraordinary jurisdiction under Art. 226 of the Constitution will not only correct the mistake but it is bound to do so if the facts and circumstances of the case justify. The possibility that a legal order can be issued by a statutory authority subsequently if the impugned illegal order is quashed, cannot be a ground to decline to issue the writ to quash an illegal order. Indeed the very purpose of issuing the writ is to correct the illegalities committed by the authorities and to make them act according to law.

39. The learned Advocate-General relied on the judgment of a Full Bench of Punjab and Haryana High Court in Ram Niwas v. State, AIR 1970 Punj and Har 462. In that case by a resolution passed in 1954, the Municipal Committee of Bahadurgarh decided to levy octroi duty on the goods imported into Fateh Mandi, but that resolution was annulled by the Government; consequently no octroi duty was levied on the shop-keepers of Fateh Mandi. However by another resolution passed in 1965 the Municipal Committee requested the Government to cancel its earlier order so that octroi duty could be levied on

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the shop-keepers of Fateh Mandi. Subsequently the State of Haryana approved that resolution. When the Municipal Committee started charging octroi duty the petitioners questioned the resolution and the approval of the government in the writ petition. It was contended by the government as well as the Municipal Committee that under Sec. 62-A of the Punjab Act 48 of 1953 the government could direct the Committee to levy octroi duty among other duties and in the event of the committee not complying, it could impose the octroi duty itself. So even if the writ petitions were allowed the State Government could nullify the effect thereof by issuing appropriate notice under Section 62-A of the Act. The Full Bench accepted that contention and observed that the Court would not issue infructuous writs or writs which could be nullified by respondents by a notification under a statute.

40. With great respect to the learned Judges, we are unable to subscribe to this view. If the resolution and the approval were bad in law, the authorities had no right to collect the duty from the petitioners therein. Merely because the duty could have been imposed validly by issuing notification on a subsequent date would not, in our view, make the writ issued to quash an illegal order authorising collection of the duty, infructuous or futile. A few examples of futile writs would be to issue a direction to grant licence for a period which had expired or to set aside the resolution impugned which has come to an end. , ...

41. Another example of futile writ is furnished by the case in Sri Krishna Rice Mills v. Dy. Director, AIR 1960 Andh Pra 431. It was held that (at p. 435 of AIR):

"An officer cannot be directed by means of a writ of mandamus to do what he under the statute could not do and which is beyond his legal powers and a petition for directions to an Officer to carry out anything which it is incompetent for him to do will be a futile one."

42. For the aforesaid reasons, we are unable to sustain the impugned notification, it is accordingly quashed. The writ petition is allowed without costs.

43. In view of allowing of the writ petition, the writ appeals filed against the interlocutory orders passed in the said writ petition, do not survive for consideration, they are accordingly dismissed, but without costs.

44. After we pronounced this Judgment, there is a request on behalf on behalf of Mr. P. M. Gopal Rao, the learned counsel that we may suspend the operation of our pronouncement for a month. This move is being vehemently opposed by Mr. P. Gangaiah Naidu, learned counsel. We do not think that we could show the indulgence of suspending the operation of our Judgment. Hence this request is negatived.

Petition allowed.

**AIR 1986 ANDHRA PRADESH 330 "Sri Lashmi Dry Fish Traders v. State"**

**ANDHRA PRADESH HIGH COURT**

Coram : 2 P. CHENNAKESAV REDDY, Actg. C. J. AND SARDAR ALI KHAN, J. ( Division Bench )

Sri Lashmi Dry Fish Traders and etc., Appellants v. State of A.P., Respondents.

Writ Appeals Nos. 153 and 154 of 1982, D/- 10 -4 -1985.\*

A.P. Agricultural Produce and Live Stock Markets Act (16 of 1966), S.2(v), S.3(3) and S.7(1) - AGRICULTURAL PRODUCE - WORDS AND PHRASES - Notification published in A.P. Gazette dt 7-11-78, Sch. II - 'Dry fish' is not 'livestock' either as defined in S. 2(v) or in common parlance - Inclusion thereof as 'Livestock' in Sch. II to the Notification is liable to be quashed.

W.P.No. 5221 of 1981, D/-19-11-1981 (Andh Pra), Reversed.

Words and Phrases -'Livestock', 'dry fish'.

Considered in the light of the definition of 'livestock' in S.2(v) which takes within its scope only animals with life and the dictionary meaning of the said word and even considering that under S.3(3) the Government could widen its scope by notifying that such other animals to be 'livestock', dry fish could not be taken as 'livestock'. It was so even if 'fish' could be treated as 'livestock'. In the circumstances and since the impugned notification published in A.P. Gazette dated 7-11-78 also did not include 'dry fish' in livestock group, inclusion of 'dry fish' as 'livestock' in Sch. II to the Notification was illegal. Hence the dealers in dry fish were not bound to take out a licence under S.7(1) of the Act for carrying on business in dry fish. Words used in taxing or penal statute should be understood as in common parlance and not in any technical sense nor on any botanical view. One could not read into the definition words which were not found in it. AIR 1961 SC 1325 and AIR 1960 SC 96 Referred to. W.P.No. 5221 of 1981, D/-19-11-1981 (Andh Pra), Reversed. (Paras 4, 5 and 7)

Cases Referred : Chronological Paras

AIR 1961 SC 1325 : (1962) 1 Andh WR(SC)27 5

AIR 1960 SC 96 : 1960 Cri LJ 168 6

K. Jwala, for Appellants; Govt. Pleader, for F. and A. (for No. 1) and M.S. Prasad, Standing Counsel, for AMC (for No. 2), for Respondents.

\* Against judgment of single Judge of this Court in W.P.No.5221 of 1981 D/-19-11-1981.

Judgement

P.CHENNAKESAV REDDY, Actg. C. J.:- In these writ appeals a question of general interest and frequent occurrence is raised for decision. The question is whether the definition of 'livestock' in S. 2(v) of the A.P. Agricultural Produce and Livestock Markets Act, 1966 (hereinafter referred to as the Act) takes within its scope and ambit also 'dry fish' and the declaration made by the Government under S.3(3) of the Act specifying 'dry fish' as 'livestock' in Schedule II to the notification of the State Government published in the A.P. Gazette dt. 7-11-1978 is valid.

2. The writ petitioners are dealers in dry fish. A notice was issued to the petitioners by the Agricultural Market Committees, Itchpuram, asking them to obtain necessary licence by paying the necessary fee under S. (91)(7(1)?) of the Act on the ground that they were carrying on business of purchase and sale in agricultural produce. But the petitioners did not obtain the necessary licence and carried on their business in 1980. The petitioner sent a reply to the Agricultural Market Committee informing them that the business in dry fish does not come within the purview of the Act and therefore there was no necessity to obtain any licence. As the petitioners continued to carry on their business without obtaining any licence under S. 7(1) of the Act, criminal cases were instituted against the petitioners and some others. Aggrieved against the prosecution the petitioners filed the writ petitions. The learned single Judge (Raghuvir, J. dismissed the writ petitions) holding that the word 'fish' in S. 2(v) of the Act includes 'dry fish' also and so the notification was valid. This indeed, is the genesis of the writ appeals.

3. The only question for decision is whether 'dry fish' is livestock falling within the definition of livestock in S. 2(v) of the Act. It is, therefore, necessary to read the definition of 'livestock' in S. 2(v) of the Act.

"2(v) 'Livestock' means cows, buffaloes, bullocks, bulls, goats and sheep and includes poultry, fish and such other animals as may be declared by the Government by notification to be livestock for the purposes of this Act."

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It would be useful also to read the definition of 'products of livestock' in S. 2(xv) of the Act.

"2(xv) 'Products of livestock' means such products of livestock as may be declared by the Government by notification, to be products of livestock for the purposes of this Act."

4. In the impugned notification dt. 7-11-1978 in the group-V the livestock 'fish' is not included. What are included in that group are : 1) Bull, 2) Bullock, 3) Cow, 4) Beifer, 5) Buffalo (Bull,) 6) He Buffalo, 7) She Buffalo, 8) Young Stock of Buffalo, 9) Sheep and 10) Goats. In group VI of the Livestock Products what are included are : 1) Raw Hides, 2) Raw skins, 3) Bones, 4) Horn and Hoof, 5) Hair and wool and 6) Ghee, 'Fish' group is separated from 'livestock' group and in this group what are included are : 1) Live Fish including fish with or without life in any form (inserted by G.O.Ms.No. 406 F and A, dt. 21-7-1980), 2) Dry fish and 3) Live Prawn including Prawn with or without life in any form. Again under the group of 'poultry' (group VII) only Hens, Ducks, and Cocks are included.

5. A close look at the definition of 'Livestock' would at once make it clear that the definition takes within its scope and ambit only animals with life. The meaning of the 'livestock' given in the Concise Oxford Dictionary also is, animals kept or dealt in for use of profit. In the Chambers 20th Century Dictionary the meaning given for 'livestock' is "domestic animals, esp., horses, cattle, sheep and pigs." The definition of 'livestock' is widened under the Act to include 'poultry' 'fish' and such other animals as may be declared by the Government by its notification as 'livestock' for the purpose of the Act. Even if 'fish' is considered to be an 'animal' the 'dry fish' in our opinion, cannot fall within the sweep of the definition of 'Livestock' is also made clear by the impugned notification itself (extracted above) where 'dry fish' is not included in the 'livestock' group. It is now well settled that, in construing the word in a taxing or penal statute, it should be understood as in common parlance and not in any technical sense nor from any botanical point of view. We cannot read into the definition words which are not found in it. The definition of 'Livestock' includes 'fish' and such other animals as may be declared by the Government by its notification as livestock. The Supreme Court in Ramavatar Budhaiprasad v. A. S. T. O. Akola (1962) 1 Andh WR (SC) 27 : (AIR 1961 SC 1325), while construing the word 'vegetables' observed after referring to several decided cases, that "the word 'vegetables' in taxing statutes is to be understood as in common parlance, i.e. denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table." We find it difficult to hold that in common parlance when a customer asks for 'fish' he means dry fish also. 'Fish' is understood in common parlance only as 'wet fish' with or without life.

6. The learned Government Pleader, however, invited our attention to the decision of the Supreme Court reported in Chimanlal v. State of Bombay, AIR 1960 SC 96 and attempted to garner support from the observations contained therein to the effect that "cotton, ginned or unginned, continued to be cotton till it loses its identity by some chemical or industrial process. So long as the identity is not lost, the fact that it is pressed into bales or packed otherwise does not make it any the less 'cotton' specified in the Schedule to the Act". Therefore the Supreme Court was only concerned with the question whether cotton ginned or unginned, continues to be cotton till it loses its identity by some chemical or industrial process. As observed by the Supreme Court, cotton there had not undergone any change, but in the case on hand 'fish' is undoubtedly a different product from the 'dry fish'. Fish has undergone a change, i.e, fish with or without life and after change alone whether due to exposure to the sun or any other chemical treatment becomes dry fish. In our opinion the decision of the Supreme Court far from lending any support to the learned Government Pleader fortifies our conclusion.

7. In the result the writ appeals are allowed and the impugned notification in so far as the inclusion of the 'dry fish' in Schedule II to the said notification is concerned is quashed. No costs. Advocates' fee Rs. 150/- in each.

8. The learned Government Pleader as well as the learned Standing Counsel for the Agricultural Market Committee make oral applications for leave to appeal to the Supreme Court. In our opinion no substantial question

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of law of general importance which requires to be considered by the Supreme Court arises in these cases. The oral request is therefore rejected.

Appeals allowed.

**AIR 1985 ANDHRA PRADESH 375 "Union Bank of India v. D. Venkataramiah"**

**ANDHRA PRADESH HIGH COURT**

Coram : 2 JEEVAN REDDY AND JAGANNADHA RAO, JJ. ( Division Bench )

Union Bank of India, Guntur, Appellant v. Dhanakula Venkataramiah and others, Respondents.

Letters Patent Appeal No. 114 of 1980. D/- 4 -12 -1984.\*

Civil P.C. (5 of 1908), O.38, R.12 - ATTACHMENT - AGRICULTURAL PRODUCE - WORDS AND PHRASES - "Agricultural produce" - Whether it is growing crop standing en land or stocked on thrashing floor or stored in house or godown is agricultural produce - Thus paddy is agricultural produce. 1980 LS.(AP) 179 Affirmed.

AIR 1962 Ker 261 Foll.

AIR 1962 Raj 82 Dissented from.

Words and Phrases - "Agricultural produce" - Meaning. (Paras 1, 2)

Cases Referred : Chronological Paras

AIR 1962 Ker 261 2

AIR 1962 Raj 82 1

G. Bhaskara Rao, for Appellant; A. Panduranga Rao, for Respondents.

\* Against order of Raghuvir. J. reported in I980 L.S. (AndhPra) 179.

Judgement

JEEVAN REDDY, J. :- The Plaintiff-appellant, having filed the suit, applied for attachment before judgment of paddy stored in the house of the first defendant. It was ordered, against which an appeal was preferred. The learned single Judge held that, by virtue of O.XXXVIII, R.12 of the Civil P.C., 'agricultural produce' cannot be attached before judgment at all. Order XXXVIII, R.12 CPC reads as follows : -

"Agricultural produce not attachable before judgment :- Nothing in this order shall be deemed to authorise the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment of production of such produce."

It is evident from a reading of the Rule that there is a total ban upon attachment before judgment of agricultural produce. In this case, the property attached is paddy, which is undoubtedly, an agricultural produce. Therefore, the ban operates. The learned counsel for the appellant, however, relied upon a decision of a learned single judge of the Rajasthan High Court in Bhabhoot Singh v. Ghanshyam, AIR 1962 Raj 82. There, the learned Judge held that the term 'agricultural produce' as used in the Code of Civil Procedure, is confined to "growing crop"; standing on the land on which it has grown or cut crop lying on the thrashing flour or fodder-stock". He further held that, once the grain is separated from the chaff, it ceases to remain 'agricultural produce' and there is no prohibition against its attachment under R.12 of O.XXXVIII. CPC. On the basis of the above observation, it is argued that once paddy is removed from the land or thrashing-floor, it

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ceases to be an agricultural produce. We are unable to appreciate this argument. Agricultural produce is agricultural produce, whether it is stocked on the thrashing floor or stored in a house or godown.

2. So far as the present case is concerned, what is attached is paddy. It is undoubtedly an 'Agricultural produce'. If so, it cannot be attached by virtue of R.12 of O.XXXVIII, CPC. This is the view taken by a learned single Judge of the Kerala High Court in Vasu v. Narayanan AIR 1962 Ker 261. The learned Judge has rightly pointed out that, while the prohibition under Ss.60 and 61 is partial, the prohibition under O.XXXVIII, R.12 CPC is complete. We agree with him.

3. For the above reasons, the LPA fails and is dismissed. No costs.

Appeal dismissed.

**AIR 1984 ANDHRA PRADESH 391 "Agrl. Market Committee v. K. Subbi Reddy"**

**ANDHRA PRADESH HIGH COURT**

Coram : 2 K. MADHAVA REDDY, C.J. AND SARDAR ALI KHAN, J. ( Division Bench )

Agricultural Market Committee Anantapur, Appellant v. Kulluru Subbi Reddy and others, Respondents.

Writ Appeals Nos. 1219 and 1220 of 1983, D/- 8 -2 -1984.

(A) Constitution of India, Art.19(6) and Art.19(1)(g) - A.P. (Agricultural Produce and Livestock) Markets Act (16 of 1966), S.7(6) - FREEDOM OF TRADE - AGRICULTURAL PRODUCE - S.7(6) prohibiting persons from purchasing or selling notified agricultural produce, livestock etc. outside Market Yard - S.7(6) is not violative of Art.19(1)(g ).

Section 7(6) which directs that no person shall purchase or sell notified agricultural produce, livestock and livestock products in a notified market area outside the Market Yard in that area is not violative of Art.19(1)(g) as the prohibition contained therein is a reasonable restriction and can be enforced after the establishment of a Market Yard with the necessary facilities for effective functioning of the market under the provisions of the Act. AIR 1983 SC 1246, Rel. on. (Para 8)

(B) A.P. (Agricultural Produce and Livestock) Markets Act (16 of 1966), S.7(6), S.4, S.12 and S.23 - AGRICULTURAL PRODUCE - G. O. Ms No. 719 dated 27-12-1979 (issued under S.4) - Minimum facilities (basic amenities) enjoined by G.O. not provided by Market Committee in Market Yard - Committee cannot compel traders, growers and commission agents to shift their business to Market Yard under S.7(6) on pain of prosecuting them or cancelling their licences.

Where the Agricultural Market Committee constituted under S.4 in the notified market area had not provided even the minimum facilities (basic amenities) in the Market Yard directed to be provided by the G.O. Ms. No. 719 dated 27-12-79, the Market Committee could not compel the growers, traders and commission agents holding licences to do business in notified agricultural produce, livestock and products of livestock in their own premises to shift to the Market Yard on pain of their being prosecuted or their licences being cancelled. The Market Committee is under an obligation to provide the facilities mentioned in the G.O. Ms. 719 in the Market Yard and only after providing all the facilities mentioned therein in the Market Yard the Committee can require the traders, growers and commission agents to carry on their business in the Market Yard. AIR 1983 SC 1246, Rel. on.; W. P. M. P. No. 14904 of 1983 (in W. P. No. 10911 of 1983) and W. P. M. P. No. 14797 of 1983 (in W. P. No. 10830 of 1983), D/-15-12-83 (A. P.), Affirmed. (Para 13)

Cases Referred : Chronological Paras

AIR 1983 SC 1246 8

Addl. Advocate General and S. Venkateswara Rao, for Appellant (in both writ appeals); K. Venkataramaiah, (in W. A. No. 1219/83) and D. V. Reddi Pantalu (in W. A. No. 1220/83), for Respondents.

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Judgement

JUDGEMENT :- These two writ petitions - W. P. No. 10830/83 by the Anantapur District Seeds and Oil Mills Association and W. P. No. 10911/83 by several growers of groundnut and other notified agricultural products within the area of the Andhra Pradesh Agricultural Market Committee - seek a writ of mandamus directing the Anantapur Market Committee "not to enforce the provisions of S.7(6) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (hereinafter referred to as the 'Act') till regular and pucca facilities are provided by the Anantapur Market Committee."

2. Pending these Writ Petitions, the petitioners prayed in W. P. M. Ps. 14797/83 and 14904/83 for directing the respondent-Market Committee not to insist or force the growers of several villages to sell their products (groundnut shelled or unshelled) in the market yard at Anantapur and to forbear from enforcing the provisions of S.7(6) of the Act till infra structure and all facilities are provided. These petitions were disposed of by our learned brother Waghray J. by his order dated 15-12-1983 holding that "it will not be just to immediately force the petitioners to a market yard where all facilities have not yet been provided. He directed that the existing practice shall be allowed to be continued for a period of one month from the date of his order. He also observed that the position can be reviewed on a further affidavit being filed by the Market Committee. He further clarified that "the mere fact that the petitioners are allowed to carry on their business as per the existing practice, it does not mean that they should not follow or abide or obey the other provisions of the Act regarding filing of returns and payment of market fee." Aggrieved by the said order, the Agricultural Market Committee has preferred Writ Appeals 1219 and 1220 of 1983.

3. Where these matters came up for hearing before a Bench of this Court, an Advocate-Commissioner was appointed to inspect the Market Yard at Anantapur and to ascertain whether the facilities in accordance with G. O. Ms. No. 719 dated 27-12-1979 were provided in the Anantapur Market Yard. The Advocate-Commissioner, after inspection of the Market Yard on 9-1-1984 in the presence of the counsel for both the parties submitted a report to this Court on 16-1-1984. Parties have filed their objections to the Commissioner's report. As the disposal of the writ appeals required the consideration of contentions raised in the writ petitions also, at the request of the parties, the writ petitions also were heard along with the writ appeals.

4. The writ petitioner in W. P. No. 10830/83 is an Association of Commission Agents who holds a licence to do business under S.7(1) of the Act. It is their case that the Agricultural Market Committee, Anantapur was constituted under S.4(4) of the Act by the Government in G. O. Ms. No. 1548 F and A dated 22-10-1971 declaring the area of the market as the whole of the Anantapur town and the adjoining area. The Market Committee did not have a market yard at that time. Later on, by G.O. Ms. No. 515, F and A, dated 26-5-1980 the Government amended the notification and declared the market yard with boundaries stated therein for the notified market area as detailed therein. An extent of 20 acres was acquired for the location of the market yard. Under another notification i.e. G.O. Ms. No. 175, F and A, dated 13-6-1983 the notified market area of Anantapur Market Committee was extended to an area within a radius of 25 kms. of the Market Yard. So far, no facilities and no infr astructure necessary for effective functioning of a market have been provided. Unless the necessary infra structure is provided and necessary amenities are made available in the market yard, it would not be possible for the growers, traders and commission agents to carry on business in that market yard. A circular was issued for construction of shop-cum-godowns and for allotment of the same to any person who was prepared to deposit Rs. 10,000/-. The members of the petitioner-Association deposited Rs. 10,000/- each and applied for allotment. But till today, they were not allotted the sites for construction of shops or godowns. They have been provided only with a small site and were asked to put up Thatties for carrying on business. There are no storage facilities. Only one godown is constructed and that too is utilised by the Market Committee for storing cement. While so, the Market Committee and its officials are threatening

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to cancel licences of the members of the petitioner-Association if they did not shift their trade to the market area. Representations made by the petitioner-Association on 28-10-1983 and 7-11-1983 were ignored. Hence these writ petitions.

5. The growers of notified agricultural products contend in their writ petition that in the 21 acres of land declared as market yard, no amenities and facilities are provided. Although the Market Committee has accumulated nearly 30 lakhs of rupees, it has not been spent for providing at least the minimum facilities. There is only one covered platform and one godown. There are no storage facilities in the yard and the market yard itself is not enclosed on all sides by a compound wall for protecting the agricultural products. There is neither any canteen facility nor are there any latrine or sanitary blocks. There is no shed for the cattle. The agricultural produce would be exposed to sun and rain and even fire. Yet the growers are required to sell their products at such a market yard. The Market Committee has issued a pamphlet informing the growers to sell their produce in the market yard which does not provide even the minimum amenities required to be provided under G. O. Ms. No. 719 dated 27-12-1979. The market yard is nearly 3 kms. away from the town. There is no police protection available either for

6. In the counter-affidavit filed by the in charge Secretary, Agricultural Market Committee, Anantapur it is admitted that there is a cash balance of Rs. 22,00,000 but not Rs. 30,00,000 as asserted by the petitioners. It is stated that the following amenities are provided in the Market yard safeguarding life and produce. There are no roads within the market yard and the area is full of grass. There are no shops for the traders or the commission agents to sit and carry on trade. There is no rest house, canteen or banking or business facilities. In short, they contend that shifting of the business to such a market yard and insisting upon the growers to sell their produce in a yard where even the minimum facilities are not provided would result in grave injury and loss to them. Though the Deputy Director, Marketing, Cuddapah inspected the area and reported to the authorities that facilities should be provided, still the Government has not provided these facilities. Without these minimum facilities, it is not possible to carry on business in the market yard. They pray that till such time as the above infra structure and facilities are provided, the market committee be restrained by a writ of mandamus or other appropriate direction from insisting upon them to sell the produce only in the market yard.

Type of amenity Amount spent

1. Internal Roads 6 Nos. 1,50,122-96

2. Covered Platforms 2 Nos.2. Covered Platforms 2 Nos. 1,20,979-33

3. Cattle sheds 2 Nos. 53,197-06

4. Compound Walls 3 Nos. 1,60,764-25

5. Open Platforms 3 Nos. 50,476-68

6. Watchman shed 16,523-20

7. Pump house-cum-overhead tank with motor pumpset 22,751-20

8. Water troughs 2 Nos. 3,369-00

9. Pipe Culverts 2 Nos. 3,312-80

10. Well 4.0 M.Dia. 14,892-50

11. Godown (including rolling shutters and CCl sheet) 1,13,414-85

12. Ryots Rest House 49, 823-48

13. Office Building (along with 4 latrines) 2,06,491-46

14. Gates 4 Nos 7,850-00

15. Electrification 14,990-00

16. Water Supply arrangements 40,547-70 @page-AP394

17. Spreading of gravel in front of platform (West) 4,827-29

18. Spreading of gravel in front of platform (south) 4,920-24

19. Borewell 1 No.

20. Telephone

21. Approach Roads."

It is further averred that the Market Committee has proposed the acquisition of a further extent of 22.29 acres in order to provide all amenities to every one coming to the market. It is also proposed to construct 10 more godowns at an estimated cost of Rs. 8.60 lakhs and the same are now under construction and have progressed up to basement level. The compound wall has been constructed on three sides and only on one side it is kept open, to be constructed after the acquisition of the adjacent land of Acs. 22.29 lying on that side. A temporary shed has been constructed for running canteen. A borewell has been sunk and water tubs are provided for the cattle. For the purpose of weighment and auctions, three auction platforms have already been constructed. It is denied that the godown that has been constructed is being used by the Market Committee for storing cement. It is asserted that in this godown 20,000 tons of any commodity could be safely stored. The allegation that no facilities are provided is denied and it is asserted that it has been taking effective steps since April, 1983 onwards to implement S.7(6) of the Act. The averments to the contra made by the petitioners were denied.

7. As the writ petitioners insisted that the facilities as mentioned by the respondents' counter-affidavit have not been provided, an Advocate-Commissioner was appointed to make an inspection of the site and submit a factual report as regards the facilities provided by the market committee particularly with reference to what is stated in G. O. Ms. No. 719 dated 27-12-1979.

8. In order to appreciate the contentions raised by the parties and the learned Additional Advocate General it is necessary to consider how a market yard may be established and what facilities are required to be provided in a notified market yard before compelling the traders, commission agents and growers to carry on business within the said market yard. S.7(6) directs that no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area, outside the market in that area. This provision was questioned as violative of fundamental rights guaranteed to a citizen under Art.19(1)(g) of the Constitution. That contention was rejected by the Supreme Court in Sreenivasa General Traders v. State of A. P., AIR 1983 SC 1246 and it was held to be a reasonable restriction and the prohibition contained therein can be validly enforced after the establishment of a market in the notified market area under the provisions of the Act. The petitioners cannot, therefore, seek a writ of mandamus not to enforce S.7(6) of the Act. All that they can claim is that the provisions of the Act should be complied with.

9. Under S.4(1) of the Act the Government is empowered to constitute a Market Committee for every notified area. Under sub-sec. (2) of S.4, the market committee is enjoined to enforce the provisions of the Act and the rules and bye-laws made thereunder. Under sub-sec. (3) of S.4 the primary duty of the Market Committee is to establish in the notified area such number of markets as the Government may from time to time direct for the purchase and sale of any notified agricultural produce, livestock or products of livestock and to provide such facilities in the market as may be specified by the Government from time to time by a general or special order. The Government in G.O. Ms. No. 719 dated 27-12-1979 specified the facilities that must be provided by a market committee. That G.O. reads as follows : -

"It has been brought to the notice of the Government that most of the Agricultural Market Committees in the State have not provided even minimum facilities which are the basic needs in every market yard, in spite of the Government directions in the G.O., read above.

2. In partial modification of the orders issued in the G.O., read above, under Cls. (a) and (b) of sub-sec. (3) of S.4 of the

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Andhra Pradesh (Agrl. Produce and Livestock) Markets Act, 1966 (Act 16 of 1966), the Governor of Andhra Pradesh hereby directs all the Market Committees to provide initially the following 'Basic Amenities' in each market :-

1. Drinking water for the users of the market.

2. Drinking water for the cattle

3. Shed for use of users of yard

4. Latrines.

3. The Governor of Andhra Pradesh also directs the Market Committees to provide the other facilities mentioned below at the market yards in course of time as and when funds permit :

1. Rest House for Ryots.

2. Electrification of Market yard.

3. Auction-cum-weighing shed

4. Auction platforms

5. Internal Roads

6. Telephone booth

7. Canteen

8. Office building

9. Godown for use of producer-seller

10. Approach roads

11. Library-cum-club building

12. Resting house for traders.

4. It is not the intention of Government that the 'Basic amenities and other facilities' must be provided in the order of priority as per serial numbers given above. The amenities are classified into two groups viz., 'Basic amenities' and other facilities keeping in view their importance and it is left to the concerned Agricultural Market Committee and the Director of Marketing to select the works for execution from the respective groups depending upon the local condition and needs.

5. The Director of Marketing is requested to ensure that the above minimum facilities are provided in all Market Committees Yards without fail.

Sd. S.A. Aziz

Joint Secretary to Government".

10. The grievance of the petitioners is that without providing these minimum and other facilities which the Government itself thought it necessary to provide before any market may effectively function, the Market Committee is insisting upon the commission agents, traders or growers of agricultural produce, livestock and products of livestock to carry on business in the market yard on pain of their licences being cancelled.

11. The Andhra Pradesh (Agricultural Produce and Livestock) Markets Act (Act 16 of 1966) is a law intended to regulate purchase and sale of agricultural produce, livestock and products of livestock and for the establishment of markets in connection therewith. It is an Act primarily intended to provide facilities to the growers, traders and commission agents for sale of agricultural products, livestocks and products of livestock in a particular market covering the notified market area. For this purpose, the Act envisages the constitution of a committee under S.4 of the Act composed among others of growers of agricultural produce comprising of small farmers and other farmers of dry lands and the growers of agricultural produce comprising of small farmers and other farmers of wet land, representatives of traders, licence tranders - small and big - Chairman of Municipality or Panchayat, as the case may be, within the Market Area, representatives of Animal Husbandry Department and Co-operative Marketing Societies. The Market committed is empowered to levy fee on the sale of agricultural produce, livestock and products of livestock. The fee so levied is required to be spent for providing facilities and amenities in the market area as laid down in S.12(1)(a). The Market Committee fund thus constituted under S.14 is required to be spent for the purposes mentioned in Ss.15 and 16 of the Act. After the establishment of the market and provision of the facilities whoever contravenes the provision of S.7 or fails to pay the fee levied under S.12 is exposed to penalties referred to in S.23 of the Act. Having regard to the power vested in the Market Committee which is primarily intended to provide facilities to the traders, growers and commission agents who sell and purchase agricultural produce, livestock and products of livestock in the market, it is contended that unless these facilities are provided, they cannot be compelled on pain of being prosecuted to leave their present places of business for which they hold licences.

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Even the respondents in the counter-affidavit have not taken the stand that they can compel the traders, growers and commission agents to shift to the market even without providing these facilities. On the other hand, it is their claim that facilities have been provided. It is, therefore, necessary to see whether the facilities as envisaged by the Act and enjoined by the G.O., have been provided.

12. The extent of the Market Area as at present is 21 acres. The facilities as detailed in G.O. Ms. No. 719 must be provided by every Market Committee. Though items 1 to 4 i.e., drinking water for the users of the market and for the cattle. shed for the use of users of Yard and latrines are stated as basic amenities and the rest of to facilities mentioned in paragraph 3 of the aforesaid G.O., are referred to as other facilities, para. 5 of the G.O., specifically enjoins that all these are the minimum facilities to be provided in all market committee areas without fail. The Government enjoined the Director of Marketing under that G.O. to ensure that the above minimum facilities are provided in all the market committee areas without fail. It is, therefore, to be seen whether, as reported by the Commissioner, all these facilities and amenities are provided in the Anantapur Market with which we are now concerned. The Advocate-Commissioner has reported that there are two cattle sheds which can accommodate about 60 cattle. But even these sheds have no water facility. It must be remembered that this is not merely an agricultural market, but also a market for livestock. Without water facilities for cattle in the market yard and agricultural market yard, it would be almost impossible for an agricultural market yard in a country where still most of the agricultural produce is transported by carts driven by cattle and where large number of cattle are brought for sale, to function. The Commissioner has further reported that shed for users of the yard as such is not available. There is, however, a rest house for ryots. He has also reported that new latrines and bath rooms are under construction. In other words at present there aria no latrines and bath rooms. He further stated that there are four bath rooms and lavatories - two meant for the staff and two for the use of others - and all these are situated in the office building which is meant for the members of the Market Committee and its staff. These latrines and bath rooms are thus not meant for the traders, commission agents and growers who come in thousands to this market which, apart from other agricultural produce, livestock and products of livestock which are notified to be sold in this market, admittedly handles about 20,000 bags of groundnut alone per day. Even under the G.O., these are basic requirements which must be provided. The Commissioner reports that except in the main building, there is no electrification in the market yard. Electric connection to the godown is cut off. There is no electric supply in the cattle shed. The Commissioner reports that he found loose electric wire hanging from wooden poles.

13. Mr. Venkataramaiah, the learned counsel for the petitioners, rightly contended that without even the minimum electric lighting, such a big market cannot function. Loose electric wires hanging from temporary wooden poles posed more a danger and a hazard to the users of the market than a facility. With respect to the internal roads, the Commissioner has reported that there are no roads to the cattle-sheds. It is also stated that there is no internal road leading to the godown. There is only one godown which is 100' X 40'. It is stated across the Bar that between the road and the godown there is a big ditch and no trader or grower can reach that godown and store his goods in that godown. There is a thatched roof at the entrance of the market yard. Photograph with signature was produced by the petitioners and the same was verified by the Commissioner. He found that the market yard with thatched roof is not sufficient even for the canteen and it is very difficult to carry on business by the trader. It can be safely concluded that there is no canteen facility at all. The Commissioner also reported that there is no telephone booth. The telephone connection to the Market Committees' Office cannot be treated as telephone booth as envisaged in the G.O. There is no library-cum-club building or resting house for traders which is one of the minimum

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facility envisaged by the G.O. As reported by the Commissioner, what all seems to have been well-equipped is the office building of the Market Committee. That does not amount to a facility provided to the growers, traders and commission agents who have to do business. Admittedly sites have not been so far allotted for the construction of shop-cum-godowns by the commission agents, traders and growers themselves. The Commissioner reports that there are two blocks of 10 sheds-cum-godowns under construction which he hopes would be completed by Mar. 1984 and these shops are proposed to be let out to the licenced traders and each of the ten licensees have already deposited Rs. 10,000/-. However the fact remains that as at present there are no shops-cum-godowns available for use. As can be gathered from the photographs filed before this Court the short internal road is not motorable. Even the facilities which are termed as basic in the G.O., and which are the minimum facilities as stated in para 3 of the said G.O., are not provided. In fact the Act envisages several facilities to be provided, in a Market. Under the G.O,, out of them, certain basic requirements and minimum facilities are envisaged to be provided by every market committee. The Legislature could never have intended to disturb the traders from their present places of business and subject them to severe hardship by requiring them to shift to a market yard where even the minimum facilities envisaged by the G.O., are not provided. The market was notified in 1971 and the Market Committee was constituted. Thereafter licences were being issued from time to time to the commission agents and traders for carrying on business in their respective premises. The Committee did not compel either the growers or the traders or the commission agents to shift to the market yard obviously because these minimum facilities were not provided. When even now facilities as laid down in G.O. No. 719 have not been provided fully, the Market Committee cannot arbitrarily require them to shift to the market yard on pain of being prosecuted or their licences being cancelled. Of course, when these facilities are provided, neither the Commission Agents nor the traders nor the growers can refuse to shift to the Market Yard and insist upon carrying on business in their own premises, for S.7(6) of the Act is mandatory and is held to be valid. Even the judgment of the Supreme Court in which reference is specifically made to the G.O. Ms. No. 719 dated 27-12-1979, clearly envisages the market committee to provide the basic amenities mentioned therein. The Supreme Court observed in that case that no material was placed on record by the petitioners therein to show that the market committees are not rendering any service. The Supreme Court observed : "We were not referred to any specific instance where any of the market committees have not provided these basic amenities". It further observed that "It is needless to stress that the question of providing these facilities would depend on the financial capacity of each market committee. This would depend on whether there are sufficient funds available at its disposal with the Market Committee". So far as the Anantapur Market Committee is concerned, as admitted in the counter, it has Rs. 22,00,000/- still as cash balance. When this amount is collected by way of fees, they are under a statutory duty to expend it for providing facilities in the market yard. Any fee can be justified only on the ground of quid pro quo. After the fee collected, facilities cannot be withheld. Surely the financial capacity of the Anantapur Market Committee to provide all the facilities envisaged by the aforesaid G.O., cannot be in doubt; the funds now held by it are quite sufficient to provide the facilities mentioned in the G.O.. The Committee is under an obligation to provide the same before requiring the traders, commission agents and growers to shift to the new market yard. While there is an obligation to pay the fee under the Act, there is a corresponding obligation upon the Market Committee to expend the fee so collected for providing at least the minimum facilities envisaged by the G.O. In view of the above discussion, we hold that the Market Committee, Anantapur has not so far provided the minimum facilities directed to be provided in para. 2 of G.O. Ms. No. 719 dated 27-12-1979 and

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consequently they cannot compel the petitioners to shift to the market yard and prevent them from carrying on the business in the licenced premises; nor are they entitled to cancel the licences and prosecute the petitioners for not shifting so long as that situation continues. There shall, therefore, be a direction to the Market Committee to provide the facilities mentioned in G.O. Ms. No. 719 dated 27-12-1979 and only after providing all the facilities mentioned therein, though not other facilities that may really be necessary, such as bank, post-office, police station etc., require the petitioners to carry on the business, in the market yard. The Writ Petitions are accordingly allowed to the extent indicated above. The Writ Appeals are dismissed. There shall be no order as to costs. Advocate's fee Rs. 150/- in each.

Appeals dismissed.

**AIR 1981 ANDHRA PRADESH 189 "Venugopala Rice Mill v. Secy., Agrl. Market Commitee"**

**ANDHRA PRADESH HIGH COURT**

Coram : 1 CHENNAKESAV REDDY, J. ( Single Bench )

Venugopala Rice Mill and others, Petitioners v. Secretary, Agricultural Market Commitee, Palakol and another, Respondents.

W.P. No.3585 of 1978, D/- 31 -10 -1980.

A.P. (Agricultural Produce and Livestock) Markets Act (16 of 1966), S.12(1) and S.12(2) - AGRICULTURAL PRODUCE - Govt. Memo D/-19-1-1977 - Levy of market fee by market committee - Fee is payable by purchaser except when he cannot be identified Seller made liable to pay market fee by Govt. memo - Memo is ultra vires the statute and is unenforceable. (Para 5)

T. Ramam, for Petitioners; R. Narsimha Reddy, for Respondents.

Judgement

ORDER :- The petitioners are all registered, traders carrying on business in paddy and rice within the notified market area of the Agricultural Market Committee, Palakole. They have all obtained licences under Section 7 (1) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (hereinafter referred to as 'the Act') from the Market Committee, Palakole, which is the respondent in this writ petition. The trade in paddy and rice is controlled by the various Control Orders issued under Section 3 of the Essential Commodities Act, 1955 with regard to the sale and purchase. Under the provisions of the A. P. Rice Procurement (Levy) and Restriction on sale order, 1967, the petitioners have to deliver the Prescribed quantity of rice to the Agent of the State Government at the notified price. Under the A. P. Rice

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(Procurement Ex-Mill Prices) Order, 1975. issued in G. O. Ms. No. 901 dated 8-10-1975 the price for quintal inclusive of taxes on paddy and exclusive of sales tax and cost of new gunny bag, the price of paddy and rice was fixed. But subsequently by an amendment to the said G.O. issued in G.O. Ms. No. 116, F. and A. dated 24-2-1977, the Government reduced the levy price of rice by Rs. 3/- for each variety. The said amendment was given retrospective effect from 7-9-1976. Later the Government again issued G.O. Ms. No. 734 Food and Agriculture (Civil Supplies) dated 14-10-1977 wherein the price of paddy was fixed. In the said order it was clearly mentioned that the price fixed was exclusive of purchase tax, market fee and cost of new gunny bag.

2. The petitioners delivered the levy rice to the Food Corporation of India in consultation with the State Civil Supplies Corporation in compliance with the A. P. Rice Procurement (Levy) and Restriction and Sale Order, 1967. The paddy and rice are undisputedly notified agricultural produce, duly notified as Items (1) and (2) in G.O. Ms. No. 2095 F. A. (Ag. IV) dated 29-10-1968. Therefore, the Market Committee is entitled to levy fees under Section 12 (1) of the Act. So the Market Committee raised a demand against the petitioners for the payment of the market fee on the value of levy rice delivered to the Food Corporation of India and the A. P. State Civil Supplies Corporation from 7-9-1966 till the date of default. The petitioners have now approached this Court invoking the extraordinary jurisdiction of this Court under Art.226 of the Constitution of India to restrain the respondents from levying and collecting the market fee from the petitioners contending that the respondents have no power to do so under Section 12 (2) of the Act.

3. The question that falls for consideration is whether the Market Committee has power under Section 12 (2) of the Act to levy and collect the market fee from the petitioners who are registered traders in paddy and rice.

4. To answer the question it is necessary to read Section 12:

"12. Levy of fees by the Market Committees:

(1) The Market Committee shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area at such rate, not exceeding one rupee as may be specified in the bye-laws for every hundred rupees of the aggregate amount for which the notified agricultural produce, livestock or products of livestock is purchased or sold, whether for cash or deferred payment or other valuable consideration.

Explanation I:- For the purposes of this section, all notified agricultural produce. livestock or products of livestock taken out of a notified market area shall unless the contrary is proved, be presumed to have been purchased or sold within such area.

Explanation II :- In the determination of the amount of fees payable under this Act, fractions of ten paise equal to or exceeding five paise shall be counted as ten paise and other fractions of ten paise shall be disregarded.

(2) The fees referred to in sub-sec. (1) shall be paid by the purchaser of the notified agricultural produce, livestock or products of livestock.

Provided that where the purchaser cannot be identified, the fees shall be paid by the seller."

5. It is clear from Section 12 (1) that the Market Committee has power to levy market fee on any notified agricultural produce. It is not disputed that paddy and rice are duly notified agricultural produce, notified under Section 3 of the Act. But the question is whether the said market fee can be collected from the petitioners who are only sellers. Under sub-section (2) of Section 12 the fee referred to in sub-section (1) shall be paid by the purchaser of the notified agricultural produce. The seller has to pay market fee only in cases where the purchaser cannot be identified. It is not the contention of the respondents that the purchaser who is the Food Corporation of India or the A. P. State Civil Supplies Corporation cannot be identified. But the learned counsel placed reliance on a memo issued by the Government on 19-1-1977 wherein it was declared that the Ex-Mill price of different varieties of rice includes market fee also. and that the market fee of rice and paddy shall be collected from the millers for the quantities delivered by them towards levy with effect from 7-9-1976. This memo runs contrary to the statute. Section 12 (2) clearly says that the market fees referred to in Section 12 (1) shall be paid by the

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purchaser of the notified agricultural produce except where the purchaser cannot be identified. Therefore, in cases where the purchaser can be identified, the market fee should be collected from the purchaser. By the said memo the seller is made liable for the market fee and the Market Committee has raised demand against the seller. The memo violates the statute and is therefore unenforceable. In the circumstances, the demand raised on the basis of the memo for the collection of market fee against the petitioners from 7-9-1976 is illegal and unenforceable. The writ petition is therefore allowed with costs. Advocate's fee Rs.150/-.

Petition allowed.

**AIR 1981 ANDHRA PRADESH 203 "Sri Vijaya Cotton Traders v. State"**

**ANDHRA PRADESH HIGH COURT**

Coram : 2 ALLADI KUPPUSWAMI C.J. AND JEEVAN REDDI, J. ( Division Bench )

Sri Vijaya Cotton Traders and others, Petitioners v. State of A.P. and others, Respondents.

Writ Petn. No.193 of 1980 etc., batch, D/- 13 -3 -1981.

(A) A.P. (Agricultural Produce and Livestock) Markets Act (16 of 1966), S.34, S.12 - AGRICULTURAL PRODUCE - AMENDMENT - Enhancement of market fee - Amendment of bye-laws of Market Committee - Previous sanction of Director - Not necessary when Director himself suggested all Committees in State to adopt Bye-law for increasing market fee - Director's suggestion should be regarded as previous sanction - The Act and Rules do not prescribe any particular form of giving sanction.

AIR 1966 Raj 142 Dissented from.

AIR 1959 Raj 75, AIR 1958 Andh Pra 354 (FB) and (1972) 1 Andh WR 216 Disting. (Paras 14, 15, 16, 17, 18)

(B) A.P. (Agricultural Produce and Livestock) Markets Act (16 of 1966), S.12(1), S.34 - AGRICULTURAL PRODUCE - Enhancement of market fee from ½% to 1% - Adoption of uniform rate by all Committees in state on suggestion of Director - Does not amount to abdication of power by, Committee or non-application of mind by its members - General increase held justified as large part was required for acquisition purpose. (Para 1, 9)

(C) A.P. (Agricultural Produce and Livestock) Markets Act (16 of 1966), S.12(1) - AGRICULTURAL PRODUCE - LAW - Market fee - Enhancement from ½% to 1% - Neither excessive nor disproportionate to services rendered by Market Committees in view of proposed acquisition and development of market sites - Proportion of services rendered cannot be worked out with mathematical precision.

Constitution of India, Art.265.

AIR 1975 SC 846 Disting. (Paras 21, 22)

(D) A.P. (Agricultural Produce and Livestock) Markets Act (16 of 1966), S.12(1) - AGRICULTURAL PRODUCE - Market fee - Services rendered not only in market area but also outside it - Fee not invalid on that ground if services are correlated to transactions in market area.

AIR 1980 SC 1008 and AIR 1976 Andh Pra 193 Rel. on. (Paras 23, 24)

(E) A.P. (Agricultural Produce and Livestock) Markets Act (16 of 1966), S.4(3)(c) and S.4(4) - AGRICULTURAL PRODUCE - Market area and notified market area - Notified market area covering area within radius of 8 Kms.- Not contrary to law on ground that it is too widely demarcated - Only limitation is that Notified market area must be adjoining the market area.

(1936) 1 Ch D 430 Disting. (Paras 25, 26)

(F) A.P. (Agricultural Produce and Livestock) Markets Act (16 of 1966), S.2(i), S.12(1), S.34 - AGRICULTURAL PRODUCE - Agricultural produce - Definition of - Both cotton seed and rice are agricultural produce."Cotton seed" is a thing produced from land in the course of horticulture, It is only removed from cotton by a particular process; but both cotton as well as seed are things produced from land in the course of horticulture. Therefore, levy of market fee on cotton seed is not ultra vires rule-making power. (Para 28)

Similarly, rice is found in and is a part of the paddy produced in the course of agriculture and hence it is a thing produced from land in the course of agriculture within the meaning of S.2 (i). In view of the notification D/-27-4-1978 if paddy has already been subjected to levy of market fee, then no market fee should be levied in respect

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of sale or purchase of rice. ILR (1975) Andh Pra 462 Followed. (Paras 29, 31)

(G) A.P. (Agricultural Produce and Livestock) Markets Act (16 of 1966), S.2(I) - AGRICULTURAL PRODUCE - WORDS AND PHRASES - Agricultural produce - Definition of - Expression "produce of like nature" - Interpretation of - Agricultural produce whether processed or unprocessed are included in the definition.

It cannot be said that the expression 'either processed or unprocessed' occurring in S.2 (I) only qualifies the words forest produce or other produce of like nature and therefore 'produce of like nature' referred to therein, would only be produce ejusdem generis with forest produce and it is only forest produce and produce of like nature which processed or unprocessed would be 'agricultural produce'. The expression, produce of like nature', qualifies not only forest produce but also the previous words viz., 'anything produced from land in the course of agriculture or horticulture' and such things would be agriculture produce, whether they are processed or unprocessed. (Para 30)

(H) A.P. (Agricultural Produce and Livestock) Markets Act (16 of 1966), S.7(6) - AGRICULTURAL PRODUCE - FREEDOM OF TRADE - Section does not infringe Art.19 (1) (g) of the Constitution - Does not impose unreasonable restriction - Section is not applicable to transactions of domestic consumption. (Constitution of India, Art.19 (1) (g) and (6). (Para 33)

(I) A.P. (Agricultural Produce and Livestock) Markets Act (16 of 1966), S.12(1) - AGRICULTURAL PRODUCE - Market fee - Leviable only on purchase or sale of agricultural produce - Cannot be demanded when goods enter check post. (Para 34)

Cases Referred : Chronological Paras

AIR 1980 SC 1008 12, 21, 23, 24, 34

AIR 1976 AP 193 24

AIR 1975 SC 846 :1975 Tax LR 1455 22

ILR (1975) Andh Pra 462 29, 31

(1972) 1 Andh WR 216 18

AIR 1966 Raj 142 16

AIR 1962 SC 1517 33

AIR 1959 SC 300 12, 33

AIR 1959 Raj 75 15, 16

AIR 1958 AP 354 (FB) 17

AIR 1954 SC 282 12

(1936) 1 Ch D 430 : 155 LT 281, Ecclesiastical Commissioner for England's Conveyance and The Law of Property Act 1925. In Re 26

D. Sudhakara Rao, V. Raghunatha Rao. G.R. Subbarayan. D.V. Reddi Pantulu, P. Venkatarama Reddy, T. Ramam, P. Krishna Reddy, B.V. Ramamohan Rao, S. Venkata Reddy, M.V. Ramana Reddy. K.N. Jwala. P. Rajagopala Rao, N. Rajeswara Rao, M. Jagannadharao. I. Koti Reddi, P. Babul Reddy, C. Poornaiah, Siddadhasankar Roy. V. Jagannadha Rao, Shaik Sardar, G. Krishna Murty. E. Kalyana Ram, A. Hanumantha Rao, for Petitioners; Advocate General and Govt. Pleader for Food and Agriculture, on behalf of the State Government in all petitions and R. Narasimha Reddy, Standing Counsel for Marketing Committee on behalf of the Marketing Committee in all the petitions, D. Jayaram, Upendralal Waghray, for Respondents.

Judgement

ALLADI KUPPUSWAMI, C.J. :- The petitioners in these Writ Petitions are merchants carrying on business in various parts of Andhra Pradesh. The main prayer in these Writ Petitions is to declare the Notification dated 21-1-1978 published in the Andhra Pradesh Gazette dated 23-2-1978 as null and void and to direct the concerned Market Committees not to collect market fees at the rate of 1% in respect of all notified commodities under section 12 (1) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966, (referred to in this JUDGEMENT as the Act) read with Bye-law No. 24 (1) of the Bye-laws of the Market Committee.

2. Under Sec. 12 of the Act, the market committee shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area at such rate, not exceeding one rupee, as may be specified in the Bye-laws for every hundred rupees of the aggregate amount for which the notified agricultural produce, livestock or products of livestock is purchased or sold, whether for cash or deferred payment or other valuable consideration. The bye-laws of all the market committees initially provided for the levy of market fees at 0-25 Ps. per cent. Subsequently it was increased to 0.50 ps. Under Section 34 of the Act, a market Committee may, in respect of the notified area for which it

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was constituted, with the previous sanction of the Director of Marketing, make bye-laws for the regulation of the business and the conditions of trading therein. Section 33 of the Act enables the Government to make rules for carrying out the purposes of the Act. By Rule 86-D of the rules framed under the Act, it was provided that there should be a State Agricultural Marketing Advisory Board for the purpose of tendering advice to the Government in all matters relating to the utilisation of Central Market Fund for the general improvement of the markets in the State, to consider different problems of the market committees arising out of the enforcement of the Act and the rules and to tender necessary advice from time to time, to review the working of regulated markets in general and suggest measures to bring about uniformity in marketing practices in all the regulated markets.

3. The State Advisory Board at its meeting held on 27th and 28th of January, 1976 resolved to recommend the enhancement of the existing rate of market fees to 1% so as to enable the market committees to build up adequate finances to meet the increasing cost towards land acquisition and establishment of markets with all modern infrastructure facilities. The Director of Marketing accordingly addressed a letter No. Rc. I (2) 736/76 dated 16-2-1976 to all the Agricultural Market Committees in the Andhra Pradesh State, inviting their attention to the resolution of the Advisory Board and requesting them to place the proposals of the enhancement of the existing rates of market fees to Re. 1-00% ad valorem before the market committees and communicate the consent of the committee for the enhanced rate under Section 12 (1) of the Act of 1966 read with bye-law No. 24 (1) of the Market Committee Bye-laws. Accordingly each market committee passed a resolution accepting the recommendations of the Advisory Board and resolving to enhance the market fee to Re. 1-00%. They also requested the Director for necessary sanction and approval of the existing Bye-law 24 (1) of the Market Committee which had at that time provided for levying of a market fee of 0-50 p.%. Thereafter the impugned notification was issued by the Director of Marketing, approving the amendment to the existing Bye-law 24 (1) of the Market Committees, which is in the following terms :

AMENDMENT

For the existing Schedule under Byelaw 24 (1), the following shall be substituted, namely

SCHEDULE

Sl No. Notified

Commodities. Rate of Market

Fee in Rupees

per cent.

1. All notified Commodities. Re. 1%

2. Livestock. Re. 1%

4. In pursuance of this notification, the market committees began to levy market fee at the rate of 1%. This led to the filing of these Writ Petitions by the aggrieved merchants in various parts of the State of Andhra Pradesh questioning the validity of the Notification and praying for the issue of an appropriate Writ directing the market committees not to levy and collect market fees at 1%.

5. Before dealing with the several contentions raised by the Writ Petitioners in support of their Writ Petitions, it is desirable to set out the relevant provisions of the Act. Act No. 16 of 1966 was enacted to consolidate and amend the law relating to the regulation of purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection therewith. Under Section 3 of the Act, the Government is empowered to declare their intention of regulating the purchase and sale of such agricultural produce, livestock or products of livestock in such area as may be specified in such notification. The area so notified is called a 'notified area', vide Section 2 (xi) of the Act. After considering the objections and suggestions, the Government is authorised to publish a final notification declaring the area to be a 'notified area'. The Government also, under Section 4, is empowered to constitute a Market Committee for every notified area which shall be a body corporate having perpetual succession and a common seal. The duty of enforcing the provisions of the Act and the Rules and Bye-laws is entrusted to the market committee under Section 4 (2) of the Act. Section 4 (3) empowers the market committee to establish in the notified area such number

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of markets as the Government may, from time to time direct for the purchase of any notified agricultural produce, livestock or products of livestock and shall provide such facilities in the market as may be specified by the Government from time to time. Similarly, under Section 3 (b), the market committee may establish markets for the purchase and sale, solely of vegetables of fruits. Under Section 3 (c), the market committee shall declare, by notification, the limits of every market established by it, and this is known as the 'market area.' After the establishment of a market by the committee, the Government, under Section 4 (4), shall declare the market area and such other area adjoining, thereto as may be specified in the notification, to be a notified market area.

6. Section 7 of the Act, is in the following terms. Trading etc., in notified agricultural produce, livestock and products of livestock in the notified area: (1) No person shall, within a notified area, set up, establish or use, or continue or allow to be continued, any place for the purchase, sale, storage, weighment, curing, pressing or processing of any notified agricultural produce or products of livestock or for the purchase or sale of livestock except under and in accordance with the conditions of a licence granted to him by the market committee :

Provided that the market committee may exempt from the provisions of this sub-section any person who carries on the business of purchasing or selling any notified agricultural produce livestock or products of livestock not exceeding such value as may be prescribed:

Provided further that a person selling notified agricultural produce, livestock or products of livestock grown, reared or produced by him, shall be exempt from the provisions of this sub-section, but the Government may, for special reasons to be recorded in writing, withdraw such exemption in respect of any such person.

xx xx xx

(2) Nothing in sub-section (1) shall apply to a person purchasing notified agricultural produce, livestock or products of livestock for his own domestic consumption.

(3) omitted as unnecessary. xx xx

(4) xx xx

(5) xx xx

(6) Notwithstanding anything in subsection (1) no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area, outside the market in that area.

7. Section 12 is the most important section in connection with these writ petitions and may be set out in full :

12. Levy of fees by the market committees :-

(1) The market committee shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area at such rate, not exceeding one rupee, as may be specified in the bye-laws for every hundred rupees of the aggregate amount for which the notified agricultural produce, livestock or products of livestock is purchased or sold, whether for cash or deferred payment or other valuable consideration.

Explanation I:- For the purposes of this section, all notified agricultural produce, livestock or products of livestock taken out of a notified market area shall, unless the contrary is proved, be presummed to have been purchased or sold within such area.

Explanation II :- In the determination of the amount of fees payable under this Act, fractions of ten paise equal to or exceeding five paise shall be counted as ten paise and other fractions of ten paise shall be disregarded.

(2) The fees referred to in sub-section (1) shall be paid by the purchaser of the notified agricultural produce, livestock or products of livestock :

Provided that where the purchaser cannot be identified, the fees shall be paid by the seller.

8. Section 14 provides for the fund called "Market Committee Fund" in which all monies received by the market committee shall be paid into a fund called the Market Committee Fund all expenditure incurred by the Committee under the Act, shall be defrayed out of the said fund. Section 14 also provides that the surplus if any may be invested in such manner as may be prescribed. Sec. 15 enumerates the purposes for which the Market Committee Fund may be expended.

9. Section 16 provides for a Central Market Fund for the whole of the State. Every market committee has to contribute ten per cent of its annual income to the Central Market Fund, which is vested in the Government. Sec. 16 (2) of

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the Act enumerates the purposes for which the fund may be administered and applied by the Director of Marketing.

10. In exercise of the powers conferred by Section 33 of the Act, rules have been framed in G.O. Ms. No. 1900 Food and Agriculture (Legislation) dated 17th October, 1969. Chapter IV of the rules deals with the powers and functions of the market committee, and Chaptar V deals with the regulation and trading. Chapter VI relates to the levy and collection of market fees, and Chapter VIII, with market committee works.

11. The main contention of the petitioners in these Writ Petitions is that the levy of market fee at the rate of Re. 1/- per cent, is invalid as the said fee does not satisfy the tests of a valid fee as laid down in the decisions of the Supreme Court and of this Court and other High Courts in India.

12. The distinction between a tax and a fee has been clearly set out in innumerable decisions of the Supreme Court, the earliest of which is the well known case of Shirur Mutt in H.R.E. Madras v. L.T. Swamiar of Shirur Mutt, AIR 1954 SC 282. Subsequent to this decision, the Supreme Court had occasion to consider the characteristics of a fee in a number of cases. It is sufficient however, to refer only to those decisions which deal with market fees. In Arunachala Nadar v. State of Madras, AIR 1959 SC 300 dealing with the Madras Commercial Crops Markets Act, the Supreme Court observed that the Act, Rules and the Bye-laws framed thereunder, have a long-term target of providing a network of markets wherein facilities for correct weighment are ensured, storage accommodation is provided, and equal powers of bargaining ensured, so that the growers may bring their commercial crops to the market and sell them at reasonable prices. . ... .. . ..... . .. . The result of the implementation of the Act would be to eliminate, as far as possible, the middlemen and to give reasonable facilities for the growers of commercial crops to secure best prices for their commodities. Enactments similar to the Madras Commercial Crops Markets Act, have been made in almost all the States in India including the State of Andhra Pradesh. The validity of these enactments and the market fee levied in pursuance of such enactments, has been the subject of attack in a number of cases. It is unnecessary to deal with all the decisions in regard to market fees in view of the elaborate and extensive discussion on the subject in the very recent decision of the Supreme Court in Kewal Krishan v. State of Punjab, AIR 1980 SC 1008. After reviewing all the prior decisions, the Supreme Court summarised the principles for satisfying the tests for a valid levy of market fees on the agricultural produce bought or sold by licensees in a notified market area as follows:-

(1) The amount of fee realised must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for this purpose.

(2) That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the agricultural produce.

(3) That while rendering services in the market area for the purpose of facilitating the transactions of purchase and sale with a view to achieve the objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and reasonable correlation between the licensees and the transactions.

(4) That while conferring some special benefits on the licensees it is permissible to render such service in the market which may be in the general interest of all concerned with the transactions taking place in the market.

(5) That spending the amount of market fees for the purpose of augmenting the agricultural produce, its facility of transport in villages and to provide other, facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground that such services in the long run go to increase the volume of transactions in the market ultimately benefiting the traders also. Such an indirect and remote benefit to the traders is in no sense a special benefits to them.

(6) That the element of quid pro quo may not be possible or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.

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(7) At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above.

In the light of these principles it has to be seen whether the levy of market fee at Re. 1/- per cent by the various Market Committees, with which we are concerned, is valid and whether the above conditions laid down by the Supreme Court are satisfied, in the present case.

13. Before dealing with the main contention, it would be convenient to deal with certain arguments addressed on behalf of the petitioners in regard to the amendment of the bye-law No. 24 (1) by each of the Market Committees.

14. It is submitted on behalf of the petitioners that under Section 34 of the Act, the Market Committee is empowered to make bye-laws with the previous sanction of the Director of Marketing. In this case, no such previous sanction was obtained and hence the amendment of Bye-law No. 24 (1) is contrary to Section 34 of the Act, and is therefore invalid. It has already been stated that the Director of Marketing addressed a letter on 16-2-1976 to all the Agricultural Market Committees in the State of Andhra Pradesh inviting their attention to the resolution of the State Advisory Board at its meeting held on 27th and 28th January, 1976 to recommend enhancement of the existing rate of market fee to Re. 1/- per cent and requesting the Market Committees to communicate their consent for enhancing the rate and amending the Bye-law No. 24 (1) accordingly. In pursuance of this letter, each Market Committee passed a resolution resolving to enhance the market fee to Re. 1/-% and requesting the Director to accord necessary sanction and approval for the amendment of the existing Bye-law No. 24 (1). The Director, thereupon issued a Notification approving the amendment. Having regard to the above facts it is argued that there was no previous sanction by the Director to the amendment of the bye-law as required by Section 34 of the Act. All that happened was that the Director merely wrote a letter to the Market Committees suggesting the enhancement of the market fee and the amendment of the bye-law; the Market Committees thereupon passed a resolution to that effect and thereafter the Director approved the amendment to the bye-law. It is therefore clear according to the petitioners that there was no previous sanction for the amendment of the bye-law of the Director as required by Sec.34. We are unable to agree with this contention. We consider that the communication of the Director dated 16-2-1976 requesting the Committees to enhance the market fee to Re. 1/- per cent and communicate their consent to enhance the market fee and to amend the bye-law, should be regarded as the previous sanction of the Director for the amendment of the bye-law. The Director himself has suggested that the market fee should be enhanced to Re. 1/- per cent and the bye-law should also be amended to give effect to such increase. We see absolutely no reason why the letter containing that suggestion should not be regarded as a previous sanction for the amendment of the bye-law.

15. Sri V. Jagannadha Rao, who appeared for the petitioners in some of the Writ Petitions drew our attention to Jethmal v. State of Rajasthan, AIR 1959 Raj 75. Under Section 64 (1) of Rajasthan Panchayat Act, it was necessary to obtain previous sanction of the Government before imposing a tax. In the case before the Rajasthan High Court, the Panchayat passed a resolution for the imposition of tax, invited objections, considered them and asked the Government for sanction. It was held that such a sanction could not be previous sanction within the meaning of Section 64 (1) of the Rajasthan Panchayat Act. It was observed that the Panchayat, as soon as it wishes to impose a tax, should communicate its wishes to the Government and must get the sanction of the Government to take steps for the imposition of the tax and follow the procedure provided for such imposition. It is only when the sanction of the Government is received that the body imposing the tax is authorised to take steps for publication of the tax intended to be imposed and for inviting objections to the tax. Thereafter it has to consider the objections and finally decide whether it would impose the tax and at what rate. When this is decided, the final proposal is again submitted to Government for sanction and on receipt of the second sanction, the tax can be imposed from such date as may be fixed under the law. As the previous

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sanction was not obtained as required by Section 64 (1), it was held that the imposition of the tax by the Panchayat should be struck down. We do not think that the above decision has any application to the facts of the present case. As pointed out, the Director wrote a letter on 16-2-1976 suggesting that the Market Committees should impose a fee of Re. 1/- per cent and amend the bye-law No. 24 (1) accordingly; and this can legitimately be considered as a previous sanction by the Director. The Act or the Rules do not prescribe any particular form in which sanction should be given and we are satisfied that the communication addressed by the Director on 16-2-1976, can be considered to be a sanction within the meaning of Sec.34 of the Act.

16. Another decision relied upon by the petitioners in this connection is Bhikam Chand v. State, AIR 1966 Raj 142, 150 where that High Court had to consider the validity of bye-laws made under Section 37 of the Rajasthan Agricultural Produce Markets Act, which is similar to Act No. 34 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act. In that case, the Director of Agriculture sent the model bye-laws as approved by him and requested the Market Committees to frame bye-laws accordingly. The model bye-laws were then considered by various Market Committees and they purported to pass them. The learned Judges held that the several Marketing Committees have to first apply their mind to the model bye-laws and after making changes wherever they considered it necessary, to seek the previous sanction of the competent authority. Thereafter, on receipt of the sanction, it was for the Marketing Committees again to consider and pass the bye-laws in the light of the previous sanction that they might have received. As this was not done, it was held that the bye-laws were null and void. The decision in Jethmal v. State of Rajasthan (AIR 1959 Raj 75) (supra), was followed. We do not agree with the observations of the Rajasthan High Court that it is necessary for the Market Committees to first consider the bye-laws suggested by the Director, then make amendments and again submit them to the Director for approval in every case.

17. There is no warrant for such a procedure in the Act or the Rules. Further the facts in the present case are distinguishable. We are not here concerned with the case of the Committees considering a whole set of bye-laws. All that was recommended to them was the increase of market fee from 0-50 ps. or half a rupee per cent to one rupee per cent. It was a simple matter which the Market Committees had to consider in the light of the recommendations of the State Advisory Board and the communication of the Director and if they agreed with such a course, their action in amending the bye-law cannot be said to be invalid on the ground that there was no previous sanction of the Director. A reference was also made to the decision in Sreerammulu Chetty v. The State, AIR 1958 Andh Pra 354 (FB), in which the Court had to consider Sec.19 (4) of the Madras General Sales Tax Act which provided that certain rules are to be made only after previous publication. The decision has no application to the facts of the present case.

18. Reliance was also placed on the decision of this Court in Minerva Talkies v. State of Andhra Pradesh, (1972) 1 Andh WR 216 where a Bench of this Court had to consider Section 81 (1) (b) of the Andhra Pradesh Municipalities Act which provided that "Every Council may, by resolution, and with the previous sanction of the Government also levy a tax on advertisements." In that case, the Government issued a G.O. in the following terms:

"In the circumstances stated by the Director of Municipal Administration in his letter second read above (R.O.C. No. 79955/67 dated 20-10-1967) the Government hereby accord sanction as required under clause (b) of sub-section (1) of Section 81 of the Andhra Pradesh Municipalities Act, 1965, to all the Municipal Councils in the State for the levy of a tax on advertisements with effect from 1-4-1968 subject to the rules issued with the G.O. first read above (G.O. Ms. No. 470, M.A., dated 24th July, 1967) The Municipal Council shall however, pass a resolution for the purpose before the tax is levied."

Thereafter a resolution was passed by the Municipality. This resolution was struck down on the ground that there was no previous sanction for it. It was observed that admittedly at the time when the said G.O. was issued, there

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was no resolution passed by any Municipality. The Kakinada Municipality had not any occasion to consider the question as to whether tax on advertisements should be levied or not. It is only in pursuance of this G.O. that the Municipality published a notice in the papers inviting objections and after considering the objections, the impugned resolution was passed. This resolution was admittedly not forwarded to the Government for sanction. The contention of the advocate appearing for the Government, that a previous general sanction as was accorded in the G.O. was sufficient, was negatived. It was held that the approval or sanction must have been prior to the levy of the tax and the process suggested in section 81 could not be topsy-turvied by giving a direction. The distinction between direction and sanction must be clealy borne in mind. In our view, the facts in the present case are distinguishable. This is not a case where the Statute requires previous sanction of the Government for an imposition. Section 3A deals with making of bye-laws and provides that the Committee should do so after obtaining the previous sanction. Further in this case there was already a bye-law authorising imposition of market fee at a particular rate and the suggestion of the Director of Marketing in this case was only that the market fees should be enhanced. The suggestion was accepted and the bye-law was amended and again it was sent to the Director of Marketing Committees who approved the amendment made to the existing bye-law by the Market Committee. In these circumstances it is legitimate to treat the communication of the Director as a previous sanction within the meaning of Section 34.

19. Another submission that was made in this connection was that as the market fee imposed has to be commensurate with the services rendered, and as the services rendered by each Market Committee may vary from Committee to Committee and from time to time, each Market Committee has to consider independently what the fee should be and then make a bye-law for imposing that levy. On the other hand in this case, all the Market Committees made a uniform levy of 1%, following the direction of the Director of Marketing. This would show that the Market Committees did not apply their minds at all and they merely proceeded on the footing that it was their duty to obey implicitly the directions of the Director of Marketing, and increased the fee to 1% from ½%. It was argued that under the Act, the duty of levying market fee is entrusted to the Market Committee and that authority cannot act on the dictation of a higher authority, thus abdicating its functions. We are not inclined to agree with this submission. From the mere fact that the Market Committees agreed with the suggestion made by the Director of Marketing, it does not follow that they did not apply their minds. We find that this suggestion was placed before the Committees and it was discussed and passed by the Committees. We have no reason to assume that they did not apply their minds independently and merely followed the direction of the Director of Marketing. On the other hand, in the case of the resolution passed by the Nizamabad Market Committee. for instance, we find that one member had opposed the suggested increase. This clearly shows that there was a discussion and different opinions were expressed but ultimately the suggestion was accepted. With reference to the contention that there was a uniform increase by the Market Committees irrespective of the different circumstances existing in each Market Committee and the difference in the services rendered by the Market Committees, it has to be noticed that this general increase became necessary in view of the increase in the price of land as well as in the cost of buildings. A large part of the expenses of all the Market Committees, is being spent for acquiring sites for the Markets, constructing buildings thereon, laying roads and providing equipment for weighment etc. As there has been a uniform increase in the price of land, cost of construction of buildings etc. throughout the State, it naturally became necessary for all the Market Committees to increase the rate of fees from ½% to 1%. The need for the increase viz. the rise in prices of land buildings and commodities etc., was common to all the Market Committees and therefore there was a uniform increase. The criticism, that all the Market Committees uniformly increased the levy to 1% without any distinction being made between the needs of the Committees, is not justified.

20. We now turn to the main contention urged on behalf of the petitioners that the levy of market fees at 1% is excessive and out of all proportion to the

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services rendered by the Market Committees to the traders from whom the fee is collected and is therefore ultra vires. Sri Siddartha Shanker Ray who addressed the main arguments on this aspect, appeared for the Nizambad Market Committee. He submitted that there is nothing to show that the fee collected at the rate of 1% was necessary to meet requirements of the Market Committee to render services to traders and that no facts have been placed to satisfy the Court as to how the money was to be applied and what factors were taken into account for increasing the fee. On the other hand he submitted that even the statement of accounts filed by the Market Committee, showed that there was a huge surplus and that the annual expenditure was much less than the income derived by levying the fee at 1%. He also stated that there is no clear enumeration about the special services to be rendered, that there was no proper budget giving the estimated income and expenditure and that there were no concrete plans or works to be undertaken in the near future. He drew our attention to the statement showing the details of income and expenditure for the three years 1977-78 1978-79 and 1979-80. This statement shows that there was a closing balance of about 39 lakhs of rupees at the end of the year 1977-78, about 51 lakhs of rupees at the end of 1978-79 and about 66 lakhs of rupees at the end of 1979-80. He therefore submitted that this showed that the income derived from the fees at 1% was out of all proportion to the expenditure incurred by the Market Committee.

21. In the counter affidavit filed on behalf of the Market Committee, it is stated that the Committee has taken up constructional works with a spillover for 1978-79, estimated at over 16 lakhs of rupees and new works have to be completed worth about 21 lakhs of rupees. The expenditure for development of eastern side yard portion of Shradhanand Gunj, Nizamabad, came to nearly 24 lakhs of rupees and of the Western Side yard at 134 lakhs of rupees. It is stated that for the year 1977-78, the Committee got a total income of about 18 lakhs of rupees by way of market fees and licence fees and the expenditure was nearly 16 lakhs of rupees. It is further stated that the sum of rupees 39 lakhs as balance at the end of the year 1977-78, is not sufficient to meet the cost of land acquisition. In general it is stated that the Committee is utilising the amount for developmental works and modern facilities are provided. It is true that the Committee was having a large balance at the end of the years 1977-78, 1978-79 and 1979-80 but it must not be forgotten that the establishment and development of a market is a long-drawn process which involves acquisition of a site and construction of buildings. In cases of land acquisition, it may take time for awards being passed and compensation being paid. There is also the prospect of appeals being filed by the owners and compensation being increased by Civil Court on reference and by the High Court on appeal. It is also well-known that the cost of land as well as construction is increasing at a tremendous rate. It is therefore in the interest of the Market Committee to have sufficient balance to meet these expenses from time to time. It is not always possible to work out with mathematical precision the amount of fee required for the services to be rendered each year and to collect only just that amount which is sufficient for meeting the expenditure in that year. In some years, the income may exceed the expenditure and in other years when works begin to progress rapidly, the expenditure may be far in excess of the income. It is wrong to take only one particular year or a few years into consideration and decide whether the fee is commensurate with the services rendered or whether it is out of all proportion to the services rendered. An overall picture has to be taken. In this connection, it has to be noticed, as pointed out in the counter affidavit that the market fee levied in the State is much less than what is levied in other States. Even in the latest decision of the Supreme Court in Kewal Krishan v. State of Punjab, AIR 1980 SC 1008, the levy or fees at 2% was held to be justified and it was only when the fee was sought to be increased to 3%, it was struck down. We are not therefore satisfied, that the fees derived at the rate of 1% is not commensurate with the services rendered.

22. Sri S.S. Ray, strongly relied on the decision of the Supreme Court in State of Maharashtra v. Salvation Army. AIR 1975 SC 846. The Salvation Army was called upon to pay a contribution of 2% of the sums which it received from various sources under Section 58 of the Bombay Public Trusts Act which prescribed that every public trust shall pay

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to the Public Trusts' Administration Fund annually such contribution as may be prescribed. It was found that the contribution at the rate of 2% on the gross income of the trusts assumed the character of tax as that merely augmented the income of the Charity Organisation. On facts it was found that there was very large surplus in the account of the Public Trusts Administration Fund. It was therefore held that if the Organisation is allowed to go on increasing its surplus year after year out of the amount of fee collected, it would demonstrate that the fee levied was unjustifiably disproportionate to the service rendered. But the Supreme Court itself pointed out in the same decision, it is not necessary that all available surplus in a year or for some years should always go in for reducing the rate of contribution for the subsequent year or years. No hard and fast rule applicable in all contingencies can be formulated. The Court will have to look into the nature of the organisation, the potentiality for its growth, the multiplication in its work consequent on its expansion for rendering the services visualized by the Act and the necessity for capital expenditure in the near future. It therefore follows that each case has to be decided according to the particular facts and circumstances of that case. As we have observed, in this case, the Market Committees are still in their infant stages and they have considerable developmental activities ahead of them and it is necessary for them to acquire sites, build markets and provide other amenities. It cannot be said that in these circumstances that the mere existence of surplus for a few years, would necessitate a reduction in the market fee and at any rate the increase in the rate of market fees is uncalled for. While we have considered the facts relating to the Nizamabad Market Committee, we have also considered the cases of other Market Committees which are the subject matter of other Writ Petitions and the above observations equally apply to those Market Committees.

23. Another argument that was advanced was that in many of these markets, services are rendered not only in the market but outside the market areas. It is true, as has been held in Kewal Krishan v. State of Punjab, AIR 1980 SC 1008, that the benefit rendered by the Market Committee, has to be correlated to the transactions in the market area but that does not mean that all the services must be performed within the market area. They may be performed outside but still they may be related to transactions within the area.

24. In I.R. Sons v. State, AIR 1976 Andh Pra 193, to which one of us viz.. Jeevan Reddy J. was a party, it was held that the services to be rendered and the facilities provided by the Market Committee extend throughout the notified market area without being confined to the market area and therefore S.12 cannot be said to be ultra vires on the ground that it authorises levy of fees on transactions taking place outside the markets established by the Market Committee though within the notified market area. It may be that in view of the decision of the Supreme Court in Kewal Krishan v. State of Punjab, AIR 1980 SC 1008 some of the observations in the JUDGEMENT in I.R. Sons v. State, AIR 1976 Andh Pra 193 may be considered to be too wide; but we do not find anything in the JUDGEMENT of the Supreme Court which is contrary to the view expressed by the division bench that the services to be rendered and the facilities to be provided by the Market Committee extend throughout the notified market area without being confined to the Market area.

25. In some of the Writ Petitions it was argued that the market area and the notified market area are too widely demarcated. It was pointed out by the learned counsel who appeared for the Market Committees in West Godavari and Krishna that in Tanuku, the entire Gram Panchayat Tanuku has been notified as a market area and an area within 8 K. Ms. surrounding the Taluk Office was notified as the market area. We are unable to agree with this contention that such a demarcation is contrary to law. Under Section 4 (3) (c) of the Act, after constituting markets, the Market Committee is empowered to declare the limits of every market established by it, which is referred to as the market area. This section does not provide any limitation in regard to the limits of the market. Similarly under Section 4 (4), the Government has to declare by notification the market area and such other area adjoining thereto as may be specified in the notification, as a notified market area. The only limitation as far as this is concerned is that the other area must be one adjoining the market area and as

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long as it is adjourning the market area, there is no further limitation prescribed.

26. Mr. M. Jagannadha Rao, learned counsel for the petitioners in W. P. Nos. 5312 to 5326 of 1980 submitted that in the case of Alamuru, the notified market area is described to be 16 K. Ms. surrounding the Panchayat. He submitted that an area within 16 K. Ms. distance, cannot be considered to be an area adjoining the market. He drew our attention to Ecclesiastical Commissioner for England's conveyance and The Law of Property Act, 1925, In Re (1936) 1 Ch D 430, in which the distinction between the expressions 'adjacent' and 'adjoining' is pointed out. It was observed that the word 'adjoining' means 'which lies near so as to touch in some part the land which it is said to adjoin. Of necessity it connotes contiguity.' In this case, there is nothing to show that the land within 16 K. Ms. is not continguous with the market. We are not satisfied that any of the notifications either under S.4 (3) (c) declaring the market area or under Section 4 (4) of the Act declaring the notified market area, are invalid for any of the grounds urged by the petitioners in the different writ petitions.

27. Sri Babulu Reddy who appeared in W. P. 3295/77 submitted that the petitioners were dealers in cotton seeds, that they purchased cotton seeds in large quantities within the notified market area of Adoni and that by Circular dated 19-11-1974, the Market Committee directed the petitioner to pay market fee on such purchases. It was argued that cotton seeds are product of Kapas and as Kapas is already subject to the levy of market fee, the levy of fee on seeds would constitute a second levy on an agricultural produce which is not permissible. It was also argued that cotton seed is not an agricultural produce and that any notification specifying cotton seed as an agricultural produce, is ultra vires the rulemaking power and no market fee on cotton seed could be levied or collected.

28. We are unable to agree with the contention that cotton seed is not an agricultural produce. Under S.2 (1) of the Act. 'agricultural produce' is defined as meaning, 'anything produced from land in the course of agriculture or horticulture and includes forest produce or any produce of like nature either processed or unprocessed and declared by the Government by notification to be agricultural produce for the purpose of the Act." Cotton seed is in our view a thing produced from land in the course of horticulture. It is only removed from kapas (cotton) by a particular process; but both cotton as well as seed are things produced from land in the course of horticulture.

29. Similarly in W. P. No. 7781 of 1979 it was contended that rice is not an agricultural produce. Rice is found in and is a part of the paddy produced in the course of agriculture and hence it is a thing produced from land in the course of agriculture within the meaning of Section 2 (i). The same view was expressed by a Division Bench of this Court in Chenchaiah Chetty v. Govt. of Andhra Pradesh, ILR (1975) Andh Pra 462, where it was held that rice constitutes 'agricultural produce' within the meaning of Section 2 (i) of the Act and the demand of market fee in respect of transactions in rice is valid. We fully agree with the reasoning and conclusion of the learned Judges in that decision. For the same reason also we hold that cotton seeds are 'agricultural produce' within the meaning of Section 2 (i) of the Act. With reference to the argument that in the sale of paddy, it is subject to market fee and it would be inequitable if transaction in rice is subject to fee, it has been brought to our notice that there is a notification that if paddy has already been subject to levy of market fee, then no market fee should be levied in respect of sale or purchase of rice, vide Circular dated 27-4-1978.

30. Sri C. Poornaiah who appeared for the petitioner in W. P. No. 690 of 1978 contended that the expression 'either processed or unprocessed' occurring in Section 2 (i) of the Act will only qualify the words forest produce or other produce of like nature. He submitted that 'produce of like nature' referred to therein, would only be produce ejusdem generis with forest produce and it is only forest produce and produce of like nature which processed or unprocessed would be 'agricultural produce'. We do not agree with this submission. The expression' 'produce of like nature', in our view, qualifies not only forest produce but also the previous words viz., 'anything produced from land in the course of agriculture or horticulture' and such things would be agricultural produce, whether they are processed or whether they are unprocessed.

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31. The advocates for some of the petitioners contended that removing cotton seed from cotton or rice from paddy, cannot be said to be 'processing' within the meaning of the section. It is unnecessary to consider this contention as we are of the view, agreeing with the decision of this Court in Chenchaiah Chetty v. Govt. of Andhra Pradesh, ILR (1975) Andh Pra 462, that both cotton seed and rice would come within the expression, 'anything produced from land in the course of agriculture or horticulture' and it is not necessary for the respondents to rely on the subsequent part of the definition.

32. Lastly it was argued on behalf of the petitioners that Section 7 (6) of the Act infringes Article 19 (1) (g) of the Constitution. It is provided that no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area, outside the market in that area. In other words, every person has to sell agricultural produce, livestock etc. in a notified market area only within the market. The area occupied by the market is a very insignificant one, and if all persons in the whole notified market area which would extend to several kilometres, are compelled to go to the market for transacting their business every time, it would be impossible for them to carry on business and hence Section 7 (6) is an unreasonable restriction on their right to carry on business. It was also submitted that even in a case where a dealer within the notified market area sells goods to an ordinary citizen for domestic consumption, he would still be compelled to come to the market to effect sale.

33. In Arunachala Nadar v. State of Madras, AIR 1959 SC 300, when it was pointed out to the Supreme Court that the grower was obliged to carry the goods to a centralised place if he has to dispose of his goods, the Supreme Court observed that the growers may have some difficulty in this regard but that is counterbalanced by the marketing facilities provided to them under the Act. It was observed that a provision limiting the area within which goods are to be sold or purchased is necessary for preventing business being diverted to other places and the object of the scheme being defeated. It was also argued that small traders would be compelled to resort to distant markets, that some of them will be forced to give up their business and others would have to incur unnecessary expenditure which they could not afford. The Supreme Court pointed out that if small traders are exempted it would create loopholes in the scheme, through which the big trader may operate and thereby the object itself would be defeated and the Act is an integrated one. Similarly in Muhammadbhai v. State of Gujarat, AIR 1962 SC 1517 (1527), the Supreme Court observed that transactions between traders and traders have to be controlled if the control in the interest of agricultural producers and the general public has to be effective. Taking the entire scheme of the Act, we are of the view that Section 7 (6) of the Act cannot be said to be an unreasonable restriction on the right to carry on business. We are however inclined to agree with the contention that S.7 (6) would not apply to the case of transactions between dealers and consumers for domestic consumption. The learned Advocate-General fairly conceded that Section 7 (6) must be read as not applying to such sales. The Act is intended to regulate purchases and sales of agricultural produce and as pointed out by the Supreme Court in Arunachala Nadar v. State of Madras, AIR 1959 SC 300 the main purpose of the Act is to provide facilities for correct weighment, storage and equal powers of bargaining between growers and traders. If S.7 (6) is made applicable even to transactions between dealers and ordinary consumers for domestic consumption, it would lead to an impossible situation whereby every consumer will be forced to travel several miles to the market for buying the daily needs. We are therefore of the view, apart from the concession made by the learned Advocate-General that S.7 (6) of the Act will not apply to purchases or sales by dealers in favour of consumers for domestic consumption.

34. On behalf of the petitioners in some of the Writ petitions, it was submitted that market fee is being levied at the check posts when the goods are being brought into the notified market area and such a levy is illegal. The learned Advocate-General submitted that no market fee is being levied at the check posts and no person is compelled to do so but as a matter of convenience, for the dealer, he is permitted to pay the market fee at the check at post. However, if, as the petitioners allege, market fee is being collected at the

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check-posts, we are of the view that such levy is illegal. Under Section 12 of the Act, market fee is levied on a notified agricultural produce at a particular rate for every hundered rupees of the aggregate amount for which the produce is purchased or sold. Unless therefore there is a transaction of sale or purchase, there cannot be a levy of market fee. Here again, the learned Advocate-General conceded that if market fee is collected when goods are coming in and even before sale or purchase is effected, no market fee can be collected. Whatever may have been the doubts regarding the scope and extent of the application of the market fees derived by the Market Committees earlier, detailed guidelines have been enunciated by the Supreme Court in Kewal Krishan v. State of Punjab, AIR 1980 SC 1008 particularly in paragraph 23 of its JUDGEMENT where their Lordships have enumerated the principles for satisfying the tests for a valid levy of market fees. The Market Committees are directed to bear these principles in mind while utilising the market fees in developing markets. We may also emphasise just as the Supreme Court did in the above case, the need for maintaining proper budget estimates, balance-sheets showing the balance of money in hand, in deposit, and the estimated income and expenditure etc., so that it will be possible to decide as to what extent the levying of market fee can be justified, taking an overall picture.

35. As we have negatived all the contentions of the Writ Petitioners, the Writ Petitions are dismissed with costs; subject however to the observations in connection with Section 7 (6) of the Act with regard to the transactions between a dealer and a consumer for domestic consumption, and with regard to the legality of the levy at check posts before there is any transaction of sale or purchase.

36. Advocate's fee Rs. 100/- in each of the writ petitions.

Petitions dismissed.

**AIR 1981 ANDHRA PRADESH 395 "N. Sreerama Murthy v. State"**

**ANDHRA PRADESH HIGH COURT**

Coram : 2 MADHAVA REDDY AND RAGHUVIR, JJ. ( Division Bench )

N. Sreerama Murthy and others, Petitioners v. The State of A. P. and another, Respondents.

W.Ps. Nos.6137, 6413 of 1980 and 4319 of 1981, D/- 29 -7 -1981.

(A) A.P. (Agricultural Produce and Livestock) Markets Act (16 of 1966), S.5(1), S.5(2) (as amended by Act 6 of 1981) - AGRICULTURAL PRODUCE - EQUALITY - Constitutionality - S.5 (1) and (2) does not violate Art.14.

Constitution of India, Art.14.

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S.5 (1) and (2) of the Act (as amended by Act 6 of 1981) empowering the Government to nominate not only the growers of the agricultural produce and the owners of livestock and products of livestock on the market committees, but also the representatives of the persons licensed under S.7 (1) of the Act (i.e. traders), does not Violate Art.14 of the Constitution. Since all the interests envisaged by the Act are represented by persons nominated by the Government, no question of hostile discrimination arises. (Para 6)

It cannot be said that the method of election alone is to be preferred as against the method of nomination in constituting the market committees. It is a matter of opinion. So long as such nomination does not violate any provision of the Constitution, the Court cannot substitute its own view in matters such as these and strike down the legislation. (Para 6)

The provisions made in the amended S.5 (1) and (2) read with the other provisions of the Act provide sufficient guidelines to the Government, the highest authority of the State, in the matter of nominating the members to the committee; be it from the category of growers or the traders. It is well settled that if such a power is vested in the highest authority, it is assumed that it would act fairly having regard to the provisions of the Act and its intendment and to advance the purposes of the Act, it, therefore, cannot be said that the amended provision is violative of Art.14 of the Constitution. AIR 1961 SC 1602, Rel. on. (Paras 8, 9)

(B) A.P. (Agricultural Produce and Livestock) Markets Act (16 of 1966), S.5(1) (as amended by Act 6 of 1981) - AGRICULTURAL PRODUCE - EQUALITY - Composition of market committee - Greater representation given to the growers as compared to traders - Does not violate Art.14.

Constitution of India, Art.14.

The representation on a particular committee is itself a right granted by the Statute and not a fundamental right or a natural right. If the Legislature, in its wisdom having regard to the large number of growers of agricultural produce and owners of livestock and products of livestock, has given a larger representation to them on the market committee than to the traders who are infinitesimally few as compared to the growers that legislation cannot be struck down as vesting an arbitrary power or as discriminatory. (Para 10)

Cases Referred : Chronological Paras

(1980) 1 APLJ 120 2

AIR 1961 SC 1602 8

AIR 1953 SC 404 : 1953 Cri LJ 1621 8

AIR 1952 SC 123 : 1952 Cri LJ 805 8

R. Venugopal Reddy, for Petitioners; Advocate General and Govt. Pleader for Food and Agriculture, for Respondents.

Judgement

MADHAVA REDDY, J.:- These three writ petitions call in question the vires of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Amendment Ordinance No.11 of 1980. Subsequent to the filing of these petitions, this Ordinance was replaced by the Andhra Pradesh (Agricultural Produce and Livestock) Markets (Amendment) Act, 1981 (Act 6 of 1981) published in the Andhra Pradesh Gazette dated 30-3-1981. This Act is deemed to have come into force on 2-12-1980, the date on which the Ordinance came into force. From the relief claimed in the writ petitions, it would appear as if the vires of the entire amendment Act is challenged. But during the course of the arguments, the attack was confined to Section 2 of the Amendment Act by which sub-sections (1) and (2) of Section 5 of the principal Act were amended.

2. Sub-sections (1) and (2) of Section 5 of the Act, as they stood prior to the amendment, read as follows:-

"5. Composition of market committee:

(1) Every market committee shall consist of such number of members, being not less than twelve and not more than sixteen, as the case may be fixed for it by the Government and shall be constituted in the following manner:-

(i) not less than one half of the members to be appointed by the Government, after consultation with the Director of Marketing, from among the growers of agricultural produce and the owners of livestock and products of livestock in the notified area;

(ii) One member to be appointed by the Government from among the presidents and persons, if any, for the time being performing the functions of the presidents of the co-operative marketing societies having their areas of operation within the notified area: or in the absence of such societies to be elected as specified in Clause (iv);

(iii) (a) one representative having jurisdiction over the notified area, of the Agricultural Department or the Animal Husbandry

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Department, to be appointed by the Government;

(b) the chairman of the municipality or the sarpanch of the gram panchayat, as the case may be, within whose jurisdiction the office of the market committee is located;

Provided that in the case of the Municipal Corporation of Hyderabad, such person as may be nominated by the Corporation may represent the Corporation;

(iv) the remaining members to be elected in the prescribed manner by the persons licensed under sub-section (1) of Section 7 in the notified area from among themselves;

Provided that where a market committee is constituted in any notified area for the first time the Government shall appoint the members under this clause from out of a panel of traders of the notified agricultural produce, livestock or products of livestock in the notified area, furnished by the Director of Marketing to the Government.

(2) Every market committee shall elect two of its members other than those mentioned in clause (iii) of sub-section (1) to be respectively chairman and vice-chairman thereof."

In P. Chandramouli v. Government of A.P., (1980) 1 APLJ 120, sub-sections (1) and (2) of Section 3 (5 ?) of the Act in so far as they made provision for election of the representatives of persons licensed under sub-sec. (1) of Section 7 (for short 'Traders') and provided for nomination of the growers of the agricultural produce and owners of livestock and products of livestock to a market committee, were questioned as violative of Art.14 of the Constitution. That batch of writ petitions was allowed by a Division Bench of this Court, to which one of us (Madhava Reddy, J.) was a party. Aggrieved by that JUDGEMENT, the State Government preferred an appeal on special leave before the Supreme Court and the operation of the JUDGEMENT of the High Court was suspended. Taking shelter under the orders of suspension issued by the Supreme Court, when the Government proceeded to nominate some of the growers of agricultural produce to some of the market committees that was once again called in question before this Court in Some writ petitions. While so, the impugned Ordinance No. 11 of 1980 was issued which was replaced by identical enactment, Act 6 of 1981 provisions of which are called in question now in these writ petitions. The provisions of sub-sections (1) and (2) of Section 5 which are substituted in the principal Act by S.2 of the Amendment Act and which are called in question, read as follows :-

"(1) Every market committee shall consist of such number of members, being not less than fifteen and not more than eighteen, as may be fixed for it by the Government by notification, and shall be constituted in the following manner :

(i) not less than two-thirds of the members to be appointed by the Government after consultation with the Director of Marketing, from among the following categories of growers of agricultural produce and the owners of livestock and products of livestock in the notified area, namely :

(a) growers of agricultural produce who are small farmers of dry lands;

(b) growers of agricultural produce, other than small farmers of dry lands;

(c) growers of agricultural produce who are small farmers of wet lands;

(d) growers of agricultural produce, other than small farmers, of wet lands; and

(e) the owners of livestock and products of livestock;

(ii) one member to be appointed by the Government from among the presidents and persons if any for the time being performing the functions of the presidents, of the cooperative marketing societies having their areas of operation within the notified area, or in the absence of such societies, to be appointed as specified in Clause (iv);

(iii) (a) one representative, having jurisdiction over the notified area, of the Agricultural Department or the Animal Husbandry Department to be appointed by the Government;

(b) the Chairman of the Municipality or the Sarpanch of the gram panchayat, as the case may be, within whose jurisdiction the office of the market committee is located;

Provided that in the case of the Municipal Corporation of Hyderabad and Visakhapatnam Municipal Corporation, such person as may be nominated by that Corporation, may represent the Corporation;

(iv) the remaining members, to be appointed by the Government after consultation with the Director of Marketing, from among the traders belonging to the following categories, namely :-

(a) small traders whose annual turnover of trade in the notified area does not exceed rupees two lakhs;

(b) other traders in the notified area.

Explanation I:- For the purpose of this sub-section, the term 'small farmer of dry

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lands' shall mean a farmer holding a total extent of not more than 4.04686 hectares (ten acres) of dry land, and the term' small farmer of wet lands' shall mean a farmer holding a total extent of not more than 2.02343 hectares (five acres) of wet land and the term 'trader' shall mean a person licensed under sub-section (1) of Section 7 in the notified area; Explanation II :- In computing the extent of land held by a farmer for the purpose of this sub-section, 0.404(,86 hectares (one acre) of wet land shall be deemed to be equal to 0.809372 (two acres) of dry land.

(2) Every market committee shall have a Chairman and Vice-Chairman, to be appointed by the Government after consultation with the Director of Marketing from among its members specified in Clauses (i) and (iv) of sub-section (1)." It would be observed that by virtue of the amendment, the Government is now empowered to nominate not only the growers of the agricultural produce and the owners of livestock and products of livestock on the market committees, but also the representatives of the persons licensed under sub-section (1) of Section 7 of the Act (the traders) in respect of whom, under the principal Act, there was a provision for election from among themselves.

3. It is contended by Sri Venugopal Reddy, learned counsel who led the arguments in this case and also by Sri Subba Rao, learned counsel who followed, that this amendment is in the teeth of the JUDGEMENT of this Court declaring the provisions of the principal Act ultra vires and it suffers from the same vice as that of the principal Act which was struck down by this Court. It is pointed out that sub-sections (1) and (2) of the principal Act in so far as they provide for the election of traders to the market committee and for nomination of the growers of agricultural produce, was violative of Article 14 of the Constitution and in the course of the JUDGEMENT striking down that provision, the Court had observed :

"The statutory purpose underlying the provision providing for representation to the market committee is to provide for the promotion and protection of interests of growers and traders who are the directly affected parties under the Act. The statute accepts broadly the principle that these interests are best protected by permitting the affected owners of those interests to elect their representatives to the market committee in whose hands the management of the market yard and the enforcement of the entire Act is placed. If the market committee is not properly balanced by due representation to the conflicting interests and is tilted against anyone of the two major interests that situation of imbalance would lead not only to a failure of the Act but would also result in the traders' getting at the cost of growers."

... .. ... ... .. ... ... ... ... ... .. .. :. ...

"The failure of the Statute to provide election by the growers to the market committee in our view, therefore, is not based on any reasonable criteria."

.. ... ... .. ... ... ... ... ... .. .. ... ... ...

"After making every reasonable presumption in favour of the legislative measure and after carefully examining its statutory purposes and practical consequences with the help of its own provisions, if we are unable to discern any reasonable basis for the classification, we cannot but declare such law to be violative of Article 14 and, therefore, unconstitutional. Judicial self-restraint should not be allowed to defeat judicial responsibility."

In that view of the matter the Court declared :-

"The law therefore does not enact a reasonable classification but a class legislation.

It is a hostile piece of legislation and it is discriminatory to the growers and accordingly constitutes a violation of the pledge of equal protection of laws clause in our Art.14."

4. It is further pointed out that the provisions which empowers the Government to nominate from among the growers of the agricultural produce and owners of livestock and products of livestock does not lay down any guidelines and as such it vests an arbitrary and unguided power in the Government and that there is no procedural safeguard and hence that provision is violative of Art.14 even on this ground. It is vehemently contended that when the earlier provisions were struck down on the ground referred to above, instead of making provision for election of the representatives of the growers of the agricultural produce and owners of livestock and products of livestock, provision quite to the contrary has been made. It is also urged that no guidance is provided even by the amended provisions for nomination of any of the members. What has been done is a mere sub-classification of the growers of agricultural produce and the traders. That does not amount to providing any guidance.

5. Prior to the amendment, a market committee was to consist of not less than twelve

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members and not more than sixteen members. Now under the amendment, it must consist of not less than fifteen and not more than eighteen members. So far as the appointment by Government of a member from among the presidents and persons, if any, for the time being performing the functions of the presidents, of the co-operative marketing societies having their areas of operation within the notified area, or one representative of the Agricultural Department or the Animal Husbandry Department to be appointed by the Government and the Chairman of the Municipality or the Sarpanch of the gram panchayat as the case may be, within whose jurisdiction the office of the market committee is located, there is no change. So far as nomination of persons from among the growers of agricultural produce and owners of livestock and products of livestock in the notified area, is concerned, now not less than two-thirds of the members of each committee have to be appointed by the Government. Further the growers of the agricultural produce and owners of livestock and products of livestock are classified as 'small farmers' and persons other than small farmers; small farmers of dry lands or small farmers of wet lands; and likewise, small farmers who are growers of agricultural produce on dry lands and small farmers who are growers of agricultural produce on wet lands. Likewise, among the traders, persons whose annual turnover in the notified area exceeded Rs. 2 lakhs, and those whose annual turnover in the notified area was below Rs. 2 lakhs are classified separately. Under the Rules framed to give effect to the purpose of the amended Act, in the case of market committees having eighteen members, twelve members are required to be nominated from among the growers of agricultural produce and owners of livestock and products of livestock and in case of the market committee having a total strength of fifteen but not more than eighteen, the nominated members are to be ten. And from among the traders, they are to be respectively three and two. That Rule reads as follows :

"(1) Every market committee shall be composed of

(a) 18 members, in case it has an annual income of rupees two lakhs or above;

(b) 15 members, in case it has an annual income of less than rupees two lakhs; consisting of the representatives of different interests specified in sub-section (1) of Section 5 of the Act as follows, namely :-

Name of the interest

whom a member

represents Number of represen-

tativeseach com-

mitttee should consist

of its is 18 member committee. 15 member committee.

(i) Growers of Agricultural

Produce and the owners

of livestock and products

of livestock:

(a) Growers of Agricultural

Produce who are small

farmers of dry lands.

(b) Growers of Agricultural

Produce other than small

farmers of dry lands. 12 10

(c) Growers of Agricultural

Produce who are small

farmers of wet lands.

(d) Growers of Agricultural

Produce other than small

farmers of wet lands.

and

(e) The owners of Livestock

and Products of live-

stock

(ii) Members of Co-operative

Marketing Societies as in

Section 5(1)(ii) of the Act. 1 1

(iii) Agricultural Department

or the Animal Husban-

dry Department as in

Section 5 (1) (iii) (a) of

the Act. 1 1

(iv) Municipality or the Gram

Panchayat as in Section 5

(1) (iii) (b) of the Act. 1 1

(v) Traders as in Section 5

(1) (iv) of the Act. 3 2

Total ... 18 15

6. Sri Venugopala Reddy, learned counsel for the petitioners, contends that the Division Bench, striking down S.5 (1) and (2) of the principal Act, declared that it was the elected members that can best subserve the interests of the different interests represented on the market committee. The amended Act gives a go-by to the system of election and is contrary to the intendment of the JUDGEMENT of this Court. He argues that if the provisions were held to be violative of Art.14 because the principle of election was not observed with respect to the representatives of the growers of the agricultural produce and owners of livestock and products of livestock as well as in the case of traders the amended provision must also be held to be violative of Art.14 of the Constitution. We must point out that this is not the correct interpretation of the earlier JUDGEMENT of this Court. The Court, in declaring the said provision to be violative of Art.14, pointed out that growers of

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agricultural produce and owners of livestock and products of livestock on the one hand and the traders in agricultural produce, owners of livestock and products of livestock on the other, represent two vital interests in the market committee and if one interest was represented by those elected from among themselves, and according to the Bench elected representatives are better suited to safeguard the interests of the particular section the other section also ought to have been given an opportunity to be represented by members elected from among themselves. Such a discrimination was held to be striking at the root of the validity of that provision. What would have been the position if the Legislature had made provision for nomination of both the interests, that is, growers of agricultural produce and owners of livestock and products of livestock on the one hand and the traders on the other, did not come up for consideration in that case. Whatever may be said about the system of nomination as compared to the system of election to a particular body, when all the interests are to be informally represented either by elected representatives or by nominated members, none of such groups can complain of hostile discrimination. That is what the Legislature in its wisdom, has now done. Now, both the traders and the growers of agricultural produce and owners of livestock and products of livestock, are to be nominated by the Government by a notification. May be, if provision was made for election of the representatives of the growers and owners of livestock and products of livestock, would have been better, but the Legislature in its wisdom must have thought nomination of persons representing the two groups was in the best interests of the market committees. Whatever criticism on such a provision may be open to, cannot certainly be questioned on the ground that it is violative of Art.14 of the Constitution. May be, the Legislature, after considering the several aspects, was of the view that the interests of the traders as well as the growers of agricultural produce and owners of livestock and products of livestock are better served by nomination of the members of those categories. May be, the administrative difficulties and financial burden of conducting elections to several market committees, especially when growers of agricultural produce and owners of livestock run into several lakhs, weighed with the Legislature in abandoning the election process. Or may be, it thought that on committees like this, persons with special knowledge or experience may not come forward to seek election and the Government preferred to secure their services by nominating them to these committees in the hope that the committee would function better. Those are matters entirely for the Legislature to consider and decide. It is not the province of this Court to say that the method of election alone is to be preferred as against the method of nomination in constituting the market committees. It is a matter of opinion. So long as such nomination does not violate any provision of the Constitution, the Court cannot substitute its own view in matters such as these and strike down the legislation. It may be pointed out that the passage from the JUDGEMENT of this Court relied upon by the learned counsel to the effect that interests are best protected by permitting the affected owners of those interests to elect their representatives to the market committee were made only to emphasise that the others interest was not similarly represented by the elected members but was represented only by nominated members. It was never meant that the persons to man the market committees must be chosen only by the process of election from among the members of that category. In our view, inasmuch as all the interests envisaged by the Act are represented by persons nominated by the Government, no question of hostile discrimination arises so as to hold the said amended provisions of the enactment to be violative of Art.14 of the Constitution.

7. It was next contended that no guidelines are laid down by the Legislature to ensure that the Government does not act arbitrarily in the matter of nominating persons to the committee. The Government, which has been given an unfettered and unguided discretion and it is alleged, is apt to exercise it arbitrarily and as such must be deemed to be violative of Art.14 of the Constitution. As already pointed out above, while prior to the amendment, no distinction was made among the large number of growers of the agricultural produce within the notified area, the amended Act identified small farmers and farmers other than small farmers and also small farmer of wet lands on one hand and the farmer of dry lands on the other hand and farmers other than small farmer who grow agricultural produce on dry or on wet lands. The problems of small farmers of wet and dry lands in the matter of growing their produce

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and the problems of persons other than small farmers growing agricultural produce on wet and dry lands may be different and therefore, they may have to be represented on the committee. So also among the traders the problems of small traders whose annual turnover does not exceed Rs. 2 lakhs and of those whose turnover exceeds Rs. 2 lakhs may be different and their interests have to be represented in administering the market through the market committee. A reading of these provisions along with the preamble of the Act and the other provisions would in our opinion, provide sufficient guidance to the Government as to who should be appointed to a particular market committee. The object of the enactment is to regulate purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection therewith. The market committee is to be a body corporate having perpetual succession and a common seal with powers to acquire, hold and dispose of property, as laid down in Section 4 of the Act and it is charged with the duty of enforcing the provisions of the Act and the Rules and Bye-laws made thereunder within the notified area. It is charged with the function of establishing requisite number of markets within its jurisdiction from time to time for the purchase and sale of any notified produce of livestock and products of livestock and provide facilities in the market for that purpose. In particular, it is also charged with the duty of establishing markets for purchase and sale solely of vegetables and fruits and provide facilities for such sale or purchase. The limits of every market are also to be notified. In the light of the experience of the functioning of the markets and the convenience or difficulties experienced by the growers and the traders, the area of the market committee may be altered by inclusion or exclusion of the areas from time to time by a notification in the gazette issued by the Government. Trading in the markets in the notified areas is regulated by licences, as laid down by Section 7 of the Act. The market committee is required to meet from time to time and at least once in a month. It is also empowered to levy fees on agricultural produce, livestock or products of livestock purchased or sold in the notified area and provide facilities for the sellers, buyers and traders. The market committee is empowered to levy subscription for market reports etc. to provide information to its subscribers regarding statistics, markets and prices in respect of notified agricultural produce, livestock or products of livestock. The purposes for which the market fund constituted under S.14 of the Act may be expended are laid down in S.15 of the Act. Among others, the purposes for which the market funds may be expended are : establishment, maintenance and improvements of markets, acquisition of site for such purpose, provisions for maintenance of standard weights and measures, propoganda for the improvement of agriculture, livestock and products of livestock, measures for the preservation of foodgrains and for promotion of grading services. It is also intended to check excess and unauthorised collection from the growers by traders or other, wise within the market area. All trade is to be regulated in accordance with the rules prescribed. Under S.33 of the Act, the Government is empowered to frame rules to carry out the purposes of the Act. The Act overrides all other laws.

8. It would thus be seen that this Act is a fairly comprehensive Act covering the purchase and sale of notified agricultural produce, livestock and products of livestock and intended to provide facilities for marketing of these products and to put a check on unauthorised collections to which the growers of agricultural produce and owners of livestock and products of livestock are exposed in the process of sale of their. stock. Having regard to the fact that the growers run into lakhs only an agency like the Government may be able to identify the persons suitable and sufficiently qualified for being nominated to the committees to represent the various interests. It is not any subordinate authority, but the Government which is the highest administrative authority, that is vested with the power to nominate persons of each category on the Committee. It is well settled that if such a power is vested in the highest authority, it is assumed that it would act fairly having regard to the provisions of the Act and its intendment and to advance the purposes of the Act. The provisions made in the amended sub-sections (1) and (2) of S.5 of the Act, read with the other provisions of the Act referred to above, provide sufficient guidelines to this highest authority of the State in the matter of nominating the members to the committee; be it from the category of growers or of traders. In Jyoti Pershad v. Union Territory of Delhi,

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AIR 1961 SC 1602, a similar contention that the Act itself did not provide any guidelines, was repelled and it was observed that "it is not essential for the legislation to comply with the rule as to equal protection, that the rules for the guidance of the designated authority, which is to exercise the power or which is vested with the discretion, should be laid down in express terms in the statutory provision itself". The Supreme Court then referred with approval to the following observations made in Kedarnath v. State of West Bengal (AIR 1953 SC 404 at p. 409):-

"The Saurashtra case would seem to lay down the principle that if the impugned legislation indicates the policy which it is to seek to attain, the mere fact that the legislation does not itself make a complete and precise classification of the persons or things to which it is to be applied, but leaves the selective application of the law to be made by the standard indicated or the underlying policy and object disclosed is not a sufficient ground for condemning it as arbitrary and therefore, obnoxious to Art.14." The Supreme Court further laid down that "such guidelines may thus be obtained from or afforded by (a) the preamble read in the light of the surrounding circumstances which necessitated the legislation, taken in conjunction with well-known facts of which the Court might take judicial notice or of which it is appraised by evidence before it in the form of affidavits, (1952) 3 SCR 435: (AIR 1952 SC 123) being an instance where the guidance was gathered in the manner above indicated (b) or even from the policy and purpose of the enactment which may be gathered from other operative provisions applicable to analogous or comparable situations or generally from the object sought to be achieved by the enactment."

9. It is unnecessary to multiply the authorities on this aspect which is well settled, viz., that the guidance for the exercise of the discretion vested in a highly placed authority, may be gathered from the various provisions of the Act. As discussed above the provisions of the Principal Act read with the provisions of the amended Act provide sufficient guidelines to a highly placed authority like the Government in the matter of nominating the members to the market committee. The contention that the amended provision is violative of Article 14 of the Constitution, for the reason that it does not provide any guidelines in the matter of nomination to the committee must therefore be rejected.

10. It was next feebly contended that greater representation was given to the growers as compared to the traders on the market committee. This contention is without substance for there is no law that all the interests which may be represented on a given committee constituted under the enactment, should be equally represented. The representation on a particular committee is itself a right granted by the Statute and not a fundamental right or a natural right. If the Legislature, in its wisdom, having regard to the large number of growers of agriculture produce and owners of livestock and products of livestock, has given a larger representation to them on the market committee than to the traders who are infinitesimally few as compared to the growers, that legislation cannot be struck down as vesting an arbitrary power or as discriminatory. In the matter of nomination to the committees constituted under an enactment, no citizen can claim a fundamental right or violation of any such fundamental right on that ground.

11. In view of the above discussion, we are of the view that the attack on the vires of the amended enactment is unsustainable These writ petitions fail and are accordingly dismissed, but in the circumstances, without costs. Advocate's fee : Rs. 150/- in each.

12. On the pronouncement of the JUDGEMENT, oral request was made for grant of leave to appeal to Supreme Court of India. We are unable to certify that these writ petitions involve such substantial questions of law of general importance as requires the consideration of the Supreme Court of India or that it is otherwise fit case for grant of leave. Leave refused.

Petitions dismissed.

**AIR 1977 ANDHRA PRADESH 147 "M. S. Murty v. State"**

**ANDHRA PRADESH HIGH COURT**

**FULL BENCH**

Coram : 3 B. J. DIVAN, C.J. LAKSHMAIAH AND RAGHUVIR, JJ. ( Full Bench )

Mamidi Satyanarayana Murty and others, Appellants v. The State of A.P. and others, Respondents.

Writ Appeal No.582 of 1974, D/- 19 -8 -1976\*.

A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.36(aa) - AGRICULTURAL PRODUCE - Object of - Ankapalli notified area - Out of five only one market set up - Applicability of S.36(aa).

The object of the saving clause is to give quietus to the confusion that might be created in the functioning of the different markets and market committees in the buying and selling of agricultural produce till the entire machinery set up under the provisions of the Act of 1966 starts functioning. (Para 10)

The notified area so far as Anakapalli notified area was concerned consisted of five taluks of Anakapalli, Yellamanchili, Chodavaram, Narsipatnam and Chintapalle. The area of these five taluks was thus a single notified area for purposes of the Act. For the notified area of Anakapalli, the Government directed five markets to be set up. Out of these five markets, only one in Anakapalli town has been set up and the market area of the market in Anakapalli town is the area covered by the Municipal Limits of Anakapalli municipality. Until the remaining four markets viz. Chodavaram market, Vaddadi market, Makavarapalem market and Yellamanchilli market, which are directed to be set up within the Anakappalli notified area, are set up, proviso (aa) to S.36 cannot be said to have been worked out and, therefore, the notified area under the repealed Act of 1933 continues to be the notified market area so far as the notified area of the Anakapalli market committee is concerned. The very fact that one out of those five markets, which the market committee for Anakapalli notified area is directed to set up, has actually been set up and that the five steps in connection with one out of those five markets have been gone through, does not mean that all the five steps for the entire notified area of Anakappalli have been gone through. W. A. No. 131 of 1971, D/- 14-7-1971 (Andh Pra) Approved. W. P. No. 4631 of 1972 (A. P.) Dt. 15-1-1974, Affirmed. (Para 11)

Cases Referred : Chronological Paras

(1971) W. A. No.131 of 1971, D/- 14-7-1971 (Andh Pra) 4

P. Kodandaramaiah, E.V. Bhagiratha Rao, for Appellants; Govt. Pleader, for Food and Agriculture, (for Nos.1 and 2) and D.V. Reddipantulu, (for No.3), for Respondents.

\* Against Judgment of Obul Reddi J. in W. P. No. 4631 of 1972, D/- 15-1-1974.

Judgement

DIVAN, C.J. :- This Writ Appeal comes before us on a reference made by our learned brothers, Sambasiva Rao and Sheth JJ. This writ appeal has been filed against the decision of Obul Reddi, J. (as he then was) in Writ Petition No.4631 of 1972. The Writ petition was filed seeking directions against the State of Andhra Pradesh the Director of Marketing and the Agricultural Marketing Committee, Anakapalle, to desist from enforcing the bye-laws and Rule 73 of the Andhra Pradesh (Agricultural Produce and Livestock) Market Rules, 1969 and the executive order of the Government in its memorandum No. 2733/Agriculture/IV/71/1 dated 26-8-1971 on the ground that the bye-laws and Rule 73 are ultra vires and without jurisdiction.

2. The main dispute between the parties is regarding the interpretation of some of the provisions of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act (Act No. 16 of 1966) (hereinafter referred to as 'the Act').

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By this Act two earlier Acts, which were in force in different regions of the State of Andhra Pradesh were repealed. These two Acts were the Andhra Pradesh (Andhra Area) Commercial Crops Act, 1933 and the Andhra Pradesh (Telangana Area) Agricultural Market Act, 1339-F. It may be pointed out that the Act of 1933, which was repealed was originally enacted in the State of Madras as Madras Commercial Crops Markets Act, 1933. The appellants before us are the original petitioners carrying on business in the notified commodities in and around Yellamanchili in Visakhapatnam District. Under the Act of 1933, the entire Visakapatnam district was constituted as a single notified area. It may be pointed out that, under the Andhra Pradesh (Andhra Area) Commercial Crops Act, 1933 as well as under the Andhra Pradesh (Telangana Area) Agricultural Market Act, 1339-F, referred to above, there were only two concepts viz. the concept of notified area and the concept of markets or market yards. There was no concept of market area or notified market area in those two Acts, which were repealed by the Act of 1966 with which we are concerned in the instant case Under the notification issued by the Government under Section 3 (3) of the Act of 1966, the Visakpatnam District is divided into three notified areas viz. Anakapalle Visakhapatnam and Kothavalasa. After issuing that notification under Section 3 (3), the State Government in exercise of its powers under Section 4 (1), constituted market committees for the three notified area. This was the major second step which the Government was required to take in putting the machinery set up under the Act of 1966 into full operation. As a third step in this process contemplated by the Act, the Anakapalle Market Committee constituted a market for Anakapalle and that was done by the market committee in exercise of the powers conferred upon it under Section 4 (3) of the Act. The notification regarding the notified area for the three units was issued on 29-10-1968 and the notification regarding the setting up of the three market committees was issued on 4th April, 1969. By the notification under Section 3 (3) of the Act, the notified area for Anakapalle was to cover Anakapalle, Yellamanchili, Chodavaram, Narasipatnam and Chintapalle taluks. The Government directed the market committee for Anakapalle notified area to establish markets at five places within the notified area of Anakapalli. The five markets to be thus established were Anakapalli, Chodavaram, Vaddadi, Makavarapalem, and Yellamanchili. After establishing the market at Anakapalli, the entire area within the limits of Anakapalli Municipality was notified by the market committee to be the market area and the Anakapalli market was to comprise of Gandhi Market. Raja Rammohan Roy Vegetable Market, Jubili Hall site fish and meat market and Sunday weekly shandy market. Thereafter, in exercise of its powers under sub-section (4) of Section 4 of the Act, the State Government notified what is referred to as notified market area for the market at Anakapalli town and this notified market area was described as follows: "20. K. Ms. radius around the office of the Agricultural Market Committee, Anakapalle within the notified area of the Agricultural Market Committee, Anakapalle". It is common ground between the parties before us that Yellamanchili the place in and around which the petitioners are carrying on their business is more than 20 K. Ms. from the office of the Agricultural Market Committee, Anakapalli and thus they are not functioning within the notified market area of Anakapalli market. The contention of the petitioners is that, since Yellamanchili is not within the notified market area of Anakapalli market, it is not open to the Market Committee of Anakapalli to impose market fees on the petitioners under Sec. 12 of the Act of 1966. There is no dispute between the parties regarding the licence fees payable by the petitioners for obtaining licences for dealing in the notified commodities. It may be pointed out that the challenge in the present litigation to the levying of the market fees under Section 12 is not on the ground of absence of any quid pro quo; but the main contention, which was urged before Obul Reddi, J. (as he then was) before the Division Bench consisting of Sambasiva Rao and Sheth, JJ. and before us, was that, as Yellamanchili is outside the radius of 20 K. Ms. from the Office of the Agricultural Market Committee of Anakapalli, the Market Committee of Anakapalli has no power to levy the market fees under S. 12, since the power to levy the market fees is only in respect of agricultural produce, livestock and products of livestock purchased or sold in the notified market area.

3. The writ petition was heard by Obul Reddi, J. (as he then was) sitting as a Single Judge. He came to the conclusion that, by virtue of the saving clause in the repealing and saving Section 36 and particularly in view of Section 36 proviso (aa) of the Act, the power of the Market Committee to levy market fees on the transactions of the petitioners in the notified commodities was not affected by the fact that Yellamanchilli was beyond the radius of 20 K. Ms. from the

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office of the Agricultural Market Committee, Anakapalli. In coming to this conclusion, Obul Reddi J. (as he then was) relied upon the decision in Writ Appeal No.131 of 1971 and batch decided by a Division Bench of this Court consisting of Narasimham C. J. and Kuppuswamy J. on July 14, 1971. According to that decision of the Division Bench the fact that under the present Act of 1966, no notification is issued under Section 4 (4) setting up a notified market area does not deprive the Market Committee of its power under Section 12 to levy market fees. The reasoning of Obul Reddi, J. (as he then was) proceeded on the footing that, prior to the constitution of the notified area for Anakapalli the entire district of Visakpatnam was a notified area and, therefore, by virtue of the provisions of the Act of 1933 saved by Sec. 36 (aa) of the Act of 1966, the Market Committee was entitled to act under Section 12 of the Act of 1966 and levy market fees.

4. At the hearing of the Writ Appeal before Sambasiva Rao and Sheth, JJ. the matter was hotly contested and both sides laid great emphasis on what are referred to as five steps in the functioning of the machinery under the Act of 1966. As Sambasiva Rao and Sheth, JJ. felt that it was desirable that a larger Bench should consider the questions involved in this case and give an authoritative ruling, since a large number of transactions and persons are covered by the provisions of the Act of 1966, this Writ Appeal has come to be referred to a larger Bench.

5. In order to understand the controversy in this case, it is necessary to point out that there are five distinct concepts mentioned in the Act. Under Section 2 (vi) 'market' means a market established under sub-section (3) of Section 4 and includes market yard and any building therein. Section 2 (vii) defines 'market committee' to mean a committee constituted or reconstituted under the provisions of the Act. Section 2 (xi) defines 'notified area' to mean any area notified under Section 3. Section 2 (xii) defines 'notified market area' to mean any area declared to be a market area by notification under Section 4. The confusion is likely to arise because similar terminology was also used in the repealed Acts viz., 'notified area', 'market' and 'market yard'. Under sub-section (3) of Section 3, of the Act of 1966 after the preliminaries set out in sub-sections (1) and (2) have been gone through, the Government has to publish a final notification declaring the area specified in the draft notification or any portion thereof, to be a notified area for the purpose of the Act in respect of any agricultural produce, livestock and products of livestock specified in the draft notification published under sub-sec. (1) of Section 3. We are not concerned, in the course of this judgment, with the rest of the provisions of Section 3. Thus it is clear that the notified area in the instant case, so far as Anakapalli notified area was concerned consisted of five taluks of Anakapalli, Yellamanchili, Chodavaram, Narsipatnam and Chintapalle. The area of these five taluks was thus a single notified area for purposes of the Act, Section 4 deals with the constitution of a market committee and declaration of notified market area. Sub-section (1) makes it dear that the setting up of a market committee by the Government is second step in the process of setting up the entire machinery under Act of 1966, and it reads:

"The Government shall constitute, by notification, a market committee for every notified area from such date as may be specified in the notification and the market committee so constituted shall be a body corporate by such name as the Government may specify in the said notification, having perpetual succession and a common seal with power to acquire, hold and dispose of property and may, by its corporate name, sue and be sued."

The market committee for Anakapalli notified area having been constituted under subsection (1) of Section 4, it started to function and the functions to be performed by the market committee are detailed in sub-section (3) of Section 4. Section 4 (3) (a) provides that every market committee shall establish in the notified area such number of markets as the Government may, from time to time, direct, for the purchase and sale of any notified agricultural produce, livestock or products of livestock and shall provide such facilities in the market as may be specified by the Government, from time to time, by a general or special order. Thus, the market committee, which functions for the whole of the notified area, has to establish markets in accordance with the directions issued by the Government. In the instant case, the Government directed the market committee for the Anakapalli notified area to establish five markets within the area of its operations viz. Anakapalli, Chodavaram, Vaddadi, Makavarapalem and Yellamanchili and this direction was given by the Government by notification dated 28th October, 1968, by which the Anakapalli notified area was declared as a notified area under sub-section (3) of Section 3. In pursuance of this direction of the Government, on January 28, 1970, the

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Market Committee established a market at Anakapalli town. This is the third step, which is required to be taken for setting up the machinery and the Market Committee for Anakapalli notified area has taken that step. Thereafter, the fourth step, which is required to be taken is under Section 4 (3) (c) of the Act and that step is that the Market Committee shall declare, by notification, the limits of every market established by it under clauses (a) and (b) referred to as the market area; and that step was taken by the Anakapalli Market Committee, by which it defined the limits of the market area for the market at Anakapalli town and the market area was the entire area within the limits of Anakapalli Municipality. The fifth step, which is required to be taken, is under Section 4 (4), and that section reads:

"As soon as may be after the establishment of a market under sub-section (3) the Government shall declare by notification the market area and such other area adjoining thereto as may be specified in the notification, to be a notified market area for the purposes of this Act in respect of any notified agricultural produce, livestock or products of livestock."

It is obvious that until the market area has been declared by the market committee for a particular notified area, the Government cannot declare the notified market area for any particular market and, therefore, after the Anakapalli Municipal area was declared by the Market Committee to be the market area for the market at Anakapalli town, on June 19, 1971, the Government declared, by notification, the notified market area for Anakapalli town market to be the area covered by 20 K. Ms. around the office of the Agricultural market Committee, Anakapalli, but the Government was very specific by providing in the declaration that this notified market area was within the notified area of the Agricultural Market Committee Anakapalli.

6. Thus, to clarify the concepts and the different terminologies used in the Act, it may be pointed out that the notified area is the largest geographical and physical unit. There may be a single market or more than one market for each notified area. There is to be a market committee which is a body corporate and it operates over the entire notified area. The market committee has to set up one or more markets within the area of its operation as may be directed by the Government. After the directions have been issued by the Government, the market committee has to establish a market or markets in accordance with the directions of the Government and for each market it has to fix, under Section 4 (3) (c), the limits of the market and the limits of the market area referred to as the 'market area'. Under Section 4 (4), the Market area and such other area adjoining thereto as may be specified by the Government in the notification issued under that Section becomes the notified market area. Thus, the largest physical unit is the notified area and within that notified area is the notified market area pertaining to each market established by the market committee. Within the notified area is the market area which defines the limits of every market and within the market area are the actual markets where the notified agricultural produce is bought or sold and where facilities have to be provided by the market committee for buying and selling these notified commodities. It is obvious that all these different five steps have to be completed before the machinery set up under the Act starts functioning.

7. Under the Madras Act of 1933, which continued to operate in the Andhra Area of the State of Andhra Pradesh till it was repealed by the present Act of 1966 only two concepts were there viz. notified area and market. The concepts of market area and notified market area were not to be found in the Act of 1933. In the same manner, in the Andhra Pradesh (Telangana Area) Agricultural Markets Act, 1339 F., which was repealed by the present Act of 1966, there were concepts of notified area and market yard, which was equivalent to the concept of market under the Madras Act of 1933. Even in the Telangana Area Act, there was no concept of notified market area or market areas.

8. After the enactment of the Act of 1966, when the notification was issued by the Government on 29th October, 1968 declaring notified areas and constituting market committees for the notified area under the Act a batch of writ petitions came to be filed against the formation of market committees and in those writ petitions, this High Court held that notification of areas involving a change in the jurisdiction of existing committee was illegal as it contravened the provisions of Section 36 of the Act which required notification of the areas already notified under the repealed Acts and that inclusion of new areas in, or exclusion of any area from, such notified areas should have been notified separately under Section 3 (4). As the notification of areas afresh as directed by the High Court would have entailed a lot of time and administrative inconvenience, it was proposed to empower the Government specifically to declare a new notified area by separation of area from any notified area or

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by uniting two or more notified areas or parts thereof or by uniting any area to a part of any notified area and also to validate the notification issued in G. O. Ms. No. 2095 Food and Agriculture Department dated the 29th October, 1968.

9. With these objects in view as stated in the Statement of Objects and Reasons the Andhra Pradesh (Agricultural Produce and Livestock) Markets (Amendment and Validation) Act, 1971 was passed by the State Legislature. Before the amendment by the Act of 1971 Section 36 (a) read as follows: "any area declared to be a notified area or market under any of the Acts so repealed shall be deemed to have been declared under this Act until such area or market is declared to be a notified area or market under this Act." By virtue of Section 8 of the Act of 1971, Clause (a) of Section 36 was amended to read: "any area declared to be a notified area or market under any of the Acts so repealed shall be deemed to have been declared under this Act", and clause (aa) was added to Section 36. Clause (aa) reads thus: "any area declared to be a notified area or market or market yard by or under any of the Acts so repealed shall be deemed to have been declared to be a notified area under this Act for the purpose of Section 12". Clause (a) and Clause (aa) are clauses of the proviso to Section 36, which operates as a saving to the repeal of the Act of 1933 and of the Telangana Area Act of 1339 F. which were repealed by the present Act of 1966. It is clear that, if, under the Madras Act of 1933, any area was declared to be a notified area or a market or if any area was declared, under the Telangana Area Act of 1339-F to be a notified area or a market yard, for the purpose of the Act of 1966 such notified area or market or market yard is deemed to have been declared to be a notified market area under the Act of 1966 for the purpose of Section 12. As pointed out above, Section 12 enables the market committee to levy market fees in respect of the notified commodities bought or sold within the notified market area.

10. It is obvious that the object of the saving clause is to give quietus to the confusion that might be created in the functioning of the different markets and market committees in the buying and selling of agricultural produce till the entire machinery set up under the provisions of the Act of 1966 starts functioning. It is well settled that the object of the Agricultural Produce and Livestock Markets Act like the one before us is to prevent exploitation of agricultural producers at the hands of dealers in the notified commodities and to see to it that unfair trade practices are not indulged in by the dealers. One of the objects is to enforce standardisation and grading in dealing in agricultural produce. If these objectives of the Act are to be carried out, it is desirable that a hiatus should be avoided and that is why the saving clause has been enacted to provide for continuity of the old provisions within the frame-work of the new Act as far as possible.

11. The saving clause would thus be worked out after the entire machinery set up under the new Act has started functioning. It is contended on behalf of the petitioners in the instant case that, with the declaration of the notified market area by the Government under sub-section (4) of Sec. 4, for Anakapalli town market by its notification dated 19-6-1971, all the five steps for setting up the market at Anakapalli were completed and therefore, the saving clause viz. clause (aa) of the proviso to Section 36 of the Act was worked out and there was no scope for further operation of proviso (aa) to Section 36. This contention must be rejected because it is based on a misconception which is entirely due to the similarity of terminologies. The misconception is that the notified market area, which is referred to in Section 36 (aa), is constituted when the notification under Section 4 (4) is issued by the Govt. It is obvious from what we have stated above that, for the notified area of Anakapalli, the Government directed five markets to be set up. Out of these five markets, only one in Anakapalli town has been set up and the market area of the market in Anakapalli town in the area covered by the Municipal limits of Anakapalli municipality. It is, therefore, obvious that the notified area, which is the field of operation of the Anakapalli market committee, is much larger than the notified market area appurtenant to Anakapalli town market which is only one of the five markets which the Government has directed the market committee for Anakapalli notified area to set up. Until those four markets within the notified area of Anakapalli market committee are set up, it cannot be said that all the five different steps contemplated by the Act of 1966 have been gone through. Until the remaining four markets viz. Chodavaram market, Vaddadi market, Makavarapalem market and Yellamanchilli market which are directed to be set up within the Anakapalli notified area, are set up, proviso (aa) to Section 36 cannot be said to have been worked out and, therefore, the notified area under the repealed Act of 1933 continues to be the notified market area so far as the notified area of the Anakapalli market committee is

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concerned. The very fact that one out of those five markets, which the market committee for Anakapalli notified area is directed to set up, has actually been set up and that the five steps in connection with one out of those five markets have been gone through does not mean that all the five steps for the entire notified area of Anakapalli have been gone through.

12. It was contended that, if the provisions of Section 36 (aa) apply in all their vigour, it might mean that Anakapalli notified area market committee would have jurisdiction over the entire district of Visakapatnam because the whole district was declared to be a notified area under the Madras Act of 1933. This argument must be rejected as fallacious, because the provisions of the Act have to be read with some degree of common sense and when, within the same original district of Visakapatnam, the three notified areas viz. Anakapalli, Visakapatnam and Kothavalasa, were set up, the effect of proviso (aa) to Section 36 was that that part of Visakapatnam which fell within the respective notified area, continued to be the notified market area for the market committee of Anakapalli, Visakapatnam and Kothavalasa.

13. Narasimham, C. J. and Kuppuswami, J., in Writ Appeal No.131 of 1971 and batch decided on 14-7-1971, construed the different provisions of the Act before us and observed:

"From a scrutiny of the relevant provisions it is obvious that the first step is the declaration of a notified area, the second step is the constitution of a market committee, the third step is the establishment of markets in the notified area, the next step is the notification of the limits of every market and then the final step in the direction is the declaration by the Government by notification of the notified market area for purposes of the Act. The several steps are part of a scheme to declare the notified market area for the purpose of levy."

Regarding the effect of Section 36 and the repealing and saving clause enacted thereby, the Division Bench observed:

"It is only the law in relation to the market that was repealed. The markets continued to exist and the A. P. law superseded the Hyderabad law."

Thus the conclusion that we have arrived at, on an examination of the different provisions of the Act of 1966, was also the conclusion which was reached by the Division Bench consisting of Narasimham C. J. and Kuppuswami, J. We are in agreement with the conclusion reached by that Division Bench.

14. As we have observed earlier in the course of this judgment, a lot of avoidable confusion is likely to arise if the clear notions and concepts behind each of the four terms used in the Act are not kept in mind viz. 'notified area', 'market', 'market area' and 'notified market area'. The fact that the name of Anakapalli is used in connection with the notified area of Anakapalli consisting of five taluks and also in connection with the market at Anakapalli town, is likely to lead to still further confusion. We have earlier, in the course of this judgment explained the exact significance of each of these four terms in the light of the provisions of the Act. If these concept and notions regarding each of those four terms is clearly borne in mind, no difficulty whatsoever is likely to be created in the interpretation of this Act or in implementing it. All persons connected with the administration of markets and market committee functioning under the Act should bear these concepts in mind and if these provisions are implemented according to the letter and spirit of the law, nobody is likely to have any difficulty whatsoever.

15. Under these circumstances, we hold that the conclusion reached by the learned single Judge, Obul Reddi, J. (as he then was) in Writ Petition No. 4631 of 1972 was correct, though the reasoning which has appealed to the learned single Judge was slightly different from the reasoning which has appealed to us. However, the ultimate conclusion that we have reached is the same as the conclusion that he arrived at. We, therefore, dismiss the writ appeal with costs.

Advocate's fee Rs. 100/-.

Appeal dismissed.

**AIR 1977 ANDHRA PRADESH 286 "P. M. Doraswamy v. E. A. and Director of Marketing"**

**ANDHRA PRADESH HIGH COURT**

Coram : 2 B. J. DIVAN, C.J. AND JEEVAN REDDY, J. ( Division Bench )

P. M. Doraswamy Reddy, Appellant v. The Election Authority and Director of Marketing, A. P. and others, Respondents.

Writ Appeal No. 596 of 1976, D/- 24 -1 -1977.\*

A.P. Agricultural Produce and Livestock Market Rules (1969), R.17 - AGRICULTURAL PRODUCE - WORDS AND PHRASES - Whether mandatory - Not mandatory - Putting a mark other than the prescribed mark on the ballot paper does not invalidate the vote.

W. P. No. 840 of 1975, D/- 19-10-1976 (Andh Pra), Reversed.

Words and Phrases - "shall" - "must".

It is well-settled law that every use of the word "shall" or 'must' in a particular rule or provision of law does not render that provision mandatory. A sound test for determining whether any particular provision is mandatory or not is to find out from the rules under consideration as to what are the consequences of noncompliance with this particular provision which is contended to be mandatory. If the non-compliance is not visited with any adverse consequences, the provision should be held not to be mandatory but only directory, even though expressed by "shall" or "must". (Para 6)

Applying these principles, since the marking of the ballot paper by a mark other than the prescribed mark, is not visited with any adverse consequences, under the rules, the provisions of R.17 are merely directory. (Para 7)

It is equally well settled that, if a particular provision is directory, substantial compliance with that provision will meet the requirements of law.

So long as a voter expresses his intention to vote for a particular candidate by putting any mark, whether the prescribed mark or any other mark, there would be substantial compliance with the provisions of R.17. It is the expression of the desire of the voter as to the candidate for whom he desires to vote that is material for the purpose of R.17. The putting of a different mark does not render the vote invalid. W. P. No. 840 of 1975, D/- 19-10-1976 (Andh Pra), Reversed. (Para 7)

K. Venkataramaiah, for Appellant; Government Pleader, for Food and Agriculture on behalf of the respondents Nos. 1 and 2 and O. Adinarayana Reddy, for Respondent No. 3.

\* Against order of Gangadhara Rao J. in W. P. No. 840 of 1975, D/- 19-10-1976.

Judgement

B. J. DIVAN, C.J. :- This writ appeal is preferred by the original petitioner against the judgment and order of our learned brother, Gangadhara Rao, J. in Writ Petition No. 840 of 1975. In this judgment, we will refer to the appellant as the original petitioner and the respondents according to their array in the original petition.

2. The facts giving rise to this litigation are as follows: Election for the Agricultural Market Committee, Chittoor was held on August 5, 1974. Seven persons contested the election. Two of the candidates got 138 and 131 votes and they were declared as duly elected. The petitioner, the 3rd respondent and one S. Srinivasulu Chetty got 96 votes each. Thereafter as provided by the relevant rules, lots were drawn and the petitioner was declared elected as a result of the drawing of the lots. Thereafter, the 3rd respondent filed an election petition before the Election Tribunal set up under the relevant rules and the petition was allowed. In the election petition, it was held by the authority concerned viz. the Election Authority and Director of Marketing, that the votes should be recounted and at the recounting of votes, the petitioner was declared to have received 91 votes, whereas the 3rd respondent was declared to have received 92 votes. On this finding, the Election Authority held that the petitioner should not have been declared as a successful candidate. He, therefore, set aside the election of the petitioner and ordered fresh election under R. 22(2) of the Andhra Pradesh Agricultural Produce and Livestock Market Rules, 1969 to the vacancy caused by

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the declaration of the election of the petitioner as void. The petitioner, thereafter, challenged this decision of the Election Authority in Writ Petition No. 840 of 1975 and this Writ Petition was dismissed by our learned brother, Gangadhara Rao, J. It is against this decision of our learned brother that the present writ appeal has been filed.

3. Both the Election Authority and our learned brother, Gangadhara Rao, J. have come to the conclusion that the mode of marking on the votes viz. by putting a mark 'X' was the only method of marking votes and that this provision of the rule was mandatory and that any vote which was marked otherwise than by mark 'X' as required by the rules should be declared as invalid. It is after interpreting the relevant rule as mandatory that the Election Authority held that the petitioner had got 91 votes, whereas the 3rd respondent had got 92 votes. Our learned brother, Gangadhara Rao, J. has accepted this interpretation of the relevant rule and has come to the conclusion that the decision of the Election Authority was correct.

4. On these facts, Mr. Venkatramaiah, the learned counsel for the petitioner, urged the following contentions before us;

"that the election petition before the Election Authority was not maintainable, because Srinivasulu Chetty who had also got 96 votes and the other two candidates, who had got 138 and 131 votes respectively, were not joined as parties to the election petition;

(2) that even though three candidates had received 96 votes each, the Election Authority scrutinised only the votes of two candidates viz. the petitioner and the 3rd respondent and did not consider exhaustively the votes of all candidates at the election;

(3) that it was held by the Election Authority that, since Srinivasulu Chetty had not been joined as a party to the election petition, it necessarily followed that 96 votes received by him must be held to be valid votes and in that eventuality, the order of the Election Authority directing a bye-election after declaring the election of the petitioner to be void was erroneous because there was no question of any by-election if 96 votes were found to have been obtained by Srinivasulu Chetty; and

(4) that, under Rr. 17 and 18 of the Andhra Pradesh Agricultural produce and Livestock Market Rules, 1969 (hereinafter referred to as 'the rules'), no votes can be rejected if the intention of the voter is clear and hence the Election Authority erred in treating R. 17 as mandatory."

5. In our opinion, our decision on the fourth contention is sufficient to dispose of this writ appeal and as this contention goes to the root of the matter, it is not necessary for us to consider the other three contentions urged by Mr. Venkataramaiah before us.

Rule 17 of the Rules is as follows: "During the hours fixed for election the polling officer shall satisfy himself of the identity of every intending voter and the fact that his name is entered in the list of voters and shall initial the entry in token thereof. Every voter wishing to vote shall be furnished with a ballot paper. The voter shall proceed to one of the voting compartments and there inscribe a mark 'X' on the ballot paper on or near the symbol of the candidate for whom he desires to vote. If the voter is illiterate, the polling officer shall inscribe the cross mark on or near the symbol of the candidate to whom the voter desires to give his vote. The voter shall put the ballot paper in the ballot box."

(emphasis supplied by us)

Rule 19 provides for counting of votes etc. Cl. (a) of R. 18 is not material for our purposes. Clause (b) of R. 18 provides as follows:

"Any ballot paper which contains the signature or any mark by which the voter can be identified or on which the mark is placed against mere candidates than the number of vacancies or the back of which does not contain the initials of the election officer shall be invalid."

6. It is clear that, so far as the invalidity of votes or the invalidity of ballot paper is concerned it is only when the ballot paper contains the signature or any mark by which the voter can be identified that it is to be treated as invalid and in addition to this, if on a particular ballot paper, the mark is placed against more candidates than the number of vacancies or if the ballot paper does not contain the initials of the election officer on the back, the ballot paper is to be treated as invalid. These are the only three contingencies contemplated under Cl. (b) of R. 18 as rendering any ballot paper invalid. It is clear from the provisions of Cl. (b) of R. 18 that expression of the desire of the voter as to the candidate for whom he desires to vote by placing a mark other than the mark 'X' on or near the symbol

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of the candidate concerned, does not render the vote or the ballot paper invalid. A distinction was sought to be drawn by the learned Government Pleader appearing on behalf of the Election Authority and the Election Officer to the effect that an invalid ballot paper was different from an invalid vote. No such distinction is to be found in the rules themselves. On the contrary it must be borne in mind that there is no specific provision in the rules rendering the vote invalid, if the voter puts a mark other than the mark 'X'. It is well settled law that every use of the word 'shall' or 'must' in a particular rule or provision of law does not render that provision mandatory. A sound test for determining whether any particular provision is mandatory or not is to find out from the rules under consideration as to what are the consequences of non-compliance with this particular provision which is contended to be mandatory. If, as a result of the rules, noncompliance with any such provision said to be mandatory is not visited with any adverse consequences, the provision should be held not to be mandatory but only directory, even though expressed by 'shall' or 'must'. In these circumstances; according to the well-known canons of construction, the word 'shall' shall be read as 'may'.

7. Applying this principle of interpretation of the rule under consideration, it is obvious that, since marking of a ballot paper by any method of marking other than a cross mark 'X' is not visited with adverse consequences under the rules, it must be held that the provisions of R. 17 regarding the putting of the cross mark 'X' on the ballot paper as indicating the desire to vote for a particular candidate are merely directory and not mandatory. It is equally well settled that, if a particular provision is directory, substantial compliance with that provision will meet the requirements of law and it is from the point of view of substantial compliance that one has to consider this case. So long as the voter expresses his intention to vote for a particular candidate by putting any mark whether 'X' or any mark other than the mark 'X' there would be substantial compliance with the provisions of R. 17, because by putting that particular mark, he expresses his desire to vote for that particular candidate and the underlined words in R. 17, which we have quoted above, go to show that it is the expression of the desire of the voter as to the candidate for whom he desires to vote that is material for the purpose of R. 17. If that desire is substantially expressed viz. by putting any mark whether 'X' or any mark other than the mark 'X' it must be held that R. 17 is complied with. With great respect to our learned brother, Gangadhara Rao, J. we are unable to agree with his conclusion that the provisions of R.17 are mandatory and that non-compliance with the provisions of that rule regarding the method of marking would render the vote invalid and not liable to be taken into consideration.

8. The learned Government Pleader appearing on behalf of respondents Nos. 1 and 2 and the learned Advocate appearing for the 3rd respondent placed very strong reliance on the provisions of R. 22 (2) which is in these terms:

"As soon as may be after the receipt of election petition under sub-r. (1) the election authority shall make such inquiry as he considers necessary. If, after such enquiry, the election authority is of the opinion that the election has been procured or induced by a correct or illegal practice or without complying with any of the rules applicable thereto and that thereby the result of the election has been materially affected, he may declare it void and order fresh election to be held and the said order of the election authority shall be final."

It is only when we hold that there is non-compliance with the provisions of R. 17 that the question of election having been held without complying with any of the rules would arise; but since we find that there was substantial compliance with the provisions of R. 17, so far as the putting of the mark 'X' is concerned, by the ascertainment of the desire of the voter to vote for a particular candidate, there is no non-compliance with any of the rules so far as the election of the petitioner was concerned. Hence, with respect to our learned brother, we are unable to agree with his conclusion, which primarily stems from a reading of R. 17 as mandatory. The only mandatory rule which we find in this context is Cl. (b) of R. 18 and not R. 17.

9. Under these circumstances, we hold that the Election Authority was in error in treating any of the votes cast in favour of the petitioner or in favour of the 3rd respondent as invalid on the ground that the mark which was put was a mark other than the mark 'X' against a particular candidate. Since Rule 19 (a) provides

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that, in the event of there being equality of votes among two or more candidates, the election officer shall draw lots and the candidate whose name is first drawn shall be declared to have been elected and since the petitioner was declared to have been elected after the drawing of lots because the petitioner, the 3rd respondent and Srinivasulu Chetty got 96 votes each, the Election Authority was in error, in declaring that the petitioner was not properly elected. Once it is found that none of the votes, which were treated as invalid by the Election Authority on an erroneous interpretation of R. 17 was in fact invalid, it follows that the conclusion reached by the Election Authority and our learned brother, Gangadhara Rao, J. cannot be sustained. It must be held that the petitioner was properly declared elected at this particular election.

10. In the result, we allow the writ appeal and the writ petition and set aside the decision of the Election Authority declaring that the petitioner was not duly elected and ordering a fresh election so far as this particular seat was concerned. We therefore, issue a writ quashing the decision of the Election Authority. There will be no order as to costs either in the writ appeal or in the writ petition. Advocate's fee Rs. 150/- in writ appeal.

Appeal allowed.

AIR 1977 ANDHRA PRADESH 322 "A. S. Rao and Co. v. Agrl. Market Committee"

ANDHRA PRADESH HIGH COURT

FULL BENCH

Coram : 3 ALLADI KUPPUSWAMI, VENKATARAMA SASTRY AND MADHAVA RAO, JJ. ( Full Bench )

Alapati Seshadri Rao and Co. and others, Petitioners v. The Agricultural Market Committee, Guntur, Respondent.

Writ Appeal No. 106 of 1974, D/- 1 -3 -1976.\*

A.P. (Agricultural Produce and Live Stock) Markets Act (16 of 1966), S.33, S.34, S.7(3) and S.2(14) - AGRICULTURAL PRODUCE - LICENSE - DELEGATION OF POWER - Guntur Agricultural Market Committee Bye-laws, Bye-law 20 - Bye-law prescribing fees for licence to be obtained by dealers - Maximum amount of fee fixed under R.48 - Bye-law is not void on ground of excessive delegation of power.

Though S.7(3) provides that the licence fee should be prescribed by rules made by the Government, by necessary implication from the various provisions of the Act it cannot be said that the State Government is not empowered to delegate that power to the market committee. R.48 which prescribes the maximum and authorises the market committee to levy the fees under its bye-laws cannot be said to be ultra vires. The bye-law which prescribes the fee within the maximum prescribed by the rules is not in any way inconsistent with the rules. R.48, in so far as it fixed only the maximum and left it to the market committee to lay down rates by its bye-laws is not void and does not amount to excessive delegation of legislative powers nor is it otherwise ultra vires. The Bye-law 20 (1) cannot, therefore, be held to be bad. (Paras 13, 57)

Where taxes are to be levied by a local body, according to the local needs, after making local enquiries, sub-delegation is valid, where there is control retained in the Government over its actions. (Para 44)

The principles regarding delegation of power are : that the power of delegation is a constituent element of legislative power. The Legislature, in marking the laws has to perform the essential function viz., of laying down the essential legislative intent by declaring its policy and formulating it as a binding rule of conduct. Such a function cannot be abdicated to any other person or body of administrators or officers.

Such a policy can be deduced either from the preamble of the Act itself or from the other guidance given by the Act intended to achieve the objects of the Act.

When once the policy is laid down in definite and discernible terms, the delegation of subsidiary or ancillary powers to delegates of their choice by the legislature for carrying out the policy laid down by it cannot be said to be excessive delegation.

On the same principle sub-delegation is also valid, if permitted by the Act, provided sufficient guidance is given, and it is intended to achieve the objects of the Act.

The doctrine of 'Delegatus non potest delegare' is not a rule of law but a rule

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of construction. Sub-delegation therefore can be sustained if permitted by an express provision of the Statute.

The nature of the body to which delegation is made is a factor in deciding whether there is proper guidance or not.

If the levy is by way of taxes like Income-tax or Sales Tax or the like by the Government, the Government cannot delegate the rates of tax to the delegate. On the other hand in case where the power to levy fees is conferred on a representative local body with maximum rates being fixed by the Statute or rules, it is valid so long as there are provisions in the Statute retaining the control in the delegates of the legislature. The fixation of maximum rates is itself guidance for the levy of reasonable fees. (Para 53)

If the Market Committee makes bye-laws it would be doing so only to regulate its own procedure and the conditions of trading in the notified area covered under the jurisdictions of the market committee. The Act also contemplates that the duty of the Market Committee is to enforce the provisions of this Act. The bye-laws made by it u/S.34 of the Act are always subject to the rules and have to be made with the previous sanction of the Director of Marketing who is an Officer appointed under this Act. They have therefore the power to regulate the business and the conditions of trading in the market under their jurisdiction. Every bye-law made under this section has to be published in the A. P. Gazette and in the District Gazette and come into force only after three months from the date of publication. Sufficient power is therefore retained with the Government to control the activities of the market committees. R.48 framed under this Act also provides that every application u/S.7 of the Act shall be accompanied with such fees which shall not exceed Rs. 100/-. The fees may be fixed by the market committees by its bye-laws subject to that maximum. This itself is sufficient guidance to make it a valid levy. In the very nature of things it cannot be expected that the legislature is aware of the varying conditions of the trading in the several markets. The levy of licence fees depends not only upon the nature of commodities bought and sold in such markets, but also on the quantum of business that is usually done and various other factors depending upon the local conditions. All these are matters which ought to be decided only by the local representatives body viz., the market committee taking into consideration the guidance given in the Act and the various factors. The levy of licence fees would also be commensurate with the services to be rendered by the market committee. In fixing the guidance for levying licence fee under bye-law No. 20, it cannot be said that they adopted any arbitrary or capricious method. (Paras 28, 55, 56)

Cases Referred : Chronological Paras

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1938 AC 708 35, 39, 40

G. Satyanarayana, for Appellants; Advocate General and D.V. Reddypantulu, for Respondent.

\* Decided by Full Bench on order of reference made by Ramachandra Rao and Punnaiah, JJ. on 12-12-1975.

Judgement

ALLADI KUPPUSWAMI, J.:- I have gone through the Judgment of my learned brother Venkatarama Sastry, J., which

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is about to be delivered and I agree with him that the Writ Appeal has to be dismissed. I would like however, to add a few words of my own.

2. Bye-law 20 of the Agricultural Market Committee, Guntur which prescribes the fees for the licence to be obtained by persons dealing in notified agricultural produce, live-stock or products of live-stock. Persons whose turnover does not exceed Rs. 300/- on any single day are exempt from taking out a licence. In regard to other cases the licence fee varies according to the scale fixed with reference to the turnover.

3. Under S. 7 (1) of the Andhra Pradesh (Agricultural Produce and Live-stock) Markets Act, 1966 (referred to in this Judgment as the Act) no person shall within a notified area set up, establish or use etc. any place for the purchase, sale etc. of any notified agricultural produce or products of live-stock except under and in accordance with the conditions of a licence granted to him by the market committee. Section 7 (3) of the Act provides that a licence granted under sub-s. (1) shall be in such form and subject to the payment of such fees, as may be prescribed. The Expression 'prescribed' is defined by S. 2 (14) as meaning prescribed by rules made under the Act. Section 33 confers power on Government to make rules for carrying out the purposes of the Act and in particular in regard to the issue by a market committee of licences under S. 7, the forms in which and the conditions under which such licences are issued or renewed, the annual fees that may be levied for such licences and the recovery of such fees. Accordingly, rules were made under the Act and R. 48 (1) provides that an application for a licence shall be accompanied with such fees which shall not exceed Rs. 100/- as may be fixed in the bye-laws of the Market Committee.

4. The contention of the petitioners as stated in the writ petition was that under S. 7(3) the licence fees has to be prescribed, which means prescribed by the Government under the rules made by it. Hence it is the duty of the Government to fix the fees but instead of doing so, the Government has under R. 48 authorised the market committee to fix the licence fees indicating only the maximum that may be fixed by the committee. It is not competent to the Government to delegate to the market committee the power to fix the rates of licence fees. It was therefore contended that the Bye-law 20 of respondents' bye-laws is ultra vires.

5. At the time of the arguments it was pointed out to Sri Y. Satyanarayana, learned counsel for the appellant that as the rule prescribes a maximum licence fee of Rs. 100/- and leaves it to the market committee to fix the licence fees, any bye-law cannot be said to be ultra vires the rules so long as the fees fixed do not exceed the maximum. Realising that the bye-law cannot be questioned as ultra vires, as long as R. 48 remains, the learned counsel for the appellant submitted that R. 48 itself is ultra vires the provisions of the Act. He modified his submission by arguing that R. 48 which delegates the power vested in the Government to fix the fees, to the committee is ultra vires. He submitted that the Government who is constituted delegate of the legislature in the matter of fixing the fees has no power to further delegate the said power to the market committee as such a power to delegate is not conferred by statute.

6. It is unnecessary in my view to consider the various decisions relating to the validity of delegation of legislative functions to the Government or any other authority, for it is not the case of the appellants that S. 7(3) of the Act which vests the power to levy the licence fee on the Government is ultra vires on the ground that there is a delegation of legislative function. The only argument is that the Government to whom the power to levy fees is delegated cannot in its turn delegate that power to the market committee. Such delegation is bad, whether the power delegated is a legislative power or not. The only question therefore is whether this sub-delegation of the power to levy fees by the Government is valid.

7. As has been pointed out by the Supreme Court the doctrine of delegatus non potest delegare is not a rule of law, but a rule of construction. (Vide Barium Chemicals Ltd. v. Company Law Board, AIR 1967 SC 295). The same view was expressed in the Union of India v. P. K. Roy, AIR 1968 SC 850). Sub-delegation may be sustained if permitted by an express provision or by necessary implication from the provisions of the Act. (Vide : AIR 1967 An Pra 265). Even in the case of a principal and agent it is well settled that no agent has power to delegate his authority except with the express or implied authority of the principal and such authority is implied in the following

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among other cases. Where it may be reasonably presumed to have been the intention that the agent should have the power to delegate his authority and where the authority conferred is of such a nature as to necessitate its execution wholly or in part by a deputy or sub-agent. This applies with greater force when the principal is the legislature and the agent is an institution like the Government. As rightly pointed out in the order of reference, there is no express provision in the statute authorising the Government to delegate its power to prescribe fees under the rules to the market committee. The question is whether such a power can be spelt out by necessary implication from the provisions of the statute. Venkatarama Sastry, J., has in the course of his Judgment set out all the relevant provisions of the Act including the preamble and has stated that when the market committee enacts bye-laws, it does so to regulate the conditions of trading in the notified area under its jurisdiction. It is the market committee that is entrusted with the duty to enforce the provisions of the Act. The committees are manned by representatives of traders, growers and nominees of Government. All the nominees received by the market committee have to be credited to a market committee fund and have to be expended only for the purposes mentioned in the Act. Thus, it is clear that it is primarily the duty of the market committee to see that the provisions of the Act are carried out. The market committee would be the authority which would know intimately the conditions prevailing in several markets. The levy of licence fee would depend upon the volume of trade, quality of business done and various other factors depending upon the local conditions. The levy of licence fee would also have to be commensurate with the services rendered by the market committee. From these circumstances it is not difficult to imply that it was intended by the legislature that the power vested in the Government to levy licence fee could be delegated to the market committee. It is also to be noticed that while delegating the power to fix the fees, the Government has taken care to say that the fee shall not exceed maximum of Rs. 100/- referred to in the rule. Further, there is also the additional safeguard that the bye-laws of a market committee are approved by the Director of Marketing who is incharge of market committees and thereby preventing any arbitrary exercise of power by the market committee.

8. In this connection it is sufficient to refer to a few decisions of the Supreme Court by way of illustration which deal with sub-delegation and are almost directly in point. In H. Bagla v. State of M. P., (AIR 1954 SC 465) one of the contentions raised was that S. 4 of the Essential Supplies (Temporary Powers) Act (Act 24 of 1946) which empowered the Central Government to exercise its power to make an order under S. 3 for regulating the production, supply and distribution of any essential commodity to any other officer or authority subordinate to the Central Government or the State Government is ultra vires on the ground of sub-delegation. It was contended that the legislature itself should have mentioned the particular authority or officers who can exercise the powers under S. 3 and it should not have left it to the discretion of the Central Government to decide the Officers or authorities to whom the power could be delegated. This contention was negatived and the power to sub-delegate the power under S. 4 of the Act was upheld. Similarly in Union of India v. Bhanamal Ghulzarimal Ltd., AIR 1960 SC 475), Cl. 11(B) of the Iron and Steel (Control of Production and Distribution) Order under which the controller was given the power to fix the maximum price was upheld. It was observed that in conferring power upon the Controller to fix the maximum price for Iron and Steel, the Legislature must inevitably have taken into account the special features of the objects, which it intends to achieve by the statute. It is true that in this case the Act itself conferred powers upon the Central Government to delegate its functions to a subordinate authority, but such power can also be inferred though not expressly granted, from the various provisions of the Act.

9. Similarly in Union of India v. P. K. Roy, AIR 1968 SC 850 it was held that there was no improper delegation of its statutory power and duties under S. 195 (5) of the States Reorganisation Act by the Central Government by asking the State Government to prepare the preliminary and final gradation lists on the principles laid down by the Central Government.

10. It is unnecessary to refer to various other decisions which have been elaborately considered and discussed by Venkatarama Sastry, J.

11. The learned Counsel for the appellants relied upon the decision in

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Mohd. Hussain v. State of Bombay, AIR 1962 SC 97). In that case S. 11 of the Bombay Agricultural Produce Markets Act, 1939 gave power to the market committee to fix the fees subject to such maximum as may be prescribed by the rules. Rule 53 of the rules framed under the Act however, authorised the levy of fees at rates specified in the bye-laws without fixing the maximum. In those circumstances it was held that the bye-laws were ultra vires. This decision has no application to the facts of the present case where R. 48 has prescribed the maximum and the fees fixed under the bye-laws is subject to that maximum. It may be noticed that after the decisions of the Supreme Court, R.53 of the rules made under the Bombay Act was amended and the maximum rate was fixed. When the matter again came up before the Supreme Court in Muhammad Bhai v. State of Gujarat, AIR 1962 SC 1517, the Supreme Court upheld the notification and the levy of fees. As has been pointed out by Venkatarama Sastry, in a later decision G. B. Modi v. Ahmedabad Municipality, AIR 1971 SC 2100) the Supreme Court held that even if a maximum is not prescribed by the Act or the rules, the validity of such levy cannot be questioned so long as policy is clearly laid down and the levy is made by a representative body subject to the control of the Government.

12. Reliance was also placed upon the decision in Madan Gopal v. The Agricultural Market Committee, AIR 1975 Andh Pra 1 where it was held that a bye-law fixing the licence fee was not ultra vires S. 7 read with S. 33 (2) (vii) and Rr. 45 and 48. It was observed that R. 48 itself empowers the market committee to fix the fee and it is by virtue of this power the bye-law was framed. Hence, the bye-law was valid. There cannot be any quarrel with this proposition and as I pointed out at the outset Sri Y. Satyanarayana did not submit that the bye-law was inconsistent with the rule, but submitted that it was not open to the Government to delegate the power to fix the fees to the committee when the statute did not empower it to do so. Apparently, the matter was not argued before the learned Judges who decided cases in Madan Gopal v. The Agricultural Market Committee (Supra) in this form. No doubt there is an observation in the Judgment "it cannot be complained that there is any further delegation of the power by the Government without the authority of the legislature". It cannot be said there is no delegation of the power at all to fix the fees as there is such a delegation under R. 48. But as I have stated above, such delegation is justified even though not expressly authorised by the legislature, as the power to delegate can be implied in the circumstances of the case. In the judgment under appeal before us also, the main basis of the decision is that the bye-law is not in excess of the authority conferred on the market committee as apparently the matter was not argued on the lines argued before us.

13. For the reasons above stated I am of the view that though S. 7 (3) provides that the licence fee should be prescribed by rules made by the Government, by necessary implication from the various provisions of the Act it cannot be said that the State Government is not empowered to delegate that power to the market committee. Rule 48 which prescribes the maximum and authorises the market committee to levy the fees under its bye-laws cannot be said to be ultra vires. The bye-law which prescribes the fee within the maximum prescribed by the rules is not in any way inconsistent with the rules.

14. The Writ Appeal is therefore dismissed.

15. VENKATARAMA SASTRY, J.:- This appeal has been referred to this Full Bench as our learned brothers Ramachandra Rao and Punnaya, JJ., felt that the decision in Madan Gopal v. The Agricultural Market Committee AIR 1975 Andh Pra 1, requires reconsideration and that the matter should be authoritatively decided by a Full Bench.

16. The facts which are necessary for appreciating the point that arises for consideration, may briefly be stated :- The appellants herein are merchants carrying on trade in Chillies and other agricultural products. The respondent is the Agricultural Market Committee, Guntur represented by its Chairman. We said committee was constituted under the Andhra Pradesh (Agricultural Produce and Live-stock) Markets Act 1966 (hereinafter referred to as the Act). According to the appellants there was a Market Committee at Guntur even prior to 1966, which was constituted under the Andhra Pradesh (Andhra Area) Commercial Crops Market Act 1933. The Market Committee under the new Act was formed in 1969. The said Committee framed bye-laws on 30-1-1970, in exercise of the powers conferred upon it by S. 34 of the

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Act. Bye-law 20 deals with licences to be issued under S. 7 R. 48 of the Act. It provides that licences under S. 7 of the Act should be in the form prescribed under R. 48 on payment of fees as prescribed under the bye-law for dealing in any or all of the notified agricultural produce, livestock or products of livestock. According to that bye-law persons whose turn-over does not exceed Rs. 300/- on any single day are exempt from taking out such a licence, whereas persons purchasing or selling any or all of the notified agricultural produce, livestock or products of livestock of the value above Rs. 300/- and upto Rs. 25,000/- per annum should pay Rs. 25/- per annum; and similarly persons carrying on such business of the value above Rs. 25,000/- upto Rs. 50,000/- had to pay Rs. 50/- those having a turnover of above Rs. 50,000/- upto Rs. 1,00,000/- per annum Rs. 75/- and those having a turnover of more than one lakh per annum had to pay Rs. 100/-. The appellants challenged the levy of the said licence fees on the ground that the expenses of the market committee have not changed in any manner that the increase in the licence fee is out of all proportion to the expenses, which would have to be incurred by the market committee for the regulation of their trade. As a matter of fact there were surplus funds to the tune of one lakh and thirty thousand rupees by the time of the formation of the new committee which represents the balance of the collections in the previous years. The bye-laws were also not approved by the Director of Marketing and they were not published in the Gazette as required by S. 34 of the Act. Writ Petitions No. 1879 of 1972 etc. were filed in the High Court questioning the said levy.

17. In the meanwhile the Act was amended by deleting from the sub-section the necessity of awaiting for three months after publication of the bye-laws for their enforcement. Therefore, the bye-laws were immediately published in the official Gazette in June, 1971.

18. One of the main grounds raised by the appellant was that the Market Committee was incompetent to fix the rate of licence fee. The licence fee had to be fixed only by the Government as per the rules made by them under the Act. S. 7 sub-s. (3) of the Act provides that the licence shall be in such form and subject to the payment of such fees as may be prescribed. 'Prescribed' means prescribed by rules made under the Act as per S. 2 sub-s. (14) of the Act. S. 33 of the Act enables the Government alone to make the rules. Thus the combined effect of all these provisions is that the rates of licence fees should be fixed by the Government alone and it is not open to the market committee to fix those rates. R. 48 framed by the Government under S. 33 of the Act provides that every application for a licence shall be accompanied with such fees, which shall not exceed Rs. 100/- as may be fixed under the bye-laws of the market committee. The proviso to R. 48, therefore, authorises the market committee to fix the rates of licence fee by its bye-laws. The Government is not competent to delegate to the market committee the power to fix the rates of licence fees. Bye-law 20 (1) of the respondent's bye-laws is ultra vires, and hence it cannot be enforced. The petitioners therefore filed the writ petition for the issue of a writ of mandamus or other appropriate writ, order or direction prohibiting the respondent from enforcing the enhanced rates of licence fees, introduced by bye-law 23 (1) and declaring the bye-law as void and to pass necessary or incidental orders.

19. The Secretary of the Agricultural Market Committee filed his counter opposing the writ petition. According to the counter the petitioners, who were all traders, are bound to obtain licences under S. 7 of the Act. The bye-laws of the market committee were made after following the procedure prescribed in the Act and after publication in the Gazette on 24-6-1971 and after obtaining the previous sanction of the Director of Marketing. The amount of licence fees fixed by the bye-law is reasonable and is not arbitrary or unreasonable. It is not true that the market committee's expenses have remained the same. The budget for 1972-73 discloses that the committee had to spend large amounts for maintenance of supervisory staff and also for providing amenities and facilities etc. Under R. 48, the Government fixed the maximum licence fee at Rs. 100/- and directed the market committee to fix the licence fees in its bye-laws. Where the maximum is fixed and the committee is given power to fix licence fees subject to the maximum fixed by the Government, there is no delegation to the market committee of any power, and the Government retained its power as they had control

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over the committee. The Committee has to fix the licence fees depending upon the facts and circumstances existing in the area of the committee and also depending upon the local conditions. There is no abdication of power or complete annihilation of the power of the Government to prescribe the licence fees under S. 7 (3) of the Act. The said bye-law 20 (1) is perfectly valid and is not opposed to S. 7 (3) or R. 48 of the rules. Moreover the Government has got powers of revision under S. 27 of the Act to examine the legality, regularity or propriety of the bye-laws made by the market committee. Hence, the writ petition may be dismissed.

20. The writ petition came up for disposal before our learned brother Obul Reddy, J. (as he then was) on 15-1-'74. The learned Judge dismissed the said writ petition holding that the bye-law cannot be said to be in any way in conflict with R. 48 as it is subject to what is provided in R. 48. It is also not in excess of authority conferred upon the market committee to make bye-laws. There is no delegation of power by the Government without the authority of the legislature. The learned Judge followed the view expressed in L. P. A. 204/72 by one of us Venkatarama Sastry, J. to the following effect :

"Admittedly, the rates of fee levied by the market committee under its bye-laws are within the maximum prescribed by the rule-making authority. Where the statutory rule itself fixes the maximum rate or rates of fees that can be levied in respect of commercial crops bought and sold in the notified area and the market committee has to fix the rates of levy within or not exceeding the maximum rates prescribed by the statutory rule, it cannot be said that the statutory provision empowering the market committee to levy fees is invalid. It is perfectly valid and it is neither unconstitutional nor void, as it does not suffer from the vice of excessive delegation."

It was also observed that the above Division Bench followed the decisions of the Supreme Court in Mohd. Hussain v. State of Bombay, (AIR 1962 SC 97) and in Muhamadbhai v. State of Gujarat, (AIR 1962 SC 1517). In that view the writ petition was dismissed.

21. The appellant herein carried the matter in writ appeal 106 of 1974. It was heard in the first instance by our learned brothers Ramachandra Rao and Punnaiah, JJ. After quoting the relevant provisions and the decisions, including the decision in Madan Gopal v. The Agricultural Market Committee (AIR 1975 Andh Pra 1) rendered by Obul Reddi, C. J., and Sriramulu, J., our learned brothers felt a doubt about the view expressed in the last mentioned decision. According to them, as per the provisions in the Act, the rates of licence fees have to be fixed by the rule-making authority, viz., the Government. It is not enough if a maximum rate is prescribed. There is nothing in the statute empowering the market committee to fix the annual licence fees. They therefore wanted the matter to be referred to a Full Bench. Accordingly the matter has been placed before us.

22. Mr. Yellapragada Satyanarayana, learned Counsel appearing for the appellants submitted that the bye-law is void in so far as it fixed the rates of licence fees, as it amounts to an abdication of the legislative power by the legislature to an authority subordinate to the Government and therefore void. To a question put by us, the learned Counsel modified his arguments be saying that R. 48 of the rules, in so far as it directs the market committee to fix the rates of licence fees by its bye-laws, is itself ultra vires as it amounts to excessive delegation of legislative power.

23. On the other hand Mr. Ramachandra Reddy, learned Advocate-General, who appeared on behalf of the market committee submitted that there is no excessive delegation in this case and the bye-law has been validly made. The special delegation, if any, by the Government to the Market Committee is within the permissible limits and is not void or ultra vires. The learned Counsel for the appellants cited one or two decisions of the Supreme Court, beside those referred to in the order of reference, while the learned Advocate General referred to other decisions, which will be referred to shortly in our discussion.

24. Before we consider the point that arises in this case, it is convenient to extract the relevant provisions of law. S. 7 of the Act, which requires licences to be taken by the traders etc. is in the following terms :

7. (1) No person shall, within a notified area, set up, establish or use, or continue or allow to be continued, any place for the purchase, sale, storage, weighment, curing, pressing or processing of any notified agricultural produce or products

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of livestock or for the purchase or sale of livestock except under and in accordance with the conditions of a licence granted to him by the market committee :

Provided that the market committee may exempt from the provisions of this sub-section any person who carries on the business of purchasing or selling any notified agricultural produce, livestock or products of livestock not exceeding such value as may be prescribed :

Provided further that a person selling notified agricultural produce, livestock or products of livestock grown, reared or produced by him, shall be exempt from the provisions of this sub-section, but the Government may, for special reasons to be recorded in writing, withdraw such exemption in respect of any such person.

Explanation: Nothing in the second proviso to this sub-section shall be construed as exempting a Co-operative Marketing Society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 selling notified agricultural produce, livestock products of livestock grown, reared or produced by any of its members.

(2) xx xx xx xx xx

(3) A licence granted under sub-s. (1) shall be in such form and subject to the payment of such fees, as may be prescribed :

Provided that no fees shall be charged for the grant of a licence;

(i) to the Khadi and Village Industries Commission;

"(ii) to a Co-operative marketing society referred to in the explanation to sub-s. (i);

(iii) to a person merely for curing, pressing or processing any notified agricultural produce or products of live stock."

The word 'prescribed' has been defined the Act by S. 2 sub-s. (14) as follows:-

"(xiv) 1. 'Prescribed' means prescribed by rules made under this Act."

25. Clause (8), sub-s. (2) of S. 33 is in the following terms :-

33. (1) The Government may, either generally or specially for any notified area or areas, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for :

(i) to (vii) xx xx xx xx

(viii) the issue by a market committee of licences under S. 7, the forms in which, and the conditions under which such licences shall be issued or renewed, the annual fees that may be levied for such licences and the recovery of such fees :" Rule 48, which is made under this Section is in the following terms :

48. (1) Any person desiring to obtain or renew a licence under sub-s. (1) of S. 7 shall make an application in Form 5 :

Provided that every such application shall be accompanied with such fees which shall not exceed Rs. 100/- (Rupees one hundred only) as may be fixed in the bye-laws of the market committee :

Provided further that a person residing outside the notified area and desiring to operate in a notified area of a Market Committee for specific transactions which may not exceed ten in a year may be granted special licence on payment of such fees which shall not exceed Rs. 20/- (Rupees twenty only) as may be fixed in the bye-laws of Market Committee." Section 34 deals with the Bye-laws and it is to the following effect :-

"34. (1) Subject to any rules made by the Govt. under S. 33 and with the previous sanction of the Director of Marketing, a market committee may, in respect of the notified area for which it was constituted, make bye-laws for the regulation of the business and the conditions of trading therein :

Provided that where a market committee fails to make bye-laws under this sub-section within two months from the date of its constitution, the Director of Marketing may make such bye-laws as he thinks fit, and the bye-laws so made shall remain in operation until the market committee has made bye-laws under this sub-section.

(2) Every bye-law made under this section shall be published in English and Telugu in the Andhra Pradesh Gazette and in the District Gazette and it shall come into operation on the expiration of three months from the date of its publication in the Andhra Pradesh Gazette.

(3) Any bye-law made under this section may provide that any contravention thereof shall be punishable with fine which may extend to five hundred rupees."

Bye-law 20 (1) framed by the various market committees as per the notification in the supplement to Rules supplement to part 2 of A. P. Gazette, D/- 24-6-1971 is to the following effect :-

20. Licences under S. 7 (Rule 48) (1) licences under S. 7 of the Act shall be in the form prescribed and shall be issued in the following manner:

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(a) Persons intending to obtain licence under S. 7, R. 48 shall make applications in form 5.

(b) Copies of application forms mentioned above can be obtained from any of the offices of the market committee on payment of Re. 0.50 paise per form.

(c) Applicants shall make applications for the renewal of licence at least 30 days before the date of expiry of the licence previously granted.

(d) All applications for fresh or renewal of licence shall accompany with a licence fee; the rate of fee shall be as shown in Annexure-V."

26. Annexure-V, attached to this supplement mentions different rates of licence fee for different Agricultural Market Committees. They are published at pages 66 to 70. We are extracting below the bye-law 20 (d) in so far as it related to the Agricultural Market Committees of Guntur, Narasaraopet, Tenali and Ongole.

27. We may state in this connection that in regard to Markapur Agricultural Market Committee, the maximum rate is only Rs. 60/- while the other corresponding rates are Rs. 40/-, Rs. 25/-, Rs. 10/- and Rs. 5/- respectively. In the cases of Agricultural Market Committees Jaggayyapet, Amudalavalasa and Kothavalsa the maximum is Rs. 100/- and the Minimum is Rs. 10/-. In the cases of Agricultural Market Committees of Rajahmundry and Ambajipet the maximum is Rs. 100/- while the minimum is Rs. 5/-. Thus it is seen varying rates of licence fees have been fixed for the various agricultural market committees. They were all approved by the Director of Marketing and notified in the A. P. Gazette as required by the Act.

28. From the above provisions it is clear that the Legislature delegated the power of fixing the rate of licence fees to the Government under S. 7 (3) of the Act, and under R. 48 of the Rules framed under the Act. R. 48 fixed the maximum licence fee as Rs. 100 and provides that the licence fees may be fixed by the market Committees subject to that maximum in accordance with this provision the various Market Committees have framed their bye-laws fixing various rates of licence fees not exceeding the said maximum, taking into consideration the special features and conditions prevailing in those markets and the corresponding services to be rendered by them for such licence fees collected from the traders etc. S. 23 of the Act provides a penalty for not possessing the licence, which is punishable with a fine of Rs. 500/- and in the case of continuous contravention with a further fine, which may extend to Rs. 100-/ for every day. The Market Committee has also got power to collect market fees as per S. 12 of the Act.

Annexure-V. (See Bye-law 20 (d).)

A. Agricultural Market Committee, Guntur, Narasaraopet, Tenali and Ongole.

Category (1) Rate of Fee (2)

Rs.

A. Class Trader and/or Trader whose purchases or

Commission Agent. sales exceed a value of

Rs. 8.00 lakhs per annum. 100.00

B. Class Trader and/or Trader whose purchases or

Commission Agent. sales are above a value of

Rs. 1.00 lakh and not exceed-

ing Rs. 8.00 lakhs per annum. 75.00

C. Class Trader and/or Trader whose purchases or

Commission Agent. sales are above a value of

Rs. 50,000/- and not exceeding

Rs. 1.00 lakh per annum. 50.00

D. Class Trader and/or Trader whose purchases or

Commission Agent. sales are above a value of

Rs. 15,000/- and not exceeding

Rs. 50,000/- per annum. 25.00

E. Class Trader and/or Trader whose purchases or

Commission Agent. sales are upto value of

Rs. 15,000/- per annum. 5.00

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29. All the moneys collected by the Market Committee are paid into a fund and expended for the purpose of this Act. S. 15 enumerates the purposes for which the market committee fund may be expended. They included the acquisition of site for the market, establishment, maintenance and improvement of the market, construction and maintenance of buildings necessary for the market and for the health, convenience and safety of the persons using the same, providing standard weights and measures, the collection and dissemination of information regarding all matters relating to crops, statistics and marketing in respect of notified agricultural produce, livestock and products of livestock, embarking upon schemes for the expansion of agricultural products and improvement to the notified agricultural produce etc. and also doing propaganda for the improvement of agricultural produce, livestock and products of livestock and encouragement thrift to promote grading services and to advice measures for the preservation of the food grains etc. The market committee constituted under S. 4 of the Act is a corporate body having perpetual succession and a common seal, with power to acquire hold and dispose of property and sue or be sued. It is the duty of the market committee to enforce the provisions of this Act and the rules and the bye-laws. It has also to establish number of markets within the notified marketing areas.

30. The composition of market committee consists of varied interests on the recommendations of the Director of Marketing from amongst growers of Agricultural products and the owners of livestock and products of livestock, and not less than half of the members would be appointed by the Government. One member representing the Co-operative Marketing Societies, one representative of the Agricultural Department or Animal Husbandry Department to be appointed by the Government, two representatives of the Municipality and the other members elected in the prescribed manner also constitute the members of the Marketing Committee. The market committee has got powers to borrow funds for its purposes. The market committee is liable to be superseded under S. 23 for failure to carry out their functions. The Director of Marketing in exercise of his powers of revision under S. 27 of the Act can call for and examine the record of any market committee and the Government also have got similar powers of revision over the Director of Marketing. This Act has got overriding effect over any other law providing for the establishment, maintenance or regulation of markets or the levy of fees thereon. This Act as is clear from the preamble to the same is regulatory in nature intended to consolidate and also to amend the law relating to the regulation of production and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection therewith. The above is a brief sketch of the scope and ambit of the Act, market committee and its powers.

31. The principal question that we have to answer in this reference is whether R. 48 in so far as it enables the market committee to fix the licence fees as per its bye-laws subject to a maximum of Rs. 100/- is valid or not, or whether it is a delegation of legislative function to the market committee, which is void.

32. In deciding this question we have to see whether and if so, to what extent, it amounts to delegation of an essential legislative function to the extent of the rule-making power. Courts have agreed that the legislature by laying down the essential legislative policy can authorise the Government to enact further details by means of subordinate legislation viz., by framing rules etc. But all the decisions are agreed that the essential legislative policy itself cannot be delegated to any subordinate authority. When once ample guidance has been given and principles have been laid down, it is open to the subordinate authority to proceed with the determination of the other details, which are required to carry out the effect, purpose and objects of the legislation, so long as they do not entrench upon the legislative powers. The question whether guidance has been given or not, in each case has to be determined on an overall appraisal of the facts and circumstances of each case. When once such guidance has been given it is open to the subordinate authority to fill the necessary details. In this connection we may also observe that it is also open to the subordinate authority to sub-delegate the said functions to persons or institutions recognised by the Statute itself, so long as it is intended to work out the result of the legislation and carry it into effect.

33. We shall now mention the leading decisions of the Supreme Court, wherein the above general principles have been laid down and where it has been held that

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even sub-delegation is permissible within limits.

34. Before we proceed to elaborately deal with the above aspects we would clarify one aspect of the case viz., that the Act itself has been upheld as a valid one not offending any of the provisions of the Constitution. We have got decisions relating not only the Act in question, but also its predecessor Act viz., The Madras Commercial Crops Act 1933 as well as the other similar enactments prevalent in other States. As the matter is no longer in dispute we would merely give a list of those previous enactments of this nature which have been uniformly upheld in those States. For instance the Madras Commercial Crops Markets Act 1933 was upheld in P. P. Kutti Keya v. The State of Madras, 1954-1 Mad LJ 177 : (AIR 1954 Mad 621), and in Arunachala Nadar v. State of Madras (AIR 1959 SC 300). The succeeding Madras Act of 1959 was upheld in Kannappa Mudaliar v. State of Madras (1969-1 Mad LJ 212). The Bombay Act was upheld in Mohd. Hussain v. State of Bombay (AIR 1962 SC 97), while the Gujarat Act has been upheld as valid in Jan Mohd. v. State Of Gujarat (AIR 1966 SC 385). The Hyderabad Act also was similarly upheld in Narayana Reddi v. State of Andh. Pra., AIR 1964 Andh Pra 373, while the validity of the Bihar Act has been approved by the Supreme Court in Lakhan Lal v. State Of Bihar (AIR 1968 SC 1408). The present Act in question in Andhra Pradesh State has been upheld in a batch of writ petitions, W. P. 1214/70 D/- 19-7-1971 decided by one of us (Kuppuswami, J.) sitting with the then Chief Justice K. V. Narasimham, J. We may in this connection also usefully extract the scope and object of the Act of this nature as extracted by the Supreme Court in Arunachala Nadar v. State of Madras (AIR 1959 SC 300 at p. 305), as follows :-

"shortly stated, the Act, Rules and the Bye-laws framed thereunder have a long-term target of providing a net work of markets wherein facilities for correct weighment are ensured, storage accommodation is provided, and equal powers of bargaining ensured, so that the growers may bring their commercial crops to the market and sell them at reasonable prices. Till such markets are established, the said provisions, by imposing licensing restrictions, enable the buyers and sellers to meet in licensed premises, ensure correct weighment, make available to them reliable market information and provide for them a simple machinery for settlement of disputes. After the markets are built or opened by the marketing committees, within a reasonable radius from the market, as prescribed by the Rule no licence is issued; thereafter all growers will have to resort to the market for vending their goods. The result of the implementation of the Act would be to eliminate, as far as possible, the middlemen and to give reasonable facilities for the growers of commercial crops to secure best prices for their commodities."

35. In In re Art. 143 Constitution of India etc., AIR 1951 SC 332 at p. 355 Fazl Ali J. summed up his conclusions in regard to the delegation of legislative functions as follows :

"The legislature must normally discharge its primary legislative function itself and not through others. (2) Once it is established that it has sovereign powers within a certain sphere, it must follow as a corollary that it is free to legislate within that sphere in any way which appears to it to be the best way to give effect to its intention and policy in making a particular law, and that it may utilise any outside agency to any extent it finds necessary for doing things which it is unable to do itself or finds it inconvenient to do. In other words, it can do everything which is ancillary to and necessary for the full and effective exercise of its power of legislation. (3) It cannot abdicate its legislative functions, and therefore while entrusting power to an outside agency, it must see that such agency acts as a subordinate authority and does not become a parallel Legislature. (4) The doctrine of separation of powers and the judicial interpretation it has received in America ever since the American Constitution was framed, enables the American Courts to check undue and excessive delegation but the courts of this country are not committed to that doctrine and cannot apply it in the same way as it has been applied in America. Therefore, there are only two main checks in this country on the power of the legislature to delegate; these being its good sense and the principle that it should not cross the line beyond which delegation amounts to 'abdication and self-effacement'."

At page 358 the same learned Judge observed as follows:-

"It is now well settled in England and in America that a legislature can pass an

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Act to allow a Government or a local body or some other agency to make Regulations consistently with the provisions of the Act."

Patanjali Sastri, J. observed in the same case at p. 361 as follows :-

"The legislature has now to make so many laws that it has no time to devote to all the legislative details, and sometimes the subject on which it has to legislate is of such a technical nature that all it can do is to state the broad principles and leave the details to be worked out by those who are more familiar with the subject. Again, when complex schemes of reform are to be subject of legislation, it is difficult to bring out a self contained and complete Act straightway, since it is not possible to foresee all the contingencies and envisage all the local requirements for which provision is to be made. Thus, some degree of flexibility becomes necessary so as to permit constant adaptation to unknown future conditions without the necessity of having to amend the law again and again. The advantage of such a course is that it enables the delegated authority to consult interests likely to be affected by a particular law, make actual experiments when necessary, and utilise the results of its investigations and experiments in the best way possible."

Mukherjee, J. expressed his opinion in the same case at page 400 as follows :-

"The decisions referred to above clearly lay down that the legislature cannot part with its essential legislative function which consists in declaring its policy and making it a binding rule of conduct. A surrender of this essential function would amount to abdication of legislative powers in the eye of law. The policy may be particularised in as few or as many words as the legislature thinks proper and it is enough if an intelligent guidance is given to the subordinate authority. The Court can interfere if no policy is discernible at all or the delegation is of such an indefinite character as to amount to abdication, but as the discretion vests with the legislature in determining whether there is necessity for delegation or not, the exercise of such discretion is not to be disturbed by the court except in clear cases of abuse. These I consider to be the fundamental principles and in respect to the powers of the legislature the constitutional position in India approximates more to the American than to the English pattern. There is a basic difference between the Indian and the British Parliament in this respect. There is no constitutional limitation to restrain the British Parliament from assigning its powers where it will, but the Indian Parliament qua legislative body is fettered by a written Constitution and it does not possess the sovereign powers of the British Parliament. The limits of the powers of delegation in India would therefore have to be ascertained as a matter of construction from the provisions of the Constitution itself and as I have said the right of delegation may be implied in the exercise of legislative power only to the extent that it is necessary to make the exercise of the power effective and complete."

Das J. also gave his own separate Judgment in that case observing at page 422 referring to the case in Shannon v. Lower Mainland Dairy Products Board, (1938 AC 708) holding that the Privy Council not only upheld the validity of a single delegation, but also upheld the validity of sub-delegation of power.

36. In Kathi Raning v. State of Saurashtra, (AIR 1952 SC 123), Mukherjea, J. again re-stated his opinion in the following terms (at page 132):

"In my opinion, if the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. xx xx xx xx xx The discretion that is conferred on official agencies in such circumstances is not an unguided discretion; it has to be exercised in conformity with the policy, to effectuate which the direction is given and it is in relation to that objective that the propriety of the classification would have to be tested. If the Administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the legislature, its action can certainly be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory irrespective of the way in which it is applied."

In Rajnarain Singh v. Chairman, P. A. Committee, Patna

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(AIR 1954 SC 569 : (1954) 2 Mad LJ 344), Bose, J., explained the decision in In re The Delhi Laws Act 1912, (AIR 1951 SC 332), and analysed the conclusions drawn by various Judges in that cases, summing up as follows at page 574 of AIR :

"In our opinion, the majority view was that an executive authority, can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above; it cannot include a change of policy."

In the facts of that case the notification Dated 23-4-1951 was not upheld as it changed the policy of the Act.

37. In H. Bagla v. State of M. P., (1954) 2 Mad LJ 211 : (AIR 1954 SC 465), Mahajan, C. J., again laid down the law in the following terms (at page 468 of AIR) :-

"It was settled by the majority judgment in the Delhi Laws Act case (1951 SCR 747) : (AIR 1951 SC 332), that essential powers of legislation cannot be delegated. In other words, the legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in the determination or choice of the legislative policy and of formally enacting that policy into a binding rule of conduct. In the present case the legislature has laid down such a principle and that principle is the maintenance or increase in supply of essential commodities and of securing equitable distribution and availability at fair prices. The principle is clear and offers sufficient guidance to the Central Government in exercising its powers under S. 3." The learned Judges therefore upheld S. 3 of the Essential Supplies (Temporary Powers) Act 24 of 1946.

38. In Delhi Municipality v. B. G. S. and W. Mills (AIR 1968 SC 1232) Wanchoo, C. J. also laid down similar principles relating to delegated legislation to the same effect.

39. We shall now deal with cases where even sub-delegation has been held to be valid. In H. Bagla v. State of M. P., (1954) 2 Mad LJ 211 : AIR 1954 SC 465, their Lordships of the Supreme Court were dealing with the validity of Ss. 3 and 4 of the Essential Supplies (Temporary Powers) Act 24 of 1946. Under S. 3, the Central Government may by order provide for regulating or prohibiting the production, supply and distribution of any essential commodity in so far as is necessary or expedient for maintenance or increasing their supply, or for securing their equitable distribution and availability at fair prices. This section was attacked as amounting to delegation of legislative power outside the permissible limits, but that argument was negatived, following the decisions of the Privy Council, including the one reported in law reports 1938 AC 708 (Shannon v. Lower Mainland Dairy Products Board). Under S. 4 of the said Act, the Central Government may by a notified order, direct that the power to make orders under S. 3, shall in relation to such matters and subject to such conditions, if any, as may be specified in the direction to be exercised also by such officer or authority subordinate to Central Government or such State Government or such officer or authority subordinate to State Government as may be specified in the direction. This section was attacked in that case as amounting to sub-delegation of its power under S. 3.

40. The contention was that the legislature itself should have mentioned the particular authorities or Officers, who can exercise powers under S. 3 and it should not have been left to the discretion of the Central Government to decide, who those officers or authorities should be. This contention also was negatived by their Lordships relying upon the decision in Shannon v. Lower Mainland Dairy Products Board, 1938 A. C. 708. In that case the Natural Products Marketing (British Columbia) Act, 1936, enabled the Lt. Governor in Council to set up a Central Marketing Board to establish or approve schemes for the control and regulation of transportation, packing storage and marketing of any natural products and to constitute marketing boards to administer the schemes to vest in those boards, to fix and collect licence fees. Lord Atkin upheld the validity of the Act by observing as follows :-

"The third objection is that it is not within the powers of the Provincial Legislature to delegate so-called legislative powers to the Lt. Governor in Council or to give him powers of further delegation.

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This objection appears to their Lordships subversive of the rights which the provincial legislature enjoys while dealing with matters following within the classes of subjects in relation to which the Constitution has granted legislative powers. Within its appointed sphere the Provincial Legislature is supreme as any other Parliament; and it is unnecessary to try to enumerate the innumerable occasions on which legislatures, provincial dominion and Imperial, have entrusted various persons and bodies with similar powers to those contained in this Act."

Following this passage, Mahajan, C. J. upheld the validity of S. 4 of the Essential Supplies (Temporary Powers) Act 24 of 1946, which also sub-delegated the power to an officer subordinate to the Central or State Government to make any of the orders specified under S. 7 of the said Act. These decisions, therefore, set at rest any controversy, in our opinion, about the authority of any sub-delegation of such powers on any subordinate authority. The Privy Council decision dealt with the powers of the Marketing Board is similar to the one in this case, which was vested with the power to establish or approve schemes contemplated by the Act. If such schemes are valid, we see no reason why the power to fix licence fee subject to a maximum laid down in R. 48, now conferred upon the market committee in this case should not be upheld as the valid one.

41. In Union of India v. Bhanamal Gulzarilal Ltd. (AIR 1960 SC 475) their Lordships of the Supreme Court were considering the validity of Cl. 11-B of the Iron and Steel (Control of Production and Distribution) Order, 1941, under which the Controller was given power to fix the maximum prices. Their Lordships followed the decision in H. Bagla v. State of M. P. (AIR 1954 SC 465 : (1954) 2 Mad LJ 211), and held that the power conferred on the Central Government by S. 3 of the Essential Supplies (Temporary Powers) Act, 1946 lays down the legislative policy and that the delegation under S. 4 of the said Act also is valid. In conferring power upon the Controller, to fix the maximum price for Iron and Steel, the legislature must inevitably have taken into account the Special features of the objects, which it intends to achieve by the statute. In fixing the said price, the delegate has to take the rational evaluation from time to time of all varied factors. Thus it was held to be not an uncanalised and unbridled power that was vested in the sub-delegate viz., the Commissioner. The sub-delegation was therefore upheld as valid.

42. In State of Bombay v. Shivabalak (AIR 1965 SC 661) it was held by their Lordships of the Supreme Court, that the Deputy Collector, to whom the powers of the State Government under S. 65 (1) of the Bombay Tenancy and Agricultural Lands Act (67 of 1948) were delegated under S. 83 of the said Act, was within his powers when he directed his subordinates to collect the material relevant to the enquiry about the lands being kept fallow etc. and on receipt of reports he could make a declaration that the management of the said land shall be assumed. There was no question of excessive sub-delegation in that case. Their Lordships have distinguished the case in Allingham v. Minister of Agriculture and Fisheries, (1948) 1 All ER 780 on the ground that there was no delegation under the statute to hold an enquiry as such. In the case before the Supreme Court, there was no delegation of the authority to the Deputy Collector to hold an enquiry, but it was only an effort to get the material necessary for the enquiry collected by the Subordinate Officers and the final conclusion was arrived at by the delegate himself.

43. In Arnold Rodricks v. State of Maharashtra (AIR 1966 SC 1788) their Lordships of the Supreme Court were considering the validity of Ss. 3 (3) and 4 of the Bombay Commissioners of Divisions Act (8 of 1958), whereby the system of Commissioners was re-introduced and they were conferred powers and duties. Their Lordships held that the legislature left it to the State Government to decide whether any duties and obligations imposed on it or some of the authorities should be conferred on the new administrative set up viz., the Commissioners. It was observed by their Lordships (at page 1795) as follows :-

"We see no difference in principle between the State legislature inserting a section in an Act enabling the State Government to delegate its power to another authority and the legislature in view of the change in the administrative set up conferring powers on the State Government to confer not only its own duties on Commissioners but also of other Officers performing executive and revenue duties."

In coming to this conclusion their Lordships followed the decision in

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H. Bagla v. State of M. P. (AIR 1954 SC 465 : (1955) 1 SCR 380), wherein a similar question viz., S. 4 of Essential Supplies (Temporary Powers) Act (24 of 1948) was upheld by the Supreme Court. It was observed "after all, the law which the Commissioners or the State Government or other authorities have to administer remains the same; it is only the authority that is changed." This decision is, therefore, an authority for the proposition that sub-delegation is permissible where the law to be administered is the same and provided sufficient guidelines are in the statute.

44. In Hapur Municipality v. Raghuvendra, (AIR 1966 SC 693) their Lordships of the Supreme Court were considering the validity of the levy of water-tax under S. 135 (3) of the U. P. Municipal Act (2 of 1916). Hidayatullah, J. speaking for the Bench observed (at pages 697-98) as follows :

"We have already pointed out that the power to tax is conferred on the State Legislature but is exercised by the local authority under the control of the State Government. The taxes with which we are concerned are local taxes for local needs and for which local inquiries have to be made. They are rightly left to the representatives of the local population which would bear the tax. Such taxes must vary from town to town, from one Board to another and from one commodity to another. It is impossible for the Legislature to pass statutes for the imposition of such taxes in local areas. The power must be delegated. Regard being had to the democratic set up of the Municipalities which need the proceeds of these taxes for their own administration, it is proper to leave to these Municipalities the power to impose and collect these taxes. The taxes are, however, predetermined and a procedure for consulting the wishes of the people is devised. But the matter is not left entirely in the hands of the Municipal Boards. As the State Legislature cannot supervise the due observance of its laws by the Municipal Boards, power is given to the State Government to check their actions. The imposition of the tax is left to the Municipal Boards but the duty to see that the provisions for publicity, and obtaining the views of the persons to be taxed are fully complied with is laid upon the State Government. The proceedings for the imposition of the tax, however, must come to a conclusion at some stage after which it can be said that the tax has been imposed. That stage is reached, not when the special resolution of the Municipal Board is passed, but when the notification by Government is issued. xx xx xx xx xx The provision making the notification conclusive evidence of the proper imposition of the tax is conceived in the best interest of compliance of the provisions by the Boards and not to facilitate their breach. It cannot, therefore, be said that there is excessive delegation."

This decision lays down the principle that where taxes are to be levied by a local body, according to the local needs, after making local enquiries, sub-delegation is valid, where there is control retained in the Government over its actions.

45. In Barium Chemicals Ltd. v. Company Law Board (AIR 1967 SC 295), it was held that the powers conferred under S. 237 of the companies Act 1956, delegated by the Central Government to Company Law Board can be exercised by the Chairman on behalf of the Board. It was also further held that the doctrine of Delegatus Non-Potest Delegare is not a rule of law, but a rule of construction. Hence, sub-delegation can be sustained, if permitted by an express provision or by necessary implication from the provisions of the Statute.

46. In Union of India v. P. K. Roy, (AIR 1968 SC 850) the same view was expressed viz., that the maxim Delegatus Non Potest Delegare is only a rule of construction.

47. In Delhi Municipality v. B. G. S. and W. Mills (AIR 1968 SC 1232) the right of the Delhi Municipal Corporation, under Act (66 of 1957) to levy any of the optional taxes by prescribing a maximum rate of tax, was held to be valid. Their Lordships have fully discussed the principle of delegated Legislation and laid down the law in very clear terms, and all the earlier case law has been reviewed, and the cases dealing with the fixation of rates of taxes by the legislature also have been considered. After a review of those authorities, it was observed at p. 1244 as follows:-

"A review of these authorities therefore leads to the conclusion that so far as this Court is concerned the principle is well established that essential legislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the legislature. Nor is there any unlimited right of delegation

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in the legislative power itself. This is not warranted by the provisions of the Constitution. The legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act. Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to deal including its preamble. Further it appears to us that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation. What form the guidance should take is again a matter which cannot be stated in general terms. It will depend upon the circumstances of each statute under consideration; in some cases guidance in broad general terms may be enough, in other cases more detailed guidance may be necessary. As we are concerned in the present case with the field of taxation, let us look at the nature of guidance necessary in this field. The guidance may take the form of providing maximum rates of tax up to which a local body may be given the discretion to make its choice, or it may take the form of providing for consideration with the people of the local area and then fixing the rates after such consultation. It may also take the form of subjecting the rate to be fixed by the local body to the approval of Government which acts as a watch-dog on the actions of the local body in this matter on behalf of the legislature. There may be other ways in which guidance maybe provided. But the purpose of guidance, whatsoever may be the manner thereof, is to see that the local body fixes a reasonable rate of taxation for the local area concerned. So long as the legislature has made provision to achieve that reasonable rates of taxation are fixed by the local bodies, whatever may be the method employed for this purpose provided it is effective-it may be said that there is guidance for the purpose of fixation of rates of taxation. The reasonableness of rates may be ensured by fixing a maximum beyond which the local bodies may not go. It may be ensured by providing safeguards laying down the procedure for consulting the wishes of the local inhabitants. It may consist in the supervision by Government of the rate of taxation by local bodies. So long as the law has provided a method by which the local body can be controlled and there is provision to see that reasonable rates are fixed it can be said that there is guidance in the matter of fixing rates for local taxation. As we have already said there is pre-eminently a case for delegating the fixation of rates of tax to the local body and so long as the legislature has provided a method for seeing that rates fixed are reasonable, be it in one form or another, it may be said that there is guidance for fixing rates of taxation and the power assigned to the local body for fixing the rates is not uncontrolled and uncanalised. It is on the basis of these principles that we have to consider the Act with which we are concerned." (underlining is ours).

This extract gives the gist of the various decisions and lays down the law very succinctly on the subject.

48. In Veena Theatre v. State of Bihar, (AIR 1970 SC 1522) it was held that sub-delegation was valid, where the made and the manner in which liability for taxation under the Bihar Entertainment Act (35 of 1948) was to be determined by the taxing authority.

49. In J. R. G. Mfg. Asscn. v. Union of India, (AIR 1970 SC 1589) it was again held that the guidance may take the form of subjecting the rate to be fixed by the local body to the approval of the Government and the reasonableness of the rates may be ensured by providing safeguards, laying down the procedure for consultation with the wishes of the local inhabitants.

50. In G. B. Modi v. Ahmedabad Municipality, (AIR 1971 SC 2100) their Lordships of the Supreme Court have again discussed the case law on the subject and held that while fixing rates at which property tax is to be levied by corporation, under Bombay Provincial Municipal Corporation Act (59 of 1949), which did not fix any maximum rate, it was not invalid on that ground, because, the ultimate control for raising them is with the councillors responsible to the people and the Act contains a policy or principles furnishing guidance to delegate in exercising such power. Their Lordships have considered various provisions of the Act at page 2105 viz., the purpose for which the taxes could be levied, we purpose for

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which they can be expended, the provisions for keeping the fund in trust and spent as per the Budget Estimate after sanction etc. and held that the above provisions amply establish that the ultimate control both for raising taxes and incurring expenditure is with the councillors, chosen by and responsible to the people and the taxes have to be levied in accordance with the rules made under the Act. It cannot, therefore, be said that the power to levy property tax in that case was so unbridled as to make it possible for the corporation to levy it in an arbitrary manner. Their Lordships further observed (at page 2105) as follows:-

"In all statutes dealing with local administration, Municipal authorities have inevitably to be delegated the power of taxation, such power is a necessary adjunct to a system of local self-Government. Whether such delegation is excessive and amounts to abdication of an essential legislative function has to be considered from the schedule, the objects, and the provisions of the statute in question."

Their Lordships have reviewed all the previous case law on the subject in this case.

51. We may mention in this connection that in dealing with the levy of market fees under S.11 of the Bombay Agricultural Produce Markets Act, 1939 (Bombay Act 22 of 1939), the Supreme Court held in Mohd. Hussain v. State of Bombay, (AIR 1962 SC 97) that R. 53 framed under the Act authorising levy of fees at rates specified under the Bye-laws as ultra vires, because S.11 of the Act gave power to the market committee subject to the provisions of the rules and subject to such maximum as may be prescribed to levy such fees. In the absence of the maximum being prescribed by R. 53, it was held that the bye-laws, which fixed them are ultra vires of the section. After this decision was rendered, the rules were amended and the maximum rate was fixed. The matter again came up before the Supreme Court in Muhammadbhai v. State of Gujarat, (AIR 1962 SC 1517). Their Lordships then upheld the notification and the levy of such fees, which were fixed under the bye-laws. This decision, in our opinion, is not in any way opposed to the principle laid down in G. B. Modi v. Ahemedabad Municipality, (AIR 1971 SC 2100) already referred to. S.11 of the Bombay Act provided that the maximum should be fixed by the rules and hence there was a necessity for the rule prescribing the maximum. But in view of the latter decision i.e., G. B. Modi v. Ahemedabad. Municipality, (AIR 1971 SC 2100), even if the maximum is not prescribed by the Act or the rules, the validity of such levy cannot be questioned so long as the policy is clearly laid down and the levy is made by representative body subject to the control of the Government.

52. In deciding the question, what is the sufficient guidance, the following cases have held that the preamble itself is sufficient. H. Bagla v. State of M. P., (AIR 1954 SC 465); Vasantlal Maganbhai v. State of Bombay, (AIR 1961 SC 4) and State of M. P. v. Champalal, (AIR 1965 SC 124).

53. We now summarise our conclusions from the principles laid down in the above decisions as follows:-

1. The power of delegation is a constituent element of Legislative power. The Legislature, in making the laws has to perform the essential function viz., of laying down the essential legislative intent by declaring its policy and formulating it as a binding rule of conduct. Such a function cannot be abdicated to any other person or body of administrators or officers.

2. Such a policy can be deduced either from the preamble of the Act itself or from the other guidance given by the Act intended to achieve the objects of the Act.

3. When once the policy is laid down in definite and discernible terms, the delegation of subsidiary or ancillary powers to delegates of their choice by the legislature for carrying out the policy laid down by it cannot be said to be excessive delegation.

4. On the same principle sub-delegation is also valid, if permitted by the Act, provided sufficient guidance is given, and it is intended to achieve the objects of the Act. For instances where such sub-delegation has been held to be valid, refer to H. Bagla v. State of M. P., (AIR 1954 SC 465) where the legislature authorised the Central Government to delegate its powers to make order under S.3 of Essential Supplies (Temporary Powers) Act (24 of 1946) not only to the State Government, but also to any officer subordinate to the Central or State Government; George Walkem v. L. M. D. P. Board, (AIR 1939 PC 36), where the Lt. Governor delegated the power of making

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schemes to the Marketing Board; Union of India v. Bhanamal Gulzarimal Ltd., (AIR 196 SC 475) where the Controller was delegated the power by the Government to fix the maximum prices for Iron and Steel; W. I. Theatres v. Municipal Corporation, Poona, (AIR 1959 SC 586) where the Municipality was held entitled to levy any other tax for the purposes of the Act, though the nature of that tax has not been enumerated by the Act; State of Bombay v. Shivabalak, (AIR 1965 SC 661) where it was held that the delegate can authorise his subordinate to gather information to enable him to pass the necessary orders required by the statute; Arnold Rodricks v. State of Maharashtra, (AIR 1966 SC 1788), where it was held that there is no difference between a case where the legislature authorising sub-delegation by statute or by conferring power on the State Government to confer duties on Commissioners (Newly introduced) or other Officers performing executive and revenue duties; Hapur Municipality v. Raghuvendra, (AIR 1966 SC 693) where it was held that the power to levy local taxes is vested in a local body for their local needs which depends upon local enquiries can be left to the representative bodies in which event there can be no excessive delegation; Barium Chemicals Ltd. v. Company Law Board, (AIR 1967 SC 295), where it was held that the chairman can exercise administrative power delegated to the Company Law Board if it is warranted by the express provisions or by necessary implication from the statute, such as the control retained by a nominee of the legislature; Khmbhalia Municipality v. Gujarat State, (AIR 1967 SC 1048) where the delegation by the Government to the Development Commissioner to declare an area to be a gram or nagar was held to be valid; Delhi Municipality v. B. G. S. and W. Mills, (AIR 1968 SC 1232) and J. R. G. Mfg. Asscn. v. Union of India, (AIR 1970 SC 1589), where it was held that in the field of taxation the guidance may take the form of providing maximum rates of tax upto which a local body may make its choice after consulting local opinion or the opinion of the representative body subject to control being retained in the delegate of the Legislature; Veena Theatre v. State of Bihar, (AIR 1970 SC 1522) which held that the made and manner in which the liability is determined can be provided in the rules leaving it to the taxing authorities, G. B. Modi v. Ahemedabad Municipality, (AIR 1971 SC 2100) where it was held that the Corporation can levy taxes where maximum rates are prescribed by the statute.

5. The doctrine of 'Delegatus non potest delegare' is not a rule of law but a rule of construction. Sub-delegation therefore can be sustained if permitted by an express provision or by necessary implication from the provisions of the Statute, Barium Chemicals Ltd. v. Company Law Board, (AIR 1967 SC 295); Union of India v. P. K. Roy, (AIR 1968 SC 850).

6. The nature of the body to which delegation is made is a factor in deciding whether there is proper guidance or not. If the levy is by way of taxes like Income-tax or Sales Tax or the like by the Government, the Government cannot delegate the rates of tax to the delegate. On the other hand in case where the power to levy fees is conferred on a representative local body with maximum rates being fixed by the Statute or rules, it is valid so long as there are provisions in the Statute retaining the control in the delegates of the legislature. The fixation of maximum rates is itself guidance for the levy of reasonable fees.

54. Though in the case, Corporation of Calcutta v. Liberty Cinema, (AIR 1965 SC 1107) it was held that the rates of tax are not essential features of Legislation, these observations were held to have been widely stated in the Delhi Municipality v. B. G. S. and W. Mills, (AIR 1968 SC 1232) case. Even if they are essential features the Legislature can validly lay down the maximum rates and leave it to the local body or the representative body to determine the rates subject to that maximum.

55. Bearing the above principles in mind, we now consider the validity of R. 48, which is now in question. The preamble to the Act is to the following effect:-

"An Act to consolidate and amend the law relating to the regulation of purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection therewith."

This is therefore an Act regulatory in nature. One of us had occasion to consider the similar question in L. P. A. No. 204/72. It was observed in that decision as follows :-

"The Madras Commercial Crops Markets Act, 1933 (Act XX of 1933) was passed by the Madras Legislature to

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provide for the better regulation of buying and selling of Commercial Crops and the establishment of markets for the commercial crops in the Presidency of Madras. It applies to commercial crops as defined in the said Act, which included originally Cotton, Ground-nut and Tobacco and which list was later on expanded to include the other products also and it is now admitted that coconuts and copra with which we are not concerned in this case have also been notified by the State Government as Commercial Crops for the purposes of that Act. There are notified areas under that Act, which are constituted by virtue of notification made under S.4 of the Act. Markets are established under S.4-A for every notified area. The said section says that it shall be the duty of the market committee to enforce the provisions of the Act and the rules and the bye-laws made thereunder in such notified area. The market committee shall establish in the notified area such number of markets providing for such facilities as the Government may from time to time decide for the purchase and sale of the commercial crop or crops concerned. Trading in commercial crops in the notified area is regulated by licences issued, under S.5 (1) of the Act. It provides that no person shall set up, establish or use or continue or allow to be continued any place for the purchase or sale of a notified commercial crops, except under and in accordance with the conditions of a licence, granted to him by the Collector. Every Market Committee consists of such number of members as may be fixed by the State Government. Every Market Committee is a body corporate and shall have a perpetual succession and a common seal. It may sue or be sued in its corporate name. It has got the powers to acquire and hold property both moveable and immoveable. It has powers to lease, sell or otherwise transfer any of its properties and to do all other things necessary for the purpose for which it is established. It can employ such staff as may be permitted by the rules to be made by the State Government for the management of the markets and pay them such emoluments as may be fixed by it. It can enter into contracts on behalf of the market committee. The market committee has also power to levy fees on the notified commercial crop or Crops, bought and sold in the notified area at such rates as it may determine and such fees have to be paid by the purchaser of the commercial crop concerned. If the purchaser cannot be found, the fee has to be paid by the seller. Any notified commercial crop leaving the notified area, shall unless the contrary is proved, be presumed to be bought and sold within such area. The market committee can levy subscription for collecting and disseminating among the subscribers information as to any matter relating to crop statistics or marketing in respect of commercial crop or crops. All moneys received by a market committee have to be credited to the market committee fund and all expenditure incurred by the market committee, as permitted by the Act or the Rules, shall be defrayed from out of the said fund. The balance has to be invested in the manner prescribed by the rules. The Act also enumerates the purposes for which the fund of a market committee may be expended. The market committee has got powers to borrow, the market committee may be superseded by the Government, if it is found incompetent to perform, or persistently makes default in performing duties imposed on it by or under this Act and abused its powers. Power is vested in the State Govt. to make rules consistent with the Act for carrying out all or any of the purposes of this Act. Power is also given under the Act for the market committee to make bye-laws for the regulation of the business and the conditions of the trading therein. Offences under this Act have to be tried by a Court, not inferior to that of a Presidency Magistrate, more a Magistrate of a First Class. The schedule to the Act gives the crop or crops or products as commercial crops for the purpose of the Act and the rate or rates at which the market fees have to be levied." We have already extracted the observations of their Lordships of the Supreme Court in Arunachala Nadar v. State of Madras (AIR 1959 SC 300) about the nature of this statute. The provisions of the present Act; Andhra Pradesh (Agricultural Produce and Livestock) Markets Act (16 of 1966) also contains similar provisions as the previous Act. We have already extracted in brief the provisions of the present statute in the beginning of our Judgment. If the Market Committee makes bye-laws it would be doing so only to regulate its own procedure and the conditions of trading in the notified area covered under the jurisdiction of the market committee. The Act also contemplates that the duty of the Market Committee is to enforce the provisions of

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this Act. The Bye-laws made by it under S.34 of the Act are always subject to the rules and have to be made with the previous sanction of the Director of Marketing, who is an Officer appointed under this Act. They have therefore the power to regulate the business and the conditions of trading in the market under their jurisdiction. Every bye-law made under this section has to be published in the A. P. Gazette and in the District Gazette and come into force only after three months from the date of publication. Sufficient power is therefore ratained with the Government to control the activities of the market committees. The market committees are manned by representatives of traders, growers etc. and also nominees of the Government, including officers. All the moneys received by the Market Committee have to be credited to a market committee fund and have to be expended only for the purposes mentioned in the Act. There is thus sufficient guidance given in the Act for the levy of the fees contemplated by the Act. R. 48 framed under this Act also provides that every application under S.7 of the Act shall be accompanied with such fees which shall not exceed Rs. 100/-. The fees may be fixed by the market committees by its bye-laws subject to that maximum.

56. This itself is sufficient guidance to make it a valid levy. In very nature of things it cannot be expected that the legislature is aware of the varying conditions of the trading in the several markets. The levy of licence fees depends not only upon the nature of commodities bought and sold in such markets, but also on the quantum of business that is usually done and various other factors depending upon the local conditions. All these are matters which ought to be decided only by the local representatives body viz., the market committee taking into consideration the guidance given in the Act and the various factors. The levy of licence fees would also be commensurate with the services to be rendered by the market committee. In fixing the guidance for levying licence fee under bye-law No. 20, it cannot be said that they adopted any arbitrary or capricious method. For traders having lower out-turn a lower licence fee has been prescribed. For traders having higher out-turn graded rates of licence fees, subject to the maximum of Rs. 100/- have been fixed. The differentiation thus made has got a reasonable nexus with the object sought to be achieved viz., the services that have to be rendered by the market committee to the various traders. The licence fee so collected would be credited to the market committee fund and would be spent only for the purposes mentioned therein viz., for improving the conditions of market, weighment and the storage facilities and dissemination of information relating to the various markets and price pattern. The Bye-laws have been approved by the Director of Marketing who is incharge of all such market committees by virtue of the Statute and it is a sufficient check over any arbitrary exercise of power by the market committees.

57. It has already been held by the Supreme Court in several decisions that the laying down of the maximum rates by the rules is itself sufficient to enable the market committee to levy licence fees upto that maximum. We have therefore to hold that R. 48, in so far as it fixed only the maximum and left it to the market committee to lay down rates by its bye-laws is not void and does not amount to excessive delegation of legislative powers nor is it otherwise ultra vires. The bye-law 20 (1) which is now impugned in this writ petition cannot, therefore, be held to be bad.

58. The validity of a bye-law has to be decided by the power to make them (vide Afzal Ullah v. State of U. P., AIR 1964 SC 264). It has also been held by the Supreme Court in Co-op. Cr. Bank v. Ind. Tri. Hyderabad, (AIR 1970 SC 245) that the bye-law of a Co-operative Society has no statutory force, though it is binding on the parties affected thereby. That decision was no doubt rendered in connection with the bye-law of a Co-operative Society under the Andhra Pradesh Co-operative Societies Act. Even assuming that it has got no statutory force it is binding between the parties affected thereby. All the appellants-traders herein are the members of the market committees, which have made the impugned bye-laws. They are therefore bound by them.

59. Our learned brothers Obul Reddy, C. J. and Sriramulu, J., have upheld he bye-law in Madan Gopal v. Agricultural M. Committee (AIR 1975 Andh Pra 1) in fixing the licence fee on the basis of turnover of the trade. In our opinion that decision has been correctly rendered, as their Lordships have followed the decision in Muhammadbhai v. State of Gujarat (AIR 1962 SC 1517) while deciding the

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above case, and also in view of the unreported decision in L. P. K No. 204 of 1972 (Andh Pra).

60. In the above view we find no grounds for interference with the Judgment of the learned Judge. The Writ Appeal therefore fails and it is accordingly dismissed with costs.

61. MADHAVA RAO, J.:- I had the pleasure of reading the judgments prepared by my learned brothers, Alladi Kuppuswami and Venkatrama Sastry. JJ., I entirely agree with their view and dismiss the Writ Appeal.

62. In accordance with the unanimous conclusion of all of us the Writ Appeal is dismissed with costs. Advocate's fee Rs. 100/-

Appeal dismissed.

AIR 1976 ANDHRA PRADESH 193 "I. R. Sons v. State"

ANDHRA PRADESH HIGH COURT

Coram : 2 CHINNAPPA REDDY AND JEEVAN REDDY, JJ. ( Division Bench )

Immedisetti Ramkrishnaiah Sons, Anakapalli and others, Petitioners v. State of A.P. and another, Respondents.

Writ Petn. No. 2705 of 1974, D/- 19 -12 -1975.

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(A) A.P. Agricultural Produce and Livestock Markets Act (16 of 1966), S.12 - AGRICULTURAL PRODUCE - S.12 is not ultra vires.

The services to be rendered and the facilities to be provided by the Market committee extend throughout the notified market area without being confined to the market area and therefore Section 12 cannot be said to be ultra vires on the ground that it authorises levy of fees on transactions taking place outside the markets established by the Market Committee though within the notified market area. (Paras 1, 3)

(B) A.P. Agricultural Produce and Livestock Markets Act (16 of 1966), S.5(1)(i) and S.4(3)(c) - AGRICULTURAL PRODUCE - LAW - Government nominating persons under S.5(1)(i) to constitute Market Committee - Nomination subsequently declared illegal by High Court - Acts done by Committee in interregnum as de facto committee are valid.

Constitution of India, Art.13.

Where under Section 5 (1) (i) the Government nominated certain persons to constitute the Market Committee and subsequently the nomination of the members of the committee was declared illegal by the High Court, it was held that the acts done by the de facto committee including the declaration of market area under Section 4 (3) (c) in the interregnum prior to its being declared as illegally constituted must be upheld as valid in law. (1912) 15 Cal LJ 517 and (1851) 3 HLC 418 and Cases on Constitutional Law by M. C. G. and H III Ed. 102 and (1886) 118 US 425 and 1968 A11 LJ 877 (FB) and (1976) 1 Andh P LJ (HC) 137, Rel. on. (Paras 4, 5, 13)

Cases Referred : Chronological Paras

(1976) 1 APLJ (HC) 137 13

(1971) W P. No. 1256 of 1970, D/-27-7-1971 (Andh Pra) 2, 4, 5

1968 All LJ 877 : 1966 All WR (HC) 705 (FB) 12

(1912) 15 Cal LJ 517 : 16 Cal WN 1105 6, 7, 11

(1886) 118 US 425 : 30 L ed. 178 10

(1875) 7 HL 869 : 9 CL 306 7

(1858) 1 El and El 213 : 120 ER 888 7

(1858) 8 E and B 952 : 120 ER 354 7

(1851) 3 HLC 418 : 10 ER 164 7, 8

(1849) 13 QB 706 7

(1840) 12 A and E 702 : 113 ER 980 7

(1840) 12 A and E 177 : 113 ER 778 7

(1840) 4 Jur 484 7

(1839) 5 Bing NC 319 : 132 ER 1127 7

(1838) 8 A and E 561 : 112 ER 951 7

(1830) 4 C and P 111 7

(1827) 6 B and C 240 : 30 RR 312 7

(1819) 1 Chitty 700 7

(1819) 3 B and A 266 : 22 RR 378 7

(1805) 6 East 356 7

(1738) Andres 163 7

(1693-1701) 1 Ld Raym 658 : 12 Mod 46 7

(1599) Cro Eli 699 : 76 ER 956 7

(1596) Cro Eli 533 : 78 ER 780 7

(1580) Moore KB 109 : 72 ER 473 7

(1553) 1 Leonard 288 7

(1431) Y B 9 H 6 Fol 32 7

P. Babulu Reddy and D. Sudhakar Rao, for Petitioners; Govt. Pleader for Food and Agriculture (for No. 1) and D.V. Pantulu (for No. 2), for Respondents.

Judgement

CHINNAPPA REDDY, J.: - The petitioners are merchants of Anakapalli. They have been making persistent efforts to thwart the levy of fees by the Anakapalli Market Committee. This writ petition is one such attempt. They object to the levy of fees on two grounds: (1) Section 12 of the Andhra Pradesh Agricultural Produce and Livestock Markets Act, 1966 is ultra vires in so far as it authorises the levy of fees on transactions taking place outside the markets established by the Market Committee, though within the notified market area. (2) The notification declaring the notified market area is invalid as the condition precedent to the declaration was not fulfilled.

2. The Government of Andhra Pradesh, purporting to act under Section 5 (1) (i) of the Agricultural Produce and Livestock Markets Act, by G. O. Rt. No. 899 dated 11-7-1969, nominated nine persons to represent the growers of agricultural produce and owners of livestock on the Agricultural Market Committee of Anakapalli. The nomination of those nine persons was set aside by Narasimham, C. J., and Kuppuswamy, J. in W. P. No. 1256/70 (Andh Pra) on the ground that there was no consultation with the Director of Marketing as contemplated by Section 5 (1) (i) of the Act. The Judgment of the High Court was pronounced on 27-7-1971. In the interregnum the Market Committee had functioned as if it had been properly constituted. Several acts had been done, notifications issued and proceedings taken by the Committee. We may mention here that the total number of members of the Anakapalli Market Committee is sixteen and the quorum for a meeting of the Market Committee of sixteen members is nine under Rule 29 of the Agricultural Produce and Livestock Market Rules, 1969. Without the participation of some

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at least nine of the members representing the growers of agricultural produce and owners of livestock there could never be a meeting of the Anakapalli Agricultural Market Committee as the total number of the remaining members was only seven. Without the participation of those members no action could have been taken by the committee under any of the provisions of the Act. One of the notifications issued by the Market Committee was that declaring the limits of the Anakapalli Market under Section 4 (3) (c) of the Act. The notification was published in the Andhra Pradesh Gazette Part II dated 5-3-1970 at page 249. By this Notification the entire area within the limits of Anakapalli Municipality was declared to be the market area of Anakapalli market. The notification by the Market Committee was followed up by a notification by the Government under Section 4 (4) of the Act, declaring the area within a radius of 20 kilometers around the office of the Agricultural Market Committee, Anakapalli as the notified market area. A result of the notification by the Government was that the Market Committee was thereafter enabled to levy fee on any notified agricultural produce, livestock or products of livestock purchased or sold in the market area. It is the levy of this fee that is questioned in this application for the issue of a writ.

3. The first submission of Sri Babul Reddy learned counsel for the petitioners was that Section 12 of the Act which authorised the levy of fees was ultra vires to the extent of the transactions carried on outside the limits of the market area, but within the limits of the notified market area. According to him, the Act did not contemplate the rendering of any services in respect of transactions carried on beyond the limits of the markets and, therefore, no fees was leviable. We do not agree with this submission. According to the scheme of the Act, the Government first notifies an area as a notified area under Section 3 of the Act. Thereafter the Government constitutes a Market Committee for the notified area. The Market Committee then establishes in the notified area such number of markets as directed by the Government. Under Section 4 (3) (c) the Market Committee is required to declare by notification the limits of every market established by it. The limits of every market so declared is known as the market area of that market. Thereafter the Government is required to declare by notification the market area and such other area adjoining thereto as may be specified to be a notified market area for the purposes of the Act. Under Section 12 the Market Committee is empowered to levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area and not merely in the market area. The learned counsel argued that fees were not leviable because the Market Committee was required to perform no service and provide no facility outside the limits of the market area. The argument proceeded on the assumption that sales and purchases of notified agricultural produce, livestock and products of livestock outside the market (sic). It says

`notwithstanding anything in sub-section (1), no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area outside the market in that area."

Another unfounded assumption of the learned counsel was that the activities of the Market Committee and the facilities provided by it were confined by the Act to the market area only. The establishment, maintenance and improvement of the market is one of the purposes for which the Market Committee Fund might be expended under Section 15 of the Act. The other services such as the provision and maintenance of standard weights and measures, the collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of notified agricultural produce, livestock and products of livestock schemes for the extension or cultural improvement of notified agricultural produce including the grant of financial aid to scheme for such extension or improvement within such area undertaken by other bodies or individuals, propaganda for the improvement of agriculture, livestock and products of livestock and thrift, the promotion of grading services, measures for the preservation of the foodgrains, etc. are not services which are confined to the market area only. They are services which are required to be performed by the Market Committee and which may be rendered throughout the notified market area without being confined to the market. Further, the facilities provided in the market are available for the use of every grower of agricultural produce and owner of livestock within the notified market area. It is too much to expect the Market Committee to provide the same facilities as are available in the market area in every nook and

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corner of the notified market area. It is up to the growers of agricultural produce and owners of livestock to avail themselves of the facilities afforded in the market. None can complain against the levy of licence fees on the ground that some may not avail themselves of the facilities available in the market. We are unable to hold that Section 12 of the Act is ultra vires either in whole or in part.

4. The next submission of Sri Babul Reddy was that the notification by the Government declaring the notified market area of Anakapalli market was invalid. His argument ran thus: Under the scheme of the Act the declaration of the notified market area by the Government had to be preceded by a declaration of the market area (i. e. the limits of the market) by the Market Committee. The declaration of the market area said to have been made by the Market Committee and published in the Andhra Pradesh Gazette on 5-3-1970 was no declaration in law as there was no legally constituted market Committee in existence at that time. In W. P. No. 1256 of 1970 (Andh Pra) the High Court found that the nomination of nine out of sixteen members of the Committee was invalid. The Market Committee was, therefore, illegally constituted and incompetent to make the declaration. If the declaration of the market area by the illegally constituted Market Committee was invalid, it followed that there was no legally defined market area and hence no notified market area either.

5. It is true that in W. P. No. 1256 of 1970 (Andh Pra) it was held that the appointment of nine members of the Market Committee by the Government was held to be illegal as there was no consultation with the Director of Marketing as prescribed by Section 5 of the Act. But the declaration under Section 4 (3) (c) was made before the appointment of the members of the Committee was declared invalid by the High Court. On the date when the declaration under Section 4 (3) (c) was made the High Court had not yet declared the appointment of the members of the Committee invalid and the Committee was undoubtedly functioning as if it was legally constituted Committee. It was doing so under colour of the appointment made by the Government in purported exercise of the Government's powers under Section 5 of the Act. There was thus in existence on the date of the declaration under Section 4 (3) (c) a de facto Market Committee. The question for consideration, therefore, is whether the acts of the de facto Committee can be upheld as valid in law.

6. As we shall presently point out it is now a well-established doctrine that

`the acts of the officers de facto performed by them within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid and binding as if they were the acts of officers de jure'. (Pulin Behari v. King Emperor, (1912) 15 Cal LJ 517 at p. 574). The doctrine is founded on good sense, sound policy and practical expedience. It is aimed at the prevention of public and private mischief and the protection of public and private interest. It avoids endless confusion and needless chaos. An illegal appointment may be set aside and a proper appointment may be made, but the acts of those who held office de facto are not so easily undone and may have lasting repercussions and confusing sequels if attempted to be undone. Hence the de facto doctrine.

7. In England, the de facto doctrine was recognised from the earliest times. In Pulin Behari v. King Emperor, (1912) 15 Cal LJ 517, Sir Asutosh Mookerjee J. traced the first of the reported cases where the doctrine received judicial recognition as the case of Abee de Fontaine decided in 1431. Mookerjee, J., noticed that even by 1431 the de facto doctrine appeared to be quite well known. After 1431 the doctrine was again and again reiterated by English Judges, Mookerjee, J., referred to these cases and said:

"From this period, the de facto doctrine rapidly spread in England, and became firmly established, as is clear from a long series of decisions dealing with its various features and expanding its principles to meet the requirements of diverse circumstances and different times. We may briefly state that these cases illustrate the following positions: First, that a person presented by an usurping patron, who was wholly without authority to present, was a good parson de facto: Abbey of Fontaine, (1431) YB 9 H 6 Fol 32. Secondly, that a clerk of a Lord of the Manor holding a Manorial Court without any authority whatever and deriving colour only from his known relation to the Lord of the Manor as a simple clerk, was a good officer de facto: Knowles v. Luce, (1580 Moore KB 109): Thirdly so of the servant of a steward holding a manorial Court without authority from the steward or the law: Lord Dacre's case ((1553) 1 Leonard 288);

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Fourthly, so of the Deputy of a Deputy to whom authority could not be delegated: Leak v. Howel, ((1596) Cro Eli 533); Fifthly so of the steward of a Manor appointed not by the Lord who alone had the power to appoint, but by county officers who had no authority whatever to appoint,: Harris v. Jays, (1599 Cro Eli 699); Sixthly reaffirmation of the doctrine by Lord Holt that the deputy of a deputy has sufficient colour to make him a de facto officer; Parker v. Kett, ((1693-1701) 1 Ld Raym 658 = 12 Mod 467 ), which is not inconsistent with the decision in Rex v. Lide, ((1738) Andres 163) and, Seventhly the adoption of Lord Holt's definition that an officer de facto is none other than he who has the reputation of being the officer he assumes to be. Although he is not such in point of law, by Lord Ellen borough in Rex v. Redform Level, ((1805) 6 East 356); amongst later decisions in which the existence of the de facto doctrine as a well-settled rule of law, is fully acknowledged, may be mentioned Margarat v. Hannam, ((1819) 3 B and Ald 266 = 22 RR 378), R. v. Herefordshire, JJ., ((1819) 1 Chitty 700), R. v. Slythe, ((1827) 6, B and C 240 = 30 RR 312), De Grave v. Monmouth ((1830) 4 C and P 111), R. v. Dolgelly, ((1838) 8 A and E 561), Penney v. Slade ((1839) 5 Bing NC 319), R. v. ST. Clement, ((1840) 12 A and E 177), R. v. Mayor of Cambridge, ((1840) 12 A and E 702), R. v. Cheshire, ((1840) 4 Jur 484), Scadding v. Lorant, ((1851) 3 HLC 418) affirming ((1849) 13 QB 706), Lancaster v. Heaton, ((1858) 8 E and B 952), Waterloo v. Cull, ((1858) 1 El and El 213) and Mahony v. East Holyford, ((1875) LR 7 HL 869 = IR 9 CL 306)."

8. In Seadding v. Lorant, (1851) 3 HLC 418 the question arose whether a rate for the relief of the poor was rendered invalid by the circumstance that some of the vestry men who made it were vestry men de facto and not de jure. The Lord Chancellor observed as follows:-

"With regard to the competency of the vestry men, who were vestry men de facto, but not vestry men de jure, to make the rate, your Lordships will see at once the importance of that objection, when you consider how many public officers and persons there are who were charged with very important duties, and whose title to the office on the part of the public cannot be ascertained at the time. You will at once see to what it would lead if the validity of their acts, when in such office, depended upon the propriety of their election. It might tend, if doubts were cast upon them, to consequences of the most destructive kind. It would create uncertainty with respect to the obedience to public officers and it might also lead to persons, instead of resorting to ordinary legal remedies to set right anything done by the officers, taking the law into their own hands."

9. The de facto doctrine has received judicial recognition in the United States of America also. In State v. Gardner (Cases on Constitutional Law by Mc. Gonvey and Howard: Third Ed. 102) the question arose whether the offer of a bribe to a City Commissioner whose appointment was unconstitutional was an offence. Bradbury, J. said,

"We think that principle of public policy, declared by the English Courts three centuries ago, which gave validity to the official acts of persons who intruded themselves into an office to which they had not been legally appointed, is as applicable to the conditions now presented as they were to the conditions that then confronted the English Judiciary. We are not required to find a name by which officers are to be known, who have acted under a statute that has subsequently been declared unconstitutional, though we think such officers might aptly be called de facto officers."

10. In Norton v. Shelby County, ((1886) 118 US 425 = 30 Law Ed 178) Field, J., observed as follows:-

"The doctrine which gives validity to acts of officers de facto whatever defects there may be in the legality of their appointment or election is founded upon considerations of policy and necessity, for the protection of the public and individuals whose interests may be affected thereby. Offices are created for the benefit of the public, and private parties are not permitted to inquire into the title of persons clothed with the evidence of such offices and in apparent possession of their powers and functions. For the good order and peace of society their authority is to be respected and obeyed until in some regular mode prescribed by law their title is investigated and determined. It is manifest that endless confusion would result, if in every proceeding before such officers their title could be called in question."

In Cooley's `Constitutional Limitations', Eighth Edition, Volume II p. 1355, it is said,

"An officer de facto is one who by some colour or right is in possession of an office and for the time being performs its duties with public acquiescence, though

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having no right in fact. His colour of right may come from an election or appointment made by some officer or body having colorable but no actual right to make it; or made in such disregard of legal requirements as to be ineffectual in law; or made to fill the place of an officer illegally removed or made in favour of a party not having the legal qualifications; or it may come from public acquiescence in the qualifications; or it may come from public acquiescence in the officer holding without performing the precedent conditions, or holding over under claim of right after his legal right has been terminated; or possibly from public acquiescence alone when accompanied by such circumstances of official reputation as are calculated to induce people, without inquiry, to submit to or invoke official action on the supposition that the person claiming the office is what he assumes to be. An intruder is one who attempts to perform the duties of an office without authority of law, and without the support of public acquiescence.

No one is under obligation to recognise or respect the acts of an intruder, and for all legal purposes they are absolutely void. But for the sake of order and regularity, and to prevent confusion in the conduct of public business and in security of private rights, the acts of officers de facto are not suffered to be questioned because of the want of legal authority except by some direct proceeding instituted for the purpose by the State or by some one claiming the office de jure, or except when the person himself attempts to build up some right, or claim some privilege or emolument, by reason of being the officer which he claims to be. In all other cases the acts of an officer de facto are as valid and effectual, while he is suffered to retain the office, as though he were an officer by right, and the same legal consequences will flow from them for the protection of the public and of third parties. There is an important principle, which finds concise expression in the legal maxim that the acts of officers de facto cannot be questioned collaterally."

11. The de facto doctrine has been recongnised by Indian Courts also. We have already referred to Pulin Behari v. King Emperor, (1912) 15 Cal LJ 517 where Mookerjee, J. traced the history of the doctrine in England, Mookerjee, J. further observed as follows:-

"The substance of the matter is that the necessity, to protect the interest of the public and the individual where the duties of an office without being lawful officers. The doctrine in fact is necessary to maintain the supremacy of the law and to preserve peace and order in the community at large. Indeed, if any individual or body of individuals were permitted, at his or their pleasure, to collaterally challenge the authority of and to refuse obedience to the Government of the State and the numerous functionaries through whom it exercised its various powers on the ground of irregular existence or defective title, in subordination and disorder of the worst kind would be encouraged. For the good order and peace of society, their authority must be upheld until in some regular mode their title is directly investigated and determined."

12. The de facto doctrine was invoked by the Allahabad High Court in Jai Kumar v. State, (1968 All LJ 877) (FB) to uphold the judgments of District Judges whose appointments had been declared invalid by the Supreme Court. Dwivedi, J. after referring to the rule against collateral challenge and the de facto doctrine said.

"The first rule establishes that the acts of a de facto judge are not suffered to be questioned because of the want of valid appointment, in a collateral proceeding. His title may be challenged only in a proceeding for a writ of quo warranto or in a suit for a declaration of his status or legal character, to which he is a party. These two proceedings are direct proceedings to challenge his title. Any other proceeding is a collateral proceeding. Accordingly, his title cannot be challenged in a proceeding before him, or in appeal or revision from his order or in a proceeding for certiorari. The second rule establishes that the acts of a de facto judge are suffered to be valid as to the public and the litigants before him until his title is investigated and determined against him in a direct proceeding. A de facto judge is one who has the reputation of being the judge although he is not a judge in the eye of law."

\* Reported in (1976) 1 Andh PLJ (HC) 137.

13. In I. J. Rajasekhar v. G. Immanuel, (Criminal Appeal No. 728/1974)\*Kuppuswami and Muktadar, JJ. upheld the judgments of District Judges whose appointment had been declared unconstitutional by the Supreme Court. The de facto doctrine was invoked. Kuppuswami, J. observed:

"Logically speaking if a person who has no authority to do so functions as a

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judge and disposes of a case the judgment rendered by him ought to be considered as void and illegal, but in view of the considerable inconvenience which would be caused to the public in holding as void judgments rendered by judges and other public officers whose title to the office may be found to be defective at a later date, Courts in a number of countries have, from ancient times evolved a principle of law that under certain conditions, the acts of a judge or officer not legally competent may acquire validity."

Though the Allahabad and the Andhra Pradesh High Courts were concerned with the question of the validity of Judgments of de facto Judges, the very observations of the learned Judges extracted by us show that the de facto doctrine is a doctrine of general applicability which may properly be invoked to validate acts of de facto public officers. We have, therefore, no doubt that the declaration of market area published in the Andhra Pradesh Gazette on 5-3-1970 is valid despite the fact that the Market Committee was illegally constituted. In the result, the writ petition is dismissed with costs. Advocate's fee Rs. 100/-.

Petition dismissed.

AIR 1975 ANDHRA PRADESH 1 "M. G. Daga v. Agricultural M. Committee"

ANDHRA PRADESH HIGH COURT

Coram : 2 S. OBUL REDDI, C.J. AND SRIRAMULU, J. ( Division Bench )

Madan Gopal Daga, Petitioner v. The Agricultural Market Committee and others, Respondents.

Writ Petns. Nos. 668 and 1084 of 1972, D/- 18 -6 -1974.\*

A.P. (Agricultural Produce and Live stock Markets) Act (16 of 1966), S.7, Cl.(viii), read with R.45, R.48 - AGRICULTURAL PRODUCE - LICENSE - EQUALITY - MAINTENANCE - Bye-law fixing licence fee on the basis of turnover - Not ultra vires S.7 and R.45 and R.48 or violative of Art.14 of the Constitution of India.

Constitution of India, Art.14.

A bye-law fixing licence-fee on the basis of the turnover of the trade cannot be held to be ultra vires S. 7 read with S. 33 (2) (viii) and Rules 45 and 48. These provisions empower the market committees to grant licences imposing conditions of licence and also levy licence fee and enable the Market Committees to make bye-laws for that purpose. The rate fixed reasonably and within the maximum limit fixed by the statutory rule itself and after taking into consideration the turnover of the trade could not also be impugned as discriminatory or as not having any nexus with the object of regulating trade. (Para 4)

Cases Referred : Chronological Paras

AIR 1962 SC 1517 : 1962 (Supp) 3 SCR 875, Muhammadbhai v. State of Gujarat 4

V. Jagannadha Rao, for Petitioners in both Petns.; D. V. Reddipantulu, (for No. 1) and S. Rangareddy for Govt. pleader, for Transport Cases (for No. 2), for Respondents in both Petns.

\* Order of Reference made by Obul Reddi. C. J. on 7-3-1974

Judgement

OBUL REDDI, C.J. :- These two writ petitions raise a common question regarding the validity of bye-law 20 (d) of the Bye-laws of the Agriculture Marketing Committee, Vizianagaram The petitioners are all merchants doing business in groundnut, jute, oil seeds etc. They seek a writ of mandamus directing the respondents to forbear from enforcing bye-law 20 (d) and Annexure V-B of the Bye-laws of the Agriculture Marketing Committee, Vizianagaram on the ground that the bye-law is ultra vires the Powers of the Market Committee under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (hereinafter referred to as the Act) and the rules.

2. Mr. Jagannadharao, the learned counsel appearing for the petitioners assailed the bye-law on the ground that it is discriminatory inasmuch as it fixes different rates of licence fee on the basis of the turnover of their business and it has no nexus with the object of regulating trade. It is also his case that there is nothing in the Act or the Rules which empowers the State Government to further delegate its power under the Act and the rules in the matter of fixing licence fee to the Market Committee. To appreciate the points urged by the learned counsel it is necessary to refer to the relevant provisions of the Act, the rules and the Bye-laws.

3. Section 5 deals with the composition of Market Committees. Every Market Committee should consist of such number of members, being not less than twelve and not more than sixteen as may be fixed for it by the Government. The manner in which Market Committee should be constituted is also provided in Section 5. Section 7 deals with trading in notified agricultural produce, livestock and their products in a notified market

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that no person shall, within a notified area, set up, establish or use, or continue or allow to be continued, any place for the purchase, sale, storage, weighment, curing, pressing or processing of any notified agricultural produce or products of livestock or for the purchase or sale of livestock except under and in accordance with the conditions of licence granted to him by the Market Committee. In other words, this section enjoins upon every trader to obtain a licence from the Market Committee if he wishes to trade in agricultural or other produce specified in Section 7. Section 12 deals with levy of fees by the Market Committees and we are not concerned with levy of fees in these two petitions. Section 33 confers upon the State Government power to make Rules. It provides that the Government may, either generally or specially for any notified area or areas make rules for carrying out the purposes of the Act. Cl. (viii) of sub-section (2) further provides:-

"(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for-

(viii) the issue by a market committee of licences under Section 7, the forms in which, and the conditions under which such licences shall be issued or renewed, the annual fees that may be levied for such licences and the recovery of such fees."

A reading of Section 7 and Cl. (viii) of Section 33 (2) would go to show that the Legislature has conferred upon the Market Committee the power to issue licences and the fees to be levied under such licences. Section 34 specifically provides for bye-laws. A Market Committee is empowered, subject to any rules made by the Government under Section 33 and with the previous sanction of the Director of Marketing, to make bye-laws for the regulation of the business and the conditions of trading therein. It is by virtue of this provision that the bye-laws had been framed for the respondent Market Committee. Rule 45 in so far as it is relevant is in these terms:

"45. Bye-laws:- The market committee shall make bye-laws under Section 34 consistent with these rules and model bye-laws framed by the Director to regulate its own procedure and to specify the conditions of trading in the notified area. The bye-laws shall inter alia, provide for:

1.............

2.............

3. the levy of licence fees

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It is not the case of the petitioners that the bye-laws are not in accordance with the model bye-laws framed by the Director. All that is contended is that the Act and the Rules do not provide for the delegation of fixing the rates of licence fee to the Market Committees. Rule 48 deals with the regulation of trading and it provides that any person desiring to obtain or renew a licence under sub-sec. (1) of Section 7 shall make an application in Form 5. There is a proviso which says:-

"provided that every such application shall be accompanied with such fees which shall not exceed Rs. 100 (Rupees one hundred only) as may be fixed in the bye-laws of the market committee."

4. It is thus seen that the rule itself empowers the Market Committee to fix the fee, which shall not exceed Rupees 100. In other words, discretion is given to the Market Committee to regulate the fee having regard to the turnover or having regard to the goods in question and the nature of the trade. Sub-rule (2) further provides for exemption being granted to such of those traders, whose turnover does not exceed Rs. 300/- on any single day. It is by virtue of the power conferred upon the Market Committee under the provisions of the Act and the Rules referred to above that bye-law 20 (d) has come to be framed. This bye-law is framed under Rule 48. It classifies traders into five classes, A to E. A class trader is one whose purchases and sales exceed a turnover of rupees two lakhs per annum, B class trader is one, whose sales and purchases exceed one lakh rupees but do not exceed Rs. 2 lakhs per annum. C class trader's turnover should be above Rs. 50,000 but should not exceed rupees one lakh. D class traders are those whose turnover is below Rs. 50,000 and above Rs. 15,000/-. E class trader's turnover is less than Rs. 15,000/-. We are unable to understand when Section 7, Section 33 (2) (viii) and the Rules empower the Market Committees to grant licences imposing conditions of licence and also levy licence fee and enable the Market Committees to make bye-laws for that purpose how the impugned bye-law can be said to be in excess of the power conferred upon the Market Committee by the Act and the Rules. Where the maximum market fee was prescribed without fixing the minimum market fee, it was held by the Supreme Court in Muhammadbhai v. State of Gujarat, AIR 1962 SC 1517 that the notification cannot be assailed on the ground of discrimination. In the instant cases the maximum and the minimum have been fixed having regard to the turnover of each of the traders. We are

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therefore unable to see any discrimination, nor is there any conflict with R. 48 as the bye-law has been made subject to what is provided in R. 48. So long as the bye-law 20 (d) is not made in excess of the authority conferred upon the Market Committee it cannot be complained that there is any further delegation of power by the Government without the authority of the legislature. The rates fixed under the bye-law are also reasonable. It took into consideration the turnover of the traders. For example, it would be hard upon a trader or commission agent whose turnover does not exceed Rs. 15,000/- per annum to be asked to pay a licence fee of Rs. 100/-. It is for that reason that discretion was left to the Market Committee to regulate licence fee having regard to the turnover of each of the traders or commission agents. When the statutory rule itself fixes the maximum licence fee that could be fixed under the bye-laws, it cannot be said that the market committee had exceeded the power delegated to it under Rule 48, or under Rule 45, or Section 7. The above discussion will make it clear that the collection of licence fee on the basis of the turnover has relation to the object of regulating trade. We therefore see no merit in these two writ petitions and they are accordingly dismissed with costs. Advocate's fee Rs. 100/- in each.

Petitions dismissed.

AIR 1975 ANDHRA PRADESH 58 "L. S. Rice Mill v. Agrl. Market Committee"

ANDHRA PRADESH HIGH COURT

Coram : 1 OBUL REDDI, J. ( Single Bench )

Sri Lakshmi Satyanarayana Rice Mill and others, Petitioners v. The Agricultural Market Committee, Tenali and another, Respondents.

W.P. Nos. 1339, 1340, 1845, 3665 and 3827, of 1972, D/- 10 -8 -1973.

Constitution of India, Art.254 - REPUGNANCY BETWEEN STATUTES - AGRICULTURAL PRODUCE - FOOD CORPORATION - CORPORATION - Repugnancy of State law to law made by Parliament - A.P. (Agricultural Produce and Live Stock) Markets Act, 1966 (16 of 1966) is not invalid on that ground.

Constitution of India , Sch.7, List 1, Entry 44, List 2, Entry 32.

A.P. (Agricultural Produce and Live Stock Markets) Act (16 of 1966), S.1.

Agricultural Produce (Development and Warehousing) Corporation Act (28 of 1956), S.1.

Food Corporation Act (37 of 1964).

It was contended that the functions assigned to the Food Corporation and to the Warehousing Corporations under the Food Corporation of India Act 1964 and Agricultural Produce (Development and Warehousing) Corporation Act, 1956 (Central Acts) respectively were encroached upon by the Market Committees under the A. P. Act 16 of 1966, as the Market Committees were empowered by the A. P. Act to discharge the same functions and the A. P. Act was therefore invalid on the ground of repugnancy under Art. 254 of the Constitution:

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Held: (applying the tests laid down by the Supreme Court in Deep Chand v. State of U. P., AIR 1959 SC 648 (665)) that there is no direct conflict between the A. P. Act, 16 of 1966 which had received the assent of the President and the two Central Acts of 1964 and 1956, establishing Corporations for the purpose of purchasing, selling, storing and warehousing foodgrains. The essential purpose of the A. P. Act is establishment of markets and regulating sale of agricultural produce and livestock; and as such, there is no such direct or positive conflict between the Central Acts and the A. P. Act as to say that the A. P. Act cannot be reconciled or cannot co-exist with the Central Acts. The doctrine of "occupied field", which applies only where there is a clash between Central legislation and State legislation within an area common to both, does not apply in the instant case: 1937 AC 260 (274), Ref. (Para 20)

The establishment of markets is within the competence of the State Legislature and establishment of a Market Committee which shall be a body corporate for the purpose of regulating marketing of agricultural produce and livestock does not in any way encroach upon the occupied field under the Central Acts. (Para 11)

Although the two Central Acts deal with supply, storage and warehousing of foodgrains that itself is not sufficient to determine the question of repugnancy. The object of the two Central Acts though seem allied in character, they cover distinct and separate fields. The dominant purpose of the two Central Acts is not the establishment of markets. (Para 21)

There is no warrant for any inference that under the A. P. Act, the Corporations are bound to transact their business through markets established by the Market Committees, or that any restrictions are placed upon the corporations established under the Central Acts to discharge the functions assigned to them. Therefore, Section 7 of the A. P. Act is not inconsistent with or repugnant to the provisions of Sections 9 and 34 of the 1956 Central Act or Section 13 of the 1964 Central Act. Case law discussed. (Para 23)

Cases Referred: Chronological Paras

AIR 1961 AP 138 : (1960) 2 Andh WR 523, Sree Ram Coconut Co. v. State of A.P. 22

AIR 1959 SC 300 : (1959) Supp 1 SCR 92, Arunachala Nadar v. State of Madras 9, 10

AIR 1959 SC 648 : (1959) Supp 2 SCR 8, Deep Chand v. State of U. P. 20

AIR 1956 SC 676 : 1956 SCR 393, Tika Ramji v. State of U.P. 18

AIR 1954 SC 752 : 1955 SCR 799, Zaverbhai v. State of Bom 17

AIR 1951 SC 69 : 1951 SCT 103, State of Bombay v. Narottamdas Jethabhai 16

AIR 1951 SC 318 : 1951 SCJ 478, State of Bombay v. F. N. Balsara 16

AIR 1947 PC 60 : 74 Ind App 23, Prafulla Kumar v. Bank of Commerce Ltd. 15

AIR 1942 FC 33 : (1942) 5 FLJ 61 : (1942) 4 FCR 90, Province of Mad. v. Boddu Paidanna and Sons 16

AIR 1941 FC 47 : 1940 FCR 188, Subrahmanyan Chettiar v. Muttuswami Goundan 16

1937 AC 260 : 106 LJPC 17, Forbes v. Att. Gen. of Manitoba 20

1937 AC 863 ; 106 LJPC 161, Gallagher v. Lynn 16

(1930) 49 Com LR 427, Ex Parte Mclean 23

(1882) 7 App Cas 829 : 51 LJPC 77, Russell v. Queen 16

(1824) 6 L Ed. 1, Gibbons v. Ogden 13

(1819) 4 L. Ed. 579 : 4 Wheat 316, M. Culloch v. State of Maryland 12

P. A. Chowdary, for Petitioners in all W. Ps. A. Suryanarayana Murthy, for N. Rajeswara Rao and N. V. S. R. Gopala Krishnamacharyulu, for 1st Respondent in W.P. Nos. 1339, 1340 and 1845 of 1972; D. V. Reddypantulu, for 1st Respondent in W.P. Nos. 3827 and 3665 of 1972; 4th Govt. Pleader on behalf of 2nd Respondent, in all the W. Ps.

Judgement

ORDER :- The main question raised in this batch of writ petitions is that the Andhra Pradesh Agricultural Produce and Live-stock Markets Act, 1966 (hereinafter referred to as 'the Act') is repugnant to the two Central Acts viz. (1) The Agricultural Produce (Development and Warehousing) Corporation Act, 1956 and (2) The Food Corporation of India Act, 1964, as the Act made by the State Legislature encroaches upon the legislative power of the Parliament, which has exclusive power to make laws with respect to matters enumerated in the Union List and as such, the levy and demand of market fees by the respective Market Committees is ultra vires.

2. The relevant facts necessary for consideration of the question involved are these: The petitioners in W. P. Nos. 1845, 1340, 8665 and 1339 of 1972 are all rice dealers in Guntur District. The petitioners in W. P. No. 3827 of 1972 are dealers in groundnut, jaggery and general merchants in Chittoor District. The Market Committees constituted under the Act, exercising jurisdiction over the respective notified market areas levied and demanded payment of market fees at varying rates in respect of the transactions of sale or purchase of agricultural produce within their jurisdiction. It is their common case that no facilities whatsoever are provided for storage of agricultural produce or for shelter of men and cattle and that they have been asked to pay fees without providing for such facilities as the Government may specify by general or special order. It is a statutory obligation on the part of the Govt. to notify the facilities and the market committee to provide those

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facilities and when such facilities are not available the collection of the fee or cess at the rates specified in the impugned notice is illegal. Section 7 (1) of the Act places a restriction on any person to purchase, sell, store or weigh the agricultural product without the permission of the market Committee and such a restriction it is alleged is beyond the legislative competence of the State Legislature as it encroaches upon the "occupied field" under the two Central Acts.

3. It is, therefore necessary to see whether the Act is repugnant to the provisions of the two Central Acts.

4. The 1956 Central Act was enacted to provide for the incorporation and regulation of corporations for the purpose of development and warehousing of agricultural produce on co-operative principles and for matters connected therewith. The Central Government is empowered to establish the National Co-operative Development and Warehousing Board. It is to consist of a chairman and other members. The functions of the Board are detailed in Section 9 of that Act, its functions being to plan and promote programmes for the production, processing, marketing, storage, warehousing, export and import of agricultural produce through a co-operative society or a Warehousing Corporation. The middleman or intermediary is totally excluded and it is the exclusive function of the Board to promote marketing, storage, warehousing, export and import of agricultural produce through a co-operative society or a warehousing Corporation. The Board is also empowered to advance loans of grants to State Government for financing Co-operative Societies and also provide funds to the State Government or a Warehousing Corporation for the purchase of agricultural produce on behalf of the Central Government. The functions of the State warehousing Corporation are to acquire and build godowns and warehouses at such places within the State as it may, in consultation with the Central Warehousing Corporation, determine; to run warehouses, in the State for the storage of agricultural produce, seeds, manures, fertilizers and agricultural implements; and to arrange facilities for the transport of agricultural produce to and from warehouses and act as an agent of the Central Warehousing Corporation or of the Government for the purpose of the purchase, sale, storage and distribution of agricultural produce, seeds, manures, fertilizers and agricultural implements. The State Government also under Section 28 of that Act, with the approval of the Central Warehousing Corporation, establish a Warehousing Corporation for the State.

5. The Food Corporation was established under the 1964 Central Act both in the interests of the producer of agricultural produce as well as in the interests of the consumer for purposes of undertaking trade in foodgrains on a commercial scale. The Central Government is empowered, in consultation with the State Government, to establish a Food Corporation for a State and the management of the State Food Corporation is vested in the Board of Directors consisting of Chairman and other members, who are to be appointed on consultation with the Central Government and the State Government. The functions of the Food Corporation are set out in Section 13 of 1964 Central Act, the primary duty of the Corporation is to undertake the purchase, storage, movement, distribution and sale of foodgrains and discharge, among other things, such other functions as may be prescribed or as are supplemental, incidental or consequential to any of the functions conferred on it under the Act.

6. It is the case of the learned counsel for the petitioners that the functions assigned to the Food Corporation and to the Warehousing Corporations under the two Central Acts are encroached upon by the Market Committees, as the Market Committees are empowered under the Act to discharge the same functions.

7. It is therefore necessary to notice the scheme of the Act. The Government is empowered to notify its intention of regulating the purchase and sale of agricultural produce, livestock or other products in any particular area. The area so notified is called "notified area" under the Act. For every notified area, a Market Committee is constituted. It is a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to sue or be sued in its name. It is the function of this Committee to enforce the provisions of the Act, the rules and bye-laws. It has also to establish such number of markets as the Government may, from time to time, direct for the purchase and sale of notified agricultural produce, livestock or products of livestock and provide such facilities in the market as and when specified by the Government from time to time. The Market Committee has to notify the limits of every market established. Every Market Committee consists of such number of members not being less than twelve and not more than sixteen as may be fixed by the Government. Section 7 to the extent material reads :

"7 (1) "No person shall, within a notified area, set up, establish or use, or continue or allow to be continued, any place for the purchase, sale, storage, weighment, curing pressing or processing of any notified agricultural produce or products of livestock or for the purchase or sale of livestock except under and in accordance with the conditions of licence granted to him by the market committee:

xx xx xx

(2) ..............

(3) ..............

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(4) ...............

(5) ..............

(6) Notwithstanding anything in sub-section (1) no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area, outside the market in that area."

8. This section imposes a restriction on persons to set up, establish or use any place for the purchase, sale, storage, weighment, curing, pressing or processing of notified agricultural produce or products of livestock or for the purchase or sale of livestock except under and in accordance with the conditions of a Licence granted to him by the Market Committee. The Market Committee has also the power to exempt any person and the Act is not made applicable to institutions like Co-operative Marketing Societies, Khadi and Village Industries Commission etc. There is prohibition to purchase or sell any notified agricultural produce in a notified market area outside the market in that area. The rate at which market fee is to be levied is specified in Section 12 of the Act. The fee is payable ordinarily by the purchaser of the agricultural produce. The fees so received and collected constitute the Market Committee funds and it is to be expended in the manner provided in Section 15 i.e., for acquisition of site for the market; establishment, maintenance and improvement of the market; construction and maintenance of buildings; provision and maintenance of buildings; provision and maintenance of standard weights and measures; payment of pay, pensions, leave allowances, gratuities, payment of interest on loans; propaganda for the improvement of agriculture; measures for the preservation of foodgrains etc. This Act is not made applicable to markets established by or on behalf of the Government. "Government" is defined as Government of the State and the Act is to override other laws which provide for the establishment, maintenance or regulation of a market or the levy of fees. That in substance is the scheme of the Act. The Act repealed the Andhra Pradesh (Andhra Area) Commercial Crops Markets Act, 1933 and the Andhra Pradesh (Telangana Area) Agricultural Market Act 1339 Fasli.

9. The validity of the Madras Commercial Crops Markets Act was upheld by the Supreme Court in Arunachala Nadar v. State of Madras, AIR 1959 SC 300. But it is Mr. Chowdary's contention that the Supreme Court did not examine the validity of that Act in the context of the two Central Acts of 1956 and 1964 establishing corporations for the purpose of purchasing, selling, storing and warehousing foodgrains. Marketing of agricultural produce had always engaged the attention of the Government. A Royal Commission on Agriculture was appointed in 1928 and that Commission submitted a report for the establishment and regulation of markets. According to the Commission:

"The Keynote to the system of marketing agricultural produce in the State is the predominate part played by middlemen.''

"It is the cultivator's chronic shortage of money that has allowed the intermediary to achieve the prominent position he now occupies."

10. With a view to regulate the buying and selling of commercial crops by providing suitable and regulated market by eliminating middlemen and bringing face to face the purchaser and the buyer, the Madras Commercial Group Markets Act, 1933 which has been replaced by the Act was passed. The attack regarding the validity of Madras Act 1933 in Arunachala Nadar's case, AIR 1959 SC 300 was that it created unreasonable restrictions on citizen's rights to carry on their business and trade and that was repelled by Subha Rao J. (as he then was) who spoke for the Court. Now the attack is not on the ground that the Act creates unreasonable restrictions on the citizens rights to carry on trade or business, but it encroaches upon the field occupied by the two Central Acts made by the Parliament and as such the present Act is repugnant to the powers of the parliament. The two Central Acts were made by the parliament within the power conferred upon it under Entry 44 of the Union List. The power to make laws under List I is conferred only upon the parliament and the State Legislature is prohibited from making any law in respect of matters covered by the Entries in List I. In the case of Concurrent List where concurrent power is conferred upon both the Parliament and the State Legislature and both of them being competent to enact laws in respect of the Entries specified in List III, the law made by the Parliament prevails over that of the State.

11. The relevant Entries in the three Lists of the Seventh Schedule are these:

List I

43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial Corporations but not including co-operative societies.

44. Incorporation, regulation and winding up of Corporations whether trading or not, with objects not confined to one State, but not including Universities.

List II:

14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

15. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.

27. Production, supply and distribution of goods subject to the provisions of Entry 33 of List III.

28. Markets and fairs.

29. Weights and measures except establishment of standards.

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32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; universities, unincorporated trading, literary scientific religious and other societies and associations; co-operative societies.

66. Fees in respect of any of the matters in this List, But not including fees taken in any Court.

List III:

33. Trade and commerce in, and the production, supply and distribution of-

(a) the products of any industry where the control of such industry by the Union is declared by parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

(b) foodstuffs, including edible oilseeds and oils;

(c) cattle fodder including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton seed and

47. Fees in respect of any of the matters in this List, but not including fees taken in any Court.

Entry 44 of the Union List deals with incorporation and regulation of corporations, whether trading or not, the objects of which are not confined to one State. This Entry has to be read with Entry 43 trading corporations, including banking, insurance and financial corporations but not including cooperative societies. Entry 32 in the State List covers incorporation, regulation and winding up of corporations other than those specified in List I, Entry 27, of the same List empowers the State Legislature to legislate in regard to production, supply and distribution of goods subject to the provisions of Entry 33 of List III. Similarly, Entry 26 also empowers the State Legislature to legislate in regard to matters concerning trade, and commerce within the State subject to the provisions of Entry 33 of List III. Entry 33 of the Concurrent List empowers both the State and Central Legislatures to legislate with respect to matters of trade and commerce in, and the production, supply and distribution of foodstuffs including edible oilseeds, oils and other goods specified therein. Markets and fairs is a State subject. Markets and fairs transact sales and purchases of any merchandise including livestock. Under Entry 66 of List II, it is open to the State Legislature to levy fees in respect of any of the matters covered by the said List except fees taken in any Court. Entry 47 of the concurrent List also empowers the State Legislature to levy fees in respect of any of the matters in the Concurrent List except fees taken in any Court. The fee or the cess imposed under Section 12 of the Act is for the services rendered by the Market Committee to the buyers and sellers of the goods. Looking at the subjects allocated to the State and Centre under the three Lists, it is clear that markets come within the ambit of the legislative power conferred upon the State Legislature. The fact that the Market Committees or Corporations come within the meaning of the expression "incorporation" will not by itself bring the Market Committees within the ambit and scope of Entry 44 of List I. Item 32 of List II empowers the State Legislature to establish corporations other than those specified in List I and when examining whether the incorporation of Market Committees under the Act is in conflict with the powers of the Central Legislature to legislate in respect of corporations under Entry 44, one has to bear in mind the scheme and object of the two Central Acts and the State Act. The establishment of markets is within the competence of the State Legislature and establishment of a Market Committee which shall be a body corporate for the purpose of regulating marketing of agricultural produce and livestock does not in any way encroach upon the occupied field under the Central Acts. The dominant purpose of the Act is to see that all agricultural commodities and livestock or products of livestock are sold or purchased through regulated markets, the market committees being empowered to issue licences to traders in a notified area. The constitution of the Committee is such that producers of agricultural produce and owners of livestock have adequate representation of the market committee so that their interests may be properly safeguarded. What all is demanded is only a fee under S. 12 for the services rendered by the Market Committees and a licence under Section 7.

12. Mr. Chowdary sought to draw support from the American decisions to show that the Market Committee has no competence to insist upon the Corporations established under the two Central Acts to transact their business in accordance with the provisions of the Act. In M. Culloch v. The State of Maryland, (1819) 4 L Ed 579, what the United States Supreme Court said is this:

"The Government of the Union, though limited in its powers, is supreme within its sphere of action; and its laws, when made in pursuance of the constitution, form the supreme law of the land."

That was a case where the validity of the State Act of Maryland was questioned on the grounds of its being repugnant to the constitution of the United States. The Government of the Union enacted an Act by which the Bank of United States had constitutionally a right to establish its branches or offices of discount and deposit within any State. The Legislature of the State of Maryland passed an Act to impose a tax on all banks or branches in the State of Maryland not chartered by the Legislature. It was therefore said by the Supreme Court of the United States:

"The State Governments have no right to tax any of the constitutional means employed

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by the Government of the Union to execute its constitutional powers.

The States have no power by taxation, or otherwise to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress, to carry into effect the powers vested in the national government."

13. In Gibbons v. Ogden, (1824) 6 L. Ed. 1 at P. 73 Marshall, C. J. dealing with the conflict between State and Union Law observed:

"In argument, however, it has been contended that if a law, passed by a State in the exercise of its acknowledged sovereignty comes into conflict with a law passed by Congress in pursuance of the Constitution, they affect the subject, and each other, like equal opposing powers.

But the framers of our constitution foresaw this state of things, and provided for it, by declaring the supremacy not only of itself, but of the laws made in pursuance of it. The nullity of any Act, inconsistent with the Constitution, is produced by the declaration that the constitution is the supreme law. The appropriate application of that part of the clause which confers the same supremacy on laws and treaties, is to such acts of the state legislatures as do not transcend their powers but though enacted in the execution of acknowledged state powers, interfere with, or are contrary to the laws of congress made in pursuance of the Constitution, or some treaty made under the authority of the United States. In very such case, the act of Congress, or the treaty, is supreme and the law of the state, though enacted in the exercise of powers not controverted, must yield to it.

14. There can be no doubt and it is well settled that the law made by the State Legislature under our Constitution also covering a field occupied by the Central law must yield to the Central law and the law to the extent of repugnancy will be void.

15. The doctrine of pith and substance stated by the Federal Court in Subrahmanyan Chettiar v. Muttuswami Goundan, 1940 FCR 188 : (AIR 1941 FC 47) was quoted with approval by the Privy Council in Prafulla Kumar Mukherjee v. Bank of Commerce Ltd. Khulna, (1947) 74 Ind App 23 ; (AIR 1947 PC 60).

16. The Supreme Court has approved the pith and substance rule in a number of cases commencing from State of Bombay v. Narottamdas Jethabhai, 1951 SCJ 103 : (AIR 1951 SC 69). The main question that fell for decision in that case was whether the Bombay City Civil Court Act (XL of 1948) is ultra vires the Legislature of the State of Bombay. The ground on which that Act was challenged was that the Act conferred jurisdiction on the new Court not only in respect of matters which the Provincial Legislature is competent to legislate upon under List II of the Seventh Schedule to the Government of India Act, 1935, but also in regard to matters in respect of which only the Central or Federal Legislature can legislate under List I. The validity of the Bombay City Civil Court Act was upheld as being a Statute within the legislative field of the province under item 1 of List II. Patanjali Sastri, J., (as he then was) in a separate but concurrent judgment upholding the validity of the Act observed at p. 177:

"The constitutional puzzles which such a system is likely to pose to the Legislatures no less than to the Courts and the litigant public in the country whenever a new Court is constituted in finding out by searching through the legislative lists, whether jurisdiction to deal with a particular matter or power to make a particular order is validly conferred by the appropriate Legislature, must make one pause and examine the relevant provisions of the Government of India Act to see if there is anything in them to compel the acceptance of so novel a system. After giving the matter my careful consideration, I am convinced that both the language of the provisions and the antecedent legislative practice support the conclusion that the provincial Legislatures, which have the exclusive power of constituting and organising Courts and of providing for the Administration of justice in their respective provinces, have also the power of investing the Courts with general jurisdiction."

Again the question that the Bombay Prohibition Act encroached on the Federal field was raised in State of Bombay v. F. N. Balsara, 1951 SCJ 478 : (AIR 1951 SC 318), Fazl Ali J., who spoke for the Court agreed with what Gwyer, C. J. said in Province of Madras v. Boddu Paidana and Sons, (1942) 5 FLJ 61 : (1942) 4 FCR 90 : (AIR 1942 FC 33) that "the analogy with the American case is an attractive one; but for the reasons which we have given we are wholly unable to accept it" and observed that:

"There is thus no real conflict between Entry 31 of List II and Entry 19 of List I and it is difficult to hold that the Bombay Prohibition Act in so far as it purports to restrict possession, use and sale of foreign liquor, is an encroachment on the field assigned to the Federal Legislature under Entry 19 of List I.

Further, even assuming that the Prohibition of purchase, use, possession, transport and sale of liquor will affect its import, the encroachment, if any is incidental and cannot affect the competence of the provincial Legislature to enact the law in question."

That view was based on what is stated in Gallagher v. Lynn, 1937 AC 863 at P. 870.

"It is well established that you are to look at the "True nature and character of the legislation: Russell v. The Queen, (1882) 7 App Cas 829 the pith and substance of the legislation". If on the view of the

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statute as a whole, you find that the substance of the legislation is within the express powers then it is not invalidated if incidentally it affects matters which are outside the authorised field."

17. In Zaverbhai v. State of Bombay, AIR 1954 SC 752, it was observed by the Supreme Court that

"The important thing to consider with reference to Article 254 (2) is whether the legislation is "in respect of the same matter." It the later legislation deals not with the matters which formed the subject of the earlier legislation but with other and distinct matters though of a cognate and allied character, then Art. 254 (2) will have no application."

18. In Tika Ramji v. State of Uttar Pradesh, AIR 1956 SC 676 at pp. 690, 691 the U. P. Sugarcane (Regulation of Supply and Purchase) Act (24 of 1958) was held to be intra vires and it does not occupy the field covered by any one of the Entries in List I of the Seventh Schedule. While holding so, the Supreme Court observed :

"Production, supply and distribution of goods was no doubt within the exclusive sphere of the State Legislature but it was subject to the provisions of Entry 33 of List 3 which gave concurrent powers of legislation to the Union as well as the States in the matters of trade and commerce in, and the production supply and distribution of the products of industries where the control of such industries by the Union was declared by Parliament by law to be expedient in the public interest.

The controlled industries were relegated to Entry 52 of List I which was the exclusive province of Parliament leaving the other industries within Entry 24 of List 2 which was the exclusive province of the State Legislature. The products of industries which were comprised in Entry 24 of List 2 were dealt with by the State Legislatures which had under Entry 27 of that List power to legislate in regard to the production, supply and distribution of goods according to the definition contained in Article 366 (12) including all raw materials, commodities and articles.

When, however, it came to the products of the controlled industries comprised in Entry 52 of List I, trade and commerce in, and production, supply and distribution of these goods became the subject-matter of Entry 33 of List III and both Parliament and the State Legislatures had jurisdiction to legislate in regard thereto. The amendment of Entry 33 of List III by the Constitution, Third Amendment Act, 1954, only enlarged the scope of that Entry without in any manner whatever detracting from the Legislative competence of Parliament and the State Legislature to Legislate in regard to the same.

If the matters had stood there, the sugar industry being a controlled industry Legislation in regard to the same would have been in the exclusive province of Parliament and production, supply and distribution of the product of sugar industry viz. sugar as a finished product would have been within Entry 33 of List III. Sugarcane would certainly not have been comprised within Entry 33 of List III as it was not the product of sugar industry which was a controlled industry. It was only after the amendment of Entry 33 of List III by the Constitution Third Amendment Act 1954 that foodstuffs including edible oilseeds and oils came to be included within that List and it was possible to legislate in regard to sugarcane, having recourse to Entry 33 of List III.

Save for that sugarcane, being goods, fell directly within Entry 27 of List 2 and was within the exclusive jurisdiction of the State Legislatures, Production, supply and distribution of sugarcane being thus within the exclusive sphere of the State Legislatures, the U. P. State Legislature would be without anything more, competent to legislate in regard to the same and the impugned Act would be intra vires the State Legislature."

19. It is thus manifest that Entries 14, 15, 27, 28, 29, 32 and 36 of List II read with Entries 33 and 47 of List III make the State Legislature competent to legislate in regard to agricultural produce, livestock and establish markets for the purpose of regulating sale, purchase, storage weighment etc. in accordance with the conditions of licence granted to a person by the Market Committee.

20. The three principles stated by Subba Rao, J. (as he then was) in Deep Chand v. State of Uttar Pradesh, AIR 1959 SC 648 at p. 665 to ascertain whether there is repugnancy between the two statutes are these:

"(1) Whether there is direct conflict between the two provisions:

(2) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature; and

(3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field."

Applying the tests laid down by the Supreme Court, I find no direct conflict between the Act which has received the assent of the President and the two Central Acts. The essential purpose of the Act is establishment of markets and regulating sale of agricultural produce and livestock; and as such, there is no direct or positive conflict between the Central Acts and the Act to say that the Act cannot be reconciled or cannot co-exist with the Central Acts. "The Doctrine of 'occupied field" applies only where there is a clash between Dominion legislation and Provincial legislation within an area common to both" See Forbes v. Attorney General of Manitoba, (1937) AC 260 at p. 274.

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21. Although the two Central Acts deal with supply storage and warehousing of foodgrains that itself is not sufficient to determine the question of repugnancy. The object of the two Central Acts though seem allied in character, they cover distinct and separate fields. The dominant purpose of the two Central Acts is not the establishment of markets. Markets is a State Subject under Entry 28 of List II and are established for supply, distribution, sale and purchase of agricultural produce. "Agricultural produce" has been defined to mean anything produced from land in the course of agriculture, or horticulture and includes forest produce or any produce of like nature. Establishment of markets necessarily involves imposing licensing restrictions to enable the buyers and sellers to meet in a notified market area. Under the two Central Acts sales and purchases are effected on behalf of the Central Government through corporations. Under the State Act, sales and purchases are not effected on behalf of the State or Central Governments. Market Committees protect the ensuring correct weighment, making available to them latest information regarding prices of agricultural produce, arranging for sale or purchase of goods and settlement of disputes, if any, arising in the course of transactions between the sellers and buyers.

22. This Court in Sree Rama Coconut Co. v. State of Andhra Pradesh, (1960) 2 Andh WR 523 : (AIR 1961 Andh Pra 138) repelled the contention that the notification issued by the State Government extending the Madras Commercial Crops Markets Act (Madras Act XX of 1933) to coconuts as being repugnant to the provisions of the Indian Coconut Committee Act (X of 1944) and to that extent void under Article 254 (1) of the Constitution. Basi Reddy, J. held that the essential purpose sought to achieved by the Madras Act is not covered by the Central Act because the latter does not touch the subject of markets.

23. There is no warrant for any inference that under the Act, the Corporations are bound to transact their business through markets established by the Market Committees, or that any restrictions are placed upon the corporations established under the Central Acts to discharge the functions assigned to them. Therefore, Section 7 of the Act is not inconsistent with or repugnant to the provisions of Sections 9 and 34 of the 1956 Central Act or Section 13 of the 1964 Central Act. To quote Dixon J. in Ex. Parte Mclean, (1930) 49 Com LR 472 at p. 483.

"The inconsistency does not lie in the mere co-existence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount Legislature to express by its enactment, completely, exhaustively what shall be the law governing the particular conduct or matter to which its attention is directed."

24. Another question raised by Mr. Chowdary is that the Market Committee has no competence to levy the market fee as the conditions laid down in Section 4 of the Act are not satisfied. There is no substance in this argument. By virtue of G. O. Ms. No. 2095 Food and Agriculture dated 29-10-1968, notified areas under Section 3 (b) for each of the revenue districts were notified. Under G. O. Ms. No. 655 dated 4-4-1969, Market Committees were constituted by virtue of the powers conferred under Section 4 (1). Market Committees were directed by the Government to establish markets. G. O. Ms. No. 2261 dated 7-12-1970 was notified under Section 4 (3) (a) of the Act. This is a general notification directing the Market Committee to provide facilities at the notified market areas. Further notifications under Section 4 (4) were duly published in respect of Market Committees with which we are now concerned.

25. In the result, I find no merit in these writ petitions and they are accordingly dismissed. No costs. Advocates fee Rs. 100/- in each.

(FOR BEING MENTIONED.)

26. It will be open to the petitioners to represent to the Tenali Market Committee in response to the notices issued by it that the Tenali Market Committee has no jurisdiction to levy fees under Section 12 as the competent Market Committees to levy the fees are Guntur, Narasaraopet and other Market Committees concerned. It is for the petitioners to satisfy the Tenali Market Committee that it has no jurisdiction to levy and collect the licence fee.

Petitions dismissed.

AIR 1975 ANDHRA PRADESH 245 "Warangal Chamber of Com. v. Director of Marketing"

ANDHRA PRADESH HIGH COURT

Coram : 2 GOPAL RAO EKBOTE, C. J. AND CHENNAKESAV REDDY, J. ( Division Bench )

The Warangal Chamber of Commerce. Petitioner v. Director of Marketing, Govt. of A.P., Hyderabad and others, Respondents.

Writ Petn. No. 1827 of 1972, D/- 6 -2 -1974\*

(A) Constitution of India, Art.226 - WRITS - Mandamus - Locus Standi - Corporate body - Locus Standi to file petition on behalf of its members.

To successfully maintain an application for the issue of a writ of mandamus, Courts have mainly laid down three tests (1) the applicant must have a legal right (2) the applicant must show that the duty which is sought to be enforced is owed to him, (3) the applicant must be able to establish an interest, the invasion of which has given rise to the action. Doubt or difficulty often arises in the application of the third test. (Para 15)

The petitioner, the Warangal Chamber of Commerce was a corporate body. The commission agents were all its members. One of the objects of the petitioner was to aid and protect trade and commerce. The commission agents assisted and advised also the vendors in the market area on matters of protection and insurance of agricultural produce and livestock. The existence of the petitioner chamber of commerce depended on its members. The commission agents demanded an increase in the percentage of commission for the service rendered by them but it was refused.

Held, that the refusal to increase the percentage of commission affected the real interest of the petitioner. Therefore the petitioner had real and sufficient interest in the matter to maintain the writ petition. (Para 20)

(B) A.P. (Agricultural Produce and Livestock) Markets Act (16 of 1966), S.33(2)(xxv) and S.34(1), Proviso , Byelaws framed under Byelaw 35 - A.P.(Agricultural Produce and Livestock) Markets Rules (1969), R.45, R.73 - AGRICULTURAL PRODUCE - WRITS - Rates of commission to be paid to commission agents in market area - Power of fixing rates vests in Govt. exclusively - Increase in rate of commission ordered by Market Committee and approved by Director of Marketing - Government can set aside the increase - Petition seeking a direction declaring that it was the Director of Marketing and not the Government which had power to fix the market fee is not maintainable.

(1972) 2 APLJ 275, Applied.

Constitution of India, Art.226. (Para 21)

Cases Referred : Chronological Paras

AIR 1973 SC 2720 : 1974 Pat LJR 204 9

(1973) 1 All ER 689 19

AIR 1972 SC 2112 : 1972 SCD 558 8

ILR (1972) A.P. 955 10

(1972) 2 APLJ 275 : ILR (1972) AP 210 21

(1968) 1 All ER 763 : (1968) 2 WLR 893 19

AIR 1966 SC 828 : (1966) 2 SCR 172 7

AIR 1962 SC 1044 : 1962 Supp (3) SCR 1 7

(1957) 2 Andh WR 250 12

AIR 1952 SC 12 : 1952 SCR 28 6

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A. Raghuvir, for Petitioner; Govt. Pleader for Transport (for Nos. 1 and 2) and D. V. Reddi Pantulu (for No. 3), for Respondents.

\* Order of reference made by Obul Reddi, J. on 20-11-1973.

Judgement

CHENNAKESAV REDDY, J.:- The problem that stands pre-eminently to the fore in this writ petition is whether the petitioner - The Warrangal Chamber of Commerce, a corporate body, can maintain a writ of Mandamus on behalf of its members, under Article 226 of the Constitution. When the case came on for hearing before our learned brother, Obul Reddi, J. his Lordship referred the matter to a Division Bench in view of the importance of the issue involved in the case and the conflicting course of judicial authority obscuring the principles governing the same.

2. Before we proceed to set out our answer, the essential facts may be shortly stated. The petitioner is a corporate body registered as a non-trading company under the Andhra Pradesh Non-Trading Companies Act, 1962 (Act II of 1962). Several licensed commission agents, dealing in agricultural produce and livestock, are its members. The objects of the petitioner-Chamber of Commerce are : to promote, encourage, aid and protect trade, commerce and industries in Warangal District in general and within the municipal limits of Warangal town in particular in the State of Andhra Pradesh.

3. Under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (Act 16 of 1966), hereinafter referred to as the Act, Market Committees have been constituted by the Government for every notified area. Every Market Committee establishes such number of markets in the notified area as the Government may direct from time to time and declare the limits of several markets, for the purchase and sale of any agricultural produce, livestock or products of livestock. It is not necessary for the purpose of this writ petition to notice in detail the provisions of the Act relating to the constitution of Market Committees and establishment of markets. Under Section 32 of the Act, the Government have the power to regulate or prohibit the Commission Agents operating in the markets by a notification in that behalf until such time the Market Committee may issue licences to the Commission Agents. Under Section 33, the Government may make rules in any notified area or areas for carrying out the purposes of the Act. Under the proviso to Section 34, the Director of Marketing may make bye-laws in respect of a notified area for which a Market Committee is constituted for the regulation of the business and the conditions of trading therein, if the Market Committee itself fails to make bye-laws within two months from the date of its constitution. Under bye-law No. 35 of the Bye-laws so framed, a commission of 1-25% is prescribed as the commission for the Commission Agents towards their fees. It is the grievance of the Chamber of Commerce that the said fee prescribed is absolutely low and not commensurate with the service rendered by its members who are licensed Commission Agents. The Commission Agents, it is the submission of the petitioner, not only represent the interests of the vendor within the market area but also help the vendors in the matter of insurance and preservation of the produce in case the vendors decide not to sell the commodity immediately. The petitioner made representations on behalf of the members to the concerned authorities to enhance the commission charges to 2.50%. It appears that when the Director of Marketing enhanced the rate to 2.50% in similar cases, the Government issued a notification in the matter nullifying the said enhancement on the ground that the Director of Marketing had no power. Since it is not possible in the circumstances to get any relief from the Director of Marketing and have the bye-law amended for the enhancement of the rate of commission to the Commission Agents, the petitioner has filed this writ petition seeking a writ of Mandamus or any other appropriate Writ, order or direction declaring that the Director of Marketing has jurisdiction to amend the bye-laws effecting changes in the rates of commission to be paid to the Commission Agents in the Market area of the petitioner-Chamber of Commerce and also directing the Director of Marketing to fix the rate of commission to be paid to the Commission Agents at 2.50% in respect of agricultural produce. This, in brief, is the genesis of this writ petition.

4. In the counter-affidavit filed by the Secretary, Agricultural Market Committee, Warangal, an objection is taken as to the locus standi of the petitioner which is a corporate body to file a writ petition on behalf of its several members. It is submitted that each individual member should file a separate writ petition and a single writ petition on behalf of all the members is liable to be dismissed.

5. The question of locus standi under Article 226 is not res integra. It has been considered in several decisions of the Supreme Court and of this Court. To begin with, let us see the view expressed in the earliest decision of the Supreme Court with reference to Art. 226 of the Constitution.

6. In State of Orissa v. Madan Gopal Rungta. AIR 1952 SC 12 Kanja, C. J. speaking for the court observed :-

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"The language of the article shows that the issuing of writs or directions by the Court is founded only on its decision that a right of the aggrieved party under Part III of the Constitution (Fundamental Rights) had been infringed. It can also issue writs or give similar directions for any purpose. The concluding words of Article 226 have to be read in the context of what precedes the same. Therefore, the existence of the right is the foundation of the exercise of jurisdiction of the court under this article."

Thus the basis for relief under Article 226 is the existence of a legal right.

7. In Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal, AIR 1962 SC 1044, Subba Rao, J. (as he then was) observed :

"Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the court seeking a relief thereunder."

The same learned Judge again in Goode Venkateswara Rao v. Government of Andhra Pradesh, AIR 1966 SC 828 observed :

"A personal right need not be in respect of a proprietary interest : it can also relate to an interest of a trustee. That apart, in exceptional cases, as the expression "ordinarily'' indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof."

8. It can immediately be seen that this decision widens the scope of judicial review. The question of locus standi again prominently came up before the Supreme Court in State of Orissa v. R. C. Indrakumar, AIR 1972 SC 2112. Mitter, J., speaking for the Court, held that, unless the infringement of the legal right is established, the High Court exercising writ jurisdiction cannot grant any relief to the party, approaching the Court.

9. The Supreme Court once again had occasion to consider the question in Dr. Satya Narayana Sinha v. M/s. S. Lal and Co. (P.) Ltd., AIR 1973 SC 2720. Jaganmohan Reddy, J., speaking for the Court, after a review of the several earlier decisions, observed at page 2723 as follows :-

"In respect of persons who are strangers and who seek to invoke the jurisdiction of the High Court or of this Court, difficulty sometimes arises because of the nature and extent of the right or interest which is said to have been infringed and whether the infringement in some way affects such persons. On this aspect there is no clear enunciation of principles on which the Court will exercise its jurisdiction.

In England also the Courts have taken the view that when the application is made by a party or by a person aggrieved the Court will intervene ex debito justitiae in justice to the applicant, and when it is made by a stranger the Court considers whether the public interest demands its intervention. In either case it is a matter which rests ultimately in the discretion of the Court."

10. A Division Bench of this Court in T. Narayana Reddy v. The Government of Andhra Pradesh, ILR (1972) Andh. Pra 955 had considered the problem of locus standi at length, Ekbote. J. (as he then was) expressed the law lucidly and incisively as follows :-

"Now, the law relating to locus standi does not really lend itself to neat generalisations. Locus standi is understood to mean legal capacity to challenge an act or decision of an authority. The state of law on this subject is still fluid and it is difficult to lay down any law precisely which would apply to all the cases and in all the circumstances. Decisions on this topic in India as well as in England and America of late have shown a marked shift. There has been a blurring of some of the sharp technical distinctions which appeared to be well established, say ten years before. The rules governing locus standi to initiate proceedings for different remedies not only are different but they in themselves have undergone in some respects some change. It is, however, clear that the recent decisions reflect the judicial liberality in connection with standing to seek judicial review."

11. The learned Judge proceeded further to observe that Article 226 of the Constitution confers wide power on High Courts to issue certain Writs, directions, or orders but does not in terms describe the class of persons to whom the right to relief thereunder should be confined. Summarising the principles governing locus standi to seek certiorari, the learned Judge held at page 961 :

"Now certiorari is a discretionary remedy and the discretion of the court as seen above extends to permitting an application made by any member of the public.

For the purpose of locus standi the decisions divide the members of public broadly speaking into three categories. Firsty the Attorney General or the Advocate-General is empowered to initiate remedies to prevent or cancel any administrative action or decision of an authority;

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secondly persons whose legal rights or interests are adversely affected; and thirdly, the persons whose legal rights or interests have not been directly or indirectly affected, nevertheless have been conferred with the status of 'person aggrieved' by Statute."

12. Jaganmohan Reddy, J., (as he then was) of this court in Tobacco Merchants' Association v. Krishna Market Committee, Vijayawada, (1957)) 2 Andh WR 250, while dealing with the question of locus standi of the associations to maintain writ petitions held :-

"The Associations (by whom the writ petitions have been filed) have as such not been affected in any way and in so far as the associations which are unregistered (amongst them) are concerned, the individual applying for the writ is not authorised to take any action on behalf of the members. Even where the Society is registered, it is not the Society which is affected and therefore it cannot ask for any writ or order seeking relief in a representative capacity on behalf of its members. The individuals concerned can file the petitions. Even though the writ petitions on behalf of the Associations were signed by persons who are members of the association, that does not make them parties as such. Hence the writ petitions cannot be considered as petitions by the persons who signed on behalf of the associations."

In that view, the learned Judge dismissed the Writ Petition as not maintainable.

13. From the aforesaid decisions it can be seen that judicial opinion teethered on the problem of standing or locus standi to seek relief under Art. 226. The movement in the current of judicial decisions has been unsteady. One, however, can dimly discern from these decisions that the terrain over which judicial review is based has enlarged in recent years and not eroded.

14. The class of persons to whom locus standi should be confined to invoke the jurisdiction under Art. 226 is not enshrined in the Article itself. Hence, Courts have to determine whether the applicant is entitled to legal protection from the infringement of his legal injury (right?) by any administrative act or decision. That becomes a matter of judicial expedience and public policy.

15. Rules governing locus standi to claim relief under Article 226 vary according to the nature of the remedy sought. Each remedy has its own technicalities. In this case, we are concerned with Mandamus. To successfully maintain an application for the issue of a writ of mandamus, Courts have mainly laid down three tests (1) the applicant must have a legal right, (2) the applicant must show that the duty which is sought to be enforced is owed to him, (3) the applicant must be able to establish an interest, the invasion of which has given rise to the action. Doubt or difficulty often arises in the application of the third test.

16. What then is the kind of interest that the applicant must establish to give him locus standi to impugn the administrative action? The view of Courts on locus standi must be dominantly ameliorative and not merely apocalyptic, and should serve the philosophy and purpose underlying Article 226.

17. A developing country involving itself in a large demanding and commanding effort to move forward in its economic and social developments has of necessity to take a number of legislative and administrative actions intensely affecting the interests of so many citizens. In a society in which there is massive State intervention the danger towards bureaucratic rule is posed. Problems will arise for which there are no precedents. There is thus an increasing necessity for Courts to see that popular action does not trespass upon right and justice as recognised in our Constitution and natural law and that necessity should serve to swell rather than contract the scope of standing. Restrictive rules about locus standi are in general inimical to a fair and healthy system of administration. That does not mean that Courts should trespass on the work and fast development of the Government to bring large-scale social and economic changes. The passivity in the general run of men is waning - indeed a good trend. Where there was resignation and acquiescence before fate now there is a growing activity and aspiration for a full development of a better society. Therefore, Courts should view with liberality the question of standing to maintain a writ petition. Even a member of the public who has sufficient interest in the fit matter should be accorded locus standi to approach the Court for relief. No more restriction should be placed on what constitutes sufficient interest to see that administrative authorities act in accordance with law and natural justice. It is not possible to discover and formulate any hard and fast rules for this problem of locus standi. It ultimately resolves itself to one of discretion to be exercised in each case on the facts and circumstances of that case. The discretion of the Judge must be guided by what Newman called the 'illative sense'. It is not a cosmic vision that makes him spin out answers. He must rely more on instinct cultivated by long experience in a close corporation of minds rather than follow a logical argument with inexorable severity inviting to absurdity.

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18. The well-known authors on Administrative Law M/s. Bernard Schewartz and H. W. R. Wade, Q. C. in their book "Legal Control of Government" dealing with the topic 'standing to sue : United States' at page 287 observed as follows :-

"In considering the subject of standing, one should bear in mind that, as the Supreme Court tells us, 'the trend is toward enlargement of the class of people who may protest administrative action'. Standing exists when plaintiff alleges that he has suffered harms as a result of the challenged agency action that it has caused him injury, economic or otherwise. Under the recent cases (we shall see) standing may stem from non-economic values as well as from economic injury.

The easiest cases are those where direct economic injury is alleged. A person who is directly affected in the economic interest by the administrative decision which he challenges does have the required standing, and this has long been recognized by the American Courts."

The same authors dealing with 'standing to sue in Britain' observed :-

"In Britain it is a thing of shreds and patches, made up of various differing rules which apply to various different remedies and procedures. It is a typical product of the untidy system of remedies, each with its own technicalities, which all British administrative lawyers would like to see reformed. On the other hand, some of these technicalities have beneficial (sic)."

19. In a recent case the law relating to locus standi of a private individual to maintain a writ petition against public authority is lucidly explained by Lord Denning in Attorney General v. Independent Broadcasting Authority, ((1973) 1 All ER 689). In that case the Independent Broadcasting Authority were proposing to broadcast, that very evening, a television film which did not comply with the statutory requirements laid down by Parliament. There was evidence which showed that the television film contained matter which offended against decency and likely to be offensive to public feeling. The Attorney General to whose notice the matter was brought by the applicant, McWhirter, declined to take action. Therefore, the applicant himself approached the Court to seek an injunction claiming that he had sufficient interest in the matter as he was himself the owner of a television set and he paid the licence fee. According to him, he was entitled to expect the programme to be in compliance with the statutory requirements when he switched on the set. There were thousands like him sitting and watching and were all entitled to have their privacy respected. The Court granted an injunction. Dealing with the question of locus standi and the role of a private individual to maintain an action Lord Denning observed as follows :-

"In the present case Mr. McWhirter told us that the Attorney General refused to take action ex officio, and that he, Mr. McWhirter, considered the matter was so urgent that he came direct to this court. Was he entitled to come here? Test it by an extreme case. Suppose the Attorney-General refuses to give leave for no good reason or on entirely wrong grounds, mistaking, may be, the interpretation of a statute. Would a private individual be entitled to come to the Court? Such a situation was not in Lord Halsbury L. C.'s mind in 1902. But it happened in 1910. There was a great case then in which this Court, to quote a learned author, 'struck a blow which is still reverberating fifty years later."

In such a situation I am of opinion and I state as a matter of principle that the citizen who is aggrieved has a locus standi to come to the courts. He can at least seek a declaration. That is the view expressed in a resourceful book to which the Attorney-General himself referred us, Zamir on "the Declaratory Judgments."

Lord Denning ultimately concluded by observing :

"...... I am of opinion that, in the last resort, if the Attorney-General refuses leave in a proper case, or improperly or unreasonably delays in giving leave, or his machinery works too slowly, then a member of the public, who has a sufficient interest, can himself apply to the Court itself. He can apply for a declaration and, in a proper case, for an injunction joining the Attorney-General if need be as defendant. In these days when Government departments and public authorities have such great powers and influence, this is a most important safeguard for the ordinary citizens of this country; so that they can see that those great powers and influences are exercised in accordance with law. I would not restrict the circumstances in which an individual may be held to have a sufficient interest. Take the recent cases when Mr. Raymond Blackburn applied to the court on the ground that the Commissioner of Police was not doing his duty in regard to gaming and pornography. Mr. Blackburn had a sufficient interest, even though it was shared with thousands of others. I doubt whether the Attorney-General would have given him leave to use his name : See R. v. Metropolitan Police Commissioner. Ex Parte Blackburn, (1968) 1 All ER 763 (770). But we heard

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Mr. Blackburn in his own name. His intervention was both timely and useful."

Thus, it can be seen that both in American and British democracies, the trend is towards the enlargement of the class of persons who may protest against arbitrary administrative actions.

20. Now turning to the facts of this case, the petitioner is a corporate body. The commission agents are all its members. One of the named objects of the petitioner - Chamber of Commerce is to aid and protect trade and commerce. It is not disputed that the Commission Agents assist and advise also the vendors in the market area on matters of protection and insurance of agricultural produce and livestock. The Commission Agents demanded an increase in the percentage of commission for the service rendered by them. The existence of the petitioner Chamber of Commerce depends on its members. In our opinion refusal to increase the commission, affects undoubtedly the real interest of the petitioner. We, therefore, hold that the petitioner has real and sufficient interest in the matter to maintain the writ petition.

21. That does not, however, conclude the matter in favour of the petitioner. There still remains the question whether the Government has the power to set aside the increase in the commission ordered by the Market Committee. We are relieved of the necessity to consider this question in view of the recent Division Bench decision of this Court in M. Kalva Suryanarayana v. The State of Andhra Pradesh, (1972) 2 APLJ 275. In that case, this court ruled that the Government had a right to put an end to the resolution passed by the Market Committee and approved by the Director of Marketing.

22. For the reasons abovementioned, the writ petition is dismissed with costs.

Petition dismissed.

AIR 1972 ANDHRA PRADESH 360 (V. 59 C 94) "A. M. Committee, Tenali v. State"

ANDHRA PRADESH HIGH COURT

Coram : 2 K. V. L. NARASIMHAM, C.J. AND ALLADI KUPPUSWAMI, J. ( Division Bench )

The Agricultural Market Committee, Tenali, Petitioner v. The State of A.P. and others, Respondents.

Writ Petn. No.477 of 1970, D/- 14 -7 -1971.

A.P. (Agricultural Produce and Livestock) Markets Act (16 of 1966), S.36(b) - AGRICULTURAL PRODUCE - Constitution of Market Committees as successors to market committee under A.P. Commercial Crops Markets Act, 1933 (repealed) - Assets and Liabilities devolve on successor committees in equal shares - Government cannot change the mode of devolution.

Under Section 36(b) of the Act, the assets and liabilities of the committee constituted under the old Act devolve equally on all the four committees which have been constituted under the new Act to take the place of the committee under the old Act. Thus the G.O. and the Memo read together which direct the division of the immovable properties between the committees according to the location of the properties in the area of their jurisdiction and the other fluid assets on the basis of the average income for certain years are violative of Section 36 of the Act. AIR 1929 All 817, Relied on. (Para 4)

Cases Referred : Chronological Paras

AIR 1929 All 817 : 1929 All LJ 1196, Abdullah v. Ahmed 4

P.A. Choudary, for Petitioner; Govt. Pleader, for Respondents.

Judgement

KUPPUSWAMI, J.:- Under the Madras Commercial Crops Market Act 1933 (Act XX of 1933) which subsequently, as applied to the State of Andhra Pradesh, came to be known as the Andhra Pradesh Commercial Crops Markets Act 1933, a Market Committee called the Guntur Market Committee was established for the entire Guntur District. In 1966 was enacted the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (hereinafter referred to as the Act) which is an Act to consolidate and amend the law relating to the regulation of purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection therewith. Section 4(1) of the Act authorises the Government to constitute a market committee for every notified area. Section 36 of the Act provides for the repeal inter alia of the Andhra Pradesh Commercial Crops Markets Act, 1933. Under proviso (b) of that section "any market committee constituted under any of the Acts so repealed and existing immediately before the commencement of this Act shall be deemed to have been constituted under this Act until a market committee is constituted in its place, and on such constitution all the assets and liabilities of the market committee so deemed to have been constituted shall devolve on the market committee so constituted under this Act."

2. Under the powers conferred under S.4(1) of the Act, the Government of Andhra Pradesh issued G.O.Ms.665 dated 29-10-1968 constituting four market committees for the district of Guntur in the place of the Guntur Market Committee which existed under old Act. These were the Agricultural Market Committee, Guntur, for Guntur and seven other places, Agricultural Committee. Tenali, for Tenali and seven other places, Agricultural Market Committee, Ongole, for Ongole and nine other places and Agricultural Market Committee, Narasaraopet, for Narasaraopet and eight other places. Later, G.O.Ms.1865 dated 11-10-1969, the Government declared that the assets, rights and liabilities of the dissolved committee shall be distributed among the new committees equitably on the basis of approximate income derived and the amenities provided in the respective area. It directed that the Examiner of Local Fund Accounts, Andhra Pradesh, he entrusted with the work relating to the division of assets and liabilities among the various market committees in the State. The Agricultural Market Committee, Tenali, which is the petitioner herein and the Collector and Ex-officio Chairman of the Krishna Marketing Committee proposed a modification to the above G.O. so as to distribute the assets and liabilities equally among the committees instead of on income basis. The Government, however, did not see fit to accept their suggestion. They issued a Memo No.3820/Agri.IV/69-3 dated 6-2-70 wherein they laid down certain principles to be followed in the division of assets and liabilities of the Guntur Market Committee. It is sufficient to refer to the first two principles which are the subject-matter of controversy in this Writ petition.

1. The immovable properties of the Committee lying in their jurisdiction should devolve on the respective committees.

2. All the fluid assets over the liabilities shall be divided among the successor Committees according to the percentage of average income for the three years from 1966 to 1968.

3. The petitioner, namely, the Agricultural Market Committee, Tenali, represented by its chairman has filed this Writ

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Petition praying for the issue of certiorari or any other appropriate writ to quash the G.O.Ms. 1865 dated 11-10-1969 and Memo No. 3820-Agri/IV dated 6-2-1970 referred to above.

4. The contention of the petitioner is that under Section 36(b) of the Act, the assets and liabilities of the committee constituted under the old Act should devolve equally on all the four committees which have been constituted under the new Act to take the place of the committee under the old Act. The G.O. and the Memo which read together direct the division of the immovable properties between the committees according to the location of the properties in the area of their jurisdiction and the other fluid assets on the basis of the average income for the years 1966 to 1968 are violative of Section 36 of the Act. In our view this contention seems to be justified. Under Section 36 of the Act, it is clearly laid down that the assets and liabilities of the old committee shall devolve upon the successor committee. In view of Section 3(35) of the Andhra Pradesh General Clauses Act which provides that words in the singular in any enactment shall include the plural, the assets and liabilities will under this section devolve on all the four successor committees. The question for consideration is as to the manner in which the devolution is to take place as between the four committees. It is not disputed that in the case of joint donees, whether the gift is inter vivos or bequest the donees are entitled to equal shares in the property in the absence of specification of the shares to which each is entitled. Even in the case of a transfer for consideration, in the absence of the other evidence, the joint transferees are presumed to be equally interested in the property (vide Sec.45 of Transfer of Property Act; Abdullah v. Ahmed, AIR 1929 All 817). The same principle equally applies to a joint devolution on more than one person. In our view, in the absence of any restriction on such devolution or any indication as to the manner of devolution given by the legislature all the assets and liabilities should devolve equally on the four committees.

5. It was however, argued on behalf of the Government that Section 36 only provides that the assets and liabilities should devolve upon the succeeding committee or committees, but does not say in what proportion it should devolve and it is left to the Government to apportion the said assets and liabilities between the successor committees in the manner they consider proper. We cannot agree with this submission. As stated above, on a plain reading of Section 36 of the Act, it appears to us that the successor committees are entitled by devolution to equal shares in the assets and liabilities of the committee constituted under the repealed enactment. If that is the proper construction of the section, it is not open to the Government to prescribe by an executive act another mode of devolution as it were, by adopting principles which admittedly do not result in equal division of the assets and liabilities between the four successor committees as provided by the legislature. In this case the Government has decided that all the immovable properties should be distributed between the committees according to the location of the immovable properties in their respective jurisdiction. The cost of the properties have to be divided on the basis of the income for three specific years of the respective committees. It is admitted that such a distribution would not result in the four committees getting a equal share of the assets and liabilities. It is not open to the Government by an executive act to vary the extent of assets and liabilities to which each of the committees is entitled under the provisions of the Act.

6. Reliance was placed upon Section 4 of the Act as amended by Act 1/1971. Section 4(1-A) of the Act provides any notification made under sub-section (1) for the constitution of a new market committee in respect of any new modified area declared under clause (c) of sub-section (4) of Section 3 may contain such supplemental, incidental and consequential provisions, including provisions as to the composition of the new market committee or new and existing market committees and the apportionment of the assets and liabilities between the market committees affected thereby.

7. On the strength of this provision it is argued that it is open to the Government to apportion the assets and liabilities between the four successor market committees in the manner they consider proper. It is, however, to be noticed that Section 4(1-A) which was introduced by amending Act 1/71 came into force only on the 5th October, 1970 (vide Section 1(2) of Act 1/71). Thus, this section would apply only to a notification made subsequent to that date. The notification constituting these four committees in question was made in April, 1969 long before the coming into force of this provision and hence this provision has no application. In this connection it may be noted that whenever certain amendments to the Act were sought to be made retrospective, it was expressly stated that the amending provision shall be and shall be deemed always to have been inserted (Section 8 introducing Section 36(aa) of the Act). Further, it is made clear by this provision that the apportionment, if any, should be contained in the notification constituting the new market committees. In this case the notification of April, 1969, does not contain any such provision for apportionment and the provision of apportionment was sought to be made only by a G.O.Ms.1865 dated 11-10-1969 and the Memo 3820-Agri.IV/69-3, dated 6-2-70. We therefore, reject the contention that the Government is entitled by and under the

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above said G.O. and memo to lay down principles of apportionment which have the effect of doing away with the devolution of assets and liabilities in equal shares which would be the result of applying the provisions of Section 36 of the Act.

8. In the result, the writ petition is allowed, but, in the circumstances without costs.

9. Advocate's fee Rs.100/-.

Petition allowed.

AIR 1971 ANDHRA PRADESH 353 (V. 58 C 75) "Donda Rama Rao v. State"

ANDHRA PRADESH HIGH COURT

Coram : 2 CHINNAPPA REDDY AND MADHAVA REDDY, JJ. ( Division Bench )

Donda Rama Rao and another, Petitioners v. The Government of Andhra Pradesh and others, Respondents.

Writ Petn. Nos. 3115, 2952, 3070 and 3781 of 1969 and 366 of 1970, D/- 20 -3 -1970.

(A) A.P. (Agricultural Produce and Livestock) Market Act (16 of 1966), S.5(2) - AGRICULTURAL PRODUCE - EQUALITY - Section is not discriminatory and hence does not violate Art.14.

Constitution of India, Art.14. (Para 1)

(B) A.P. (Agricultural Produce and Livestock) Market Act (16 of 1966), S.5(1) - AGRICULTURAL PRODUCE - Consultation with Director of Marketing for appointment of members to the Market Committee is mandatory.

AIR 1970 SC 370, Followed. (Para 2)

(C) A.P. (Agricultural Produce and Livestock) Market Act (16 of 1966), S.5(1)(i) - AGRICULTURAL PRODUCE - Power under section must be exercised as a whole and once for all. (Para 3)

(D) A.P. (Agricultural Produce and Livestock) Market Act (16 of 1966), S.3 - AGRICULTURAL PRODUCE - Power of Government to declare an area as notified area can be exercised only once. (Para 7)

Cases Referred : Chronological Paras

(1970) AIR 1970 SC 370 (V 57) : W. P. No. 349 of 1968, Chandramouleshwar Prasad v. Patna High Court 2

(1969) 1969-1 All ER 60 : 1969-2 WLR 249, Kings way Investments Ltd. v. Kent C. C. 3

(1958) AIR 1958 SC 845 (V 45) : 1958 SCJ 1199, Sewpujanrai Indrasanraj Ltd. v. Collector of Customs 3

(1958) 1958-1 All ER 625 : 1958-2 WLR 371, Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government 3

Judgement

CHINNAPPA REDDY J. :- The facts of these writ petitions expose the blatant and systematic manner in which the executive Government has consistently

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mocked at legislative mandates and flouted statutory provisions in connection with the constitution and composition of Market Committee under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966. Section 3 of the Act provides for the declaration of an area as a 'notified area' and Section 4 provides for the constitution of a Market Committee for each 'notified area'. Section 5 prescribes that every market committee shall consist of not less than twelve and not more than sixteen members, the number to be fixed by the Government. The Government is empowered to appoint after consultation with the Director of Marketing, not less than half the members from among the growers of agricultural produce and owners of livestock and products of livestock in the notified area. The Government is also empowered to appoint a representative of the agricultural Department or Animal Husbandry Department to be a member of the Committee. One member is to be elected by the members of the local Co-operative Marketing Societies. The members of the Gram Panchayats comprised in the notified area are required to elect one member. The members of the municipality where the office of the market committee is located are required to elect a member but if there is no such municipality, the members of the Gram Panchayats in the notified area are required to elect a second member. The remaining members of the Market Committee are to be elected by the persons licensed as traders under Section 7 of the Act. Where a Market Committee is constituted for the first time the Government is empowered to appoint the representatives of the traders from out of a panel of traders furnished by the Director of Marketing to the Government. Section 5(2) provides for the election of a Chairman and Vice-Chairman but the Official member representing the Agricultural Department or Animal Husbandry Department and the representatives of the Municipality and Gram Panchayats are not eligible to be elected as Chairman and Vice-Chairman. We may dispose of at this stage a question raised by the petitioners in some of the Writ Petitions that Section 5(2) is discriminatory and violative of Article 14 of the Constitution. We do not think that there is any substance in the objection to the validity of Section 5 (2). The official member is excluded obviously because it is not considered desirable for an official to seek election to an office where the electorate consists of Non-Officials. The members of the Municipality and Gram-Panchayats are excluded because they are not directly interested in promoting the object of the Act which is to bring together the producer and the trader and to eliminate middlemen. The Municipality and the Panchayats have their representatives in the Market Committee merely to safeguard the interests of the Municipality and Panchayats which suffer a loss of revenue as soon as a Market Committee is constituted since under Section 29 they are barred from levying any fees on any agricultural produce, livestock or products of livestock in a notified area. On the other hand, the representatives of growers, the representatives of traders and the representatives of Co-operative Marketing Societies are persons who are directly interested in promoting the object of the Act. The classification of the members, therefore is clear and the nexus between the classification and the object of the Act is patently reasonable. Section 5(2) of the Act, in our view, does not suffer from the vice of discrimination.

2. Having disposed of the contention regarding the views of Section 5(2) of the Act, we may now proceed to consider the other contentions raised in these Writ Petitions. The facts in W. P. No. 3115/69 are as follows : By a notification dated 29-10-1968, the area comprising the Taluks of Eluru and Chinthalapudi in West Godavary district were declared as a notified area under Section 3(3) of the Act. By another notification dated 4-4-1969 the strength of the Market Committee for this area was fixed at 14. By G. O. Rt. No. 942 dated 17-7-1969 the Government of Andhra Pradesh appointed respondents 4 to 11 as members of the Market Committee to represent the growers under Section 5(1) of the Act. By the same notification the Government appointed respondents 12 and 13 as members of the Market Committee to represent the traders under the proviso to Section 5(1)(iv) of the Act. The appointment of these ten persons as members of the Market Committee is questioned in this Writ Petition. The petitioners allege in the affidavit filed in support of the Writ Petition that the appointment of respondents 4 to 11 was not made after consultation with the Director of Marketing as contemplated by Section 5(1)(i) and that the appointment of respondents 12 and 13 was not made from out of a panel furnished by the Director of Marketing. The petitioners further allege that the Director of Marketing submitted two panels of names for appointment as members of the Committee to represent growers and traders and that not one person included in either of the panels was appointed by the Government. These facts are not disputed by the respondents and the learned Government Pleader has placed before me the panels of names submitted by the Director of Marketing. The panel prepared by the Director of Marketing to

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represent growers consists of twelve names while the panel to represent traders consists of six names. None of them was appointed by the Government. The Proviso to Section 5(1)(iv) of the Act requires the Government to appoint representatives of traders from out of the panel submitted by the Director of Marketing. The Government instead of making appointments from out of the panel. made appointments outside the panel directly in contravention of the proviso to Section 5(1)(iv). Section 5(1)(i) requires the Government to appoint representatives of growers after consultation with the Director of Marketing. It is clear that there was no consultation with the Director of Marketing regarding the appointment of Respondents 4 to 11. It was urged by the learned Government Pleader that consultation with the Director was not mandatory and that even if ft was mandatory, the Government was not bound to accept the names recommended by the Director and that they may choose some or none from the panel submitted by the Director. We are unable to agree there is nothing in Section 5 or anywhere else in the Act to indicate that consultation with the Director is not mandatory. There is no warrant to hold that the word 'shall' occurring in Section 5(1)(i) means something other than 'shall'. It is true that the Government is at liberty to appoint persons not recommended by the Director, but even in regard to such persons the Director must be consulted. If the Director recommends A. B. C. D. E. F., the Government may choose to appoint L. M. N. O. P. Q. but before appointing them, the Government must consult the Director regarding their appointment. If the Government does not consult the Director about the appointment of L. M. N. O. P. Q. then the appointment cannot be said to have been made after consultation with the Director. This position has now been clarified by a recent judgment of Their Lordships of the Supreme Court in Chandramouleswar Prasad v. The Patna High Court. W. P. No. 349 of 1968 : (reported in AIR 1970 SC 370) which was brought to our notice by Sri P. A. Choudhary, learned counsel for the petitioners in W. P. No. 2952/69. The case arose under Article 233 of the Constitution which prescribes that appointments of persons as District Judges shall be made by the Governor in consultation with the High Court. Explaining Article 233 of the Constitution their Lordships observed :

"The underlying idea of the Article is that the Governor should make up his mind after there has been a deliberation with the High Court. The High Court is the body which is intimately familiar with the efficiency and quality of officers who are fit to be promoted as District Judges. The High Court alone knows their merits as also demerits. This does not mean that the Governor must accept whatever advice is given by the High Court but the Article does require that the Governor should ascertain from the High Court its views on the merits or demerits of persons among whom the choice of promotion is to be limited. If the High Court recommends A while the Governor is of opinion that B's claim is superior to A's it is incumbent on the Governor to consult the High Court with regard to its proposal to appoint B and not A. If the Governor is to appoint B without getting the views of the High Court about B's claims vis-a-vis A's to promotion. B's appointment cannot be said to be in compliance with Article 233 of the Constitution."

Later again their Lordships observed :

"Consultation or deliberation is not complete or effective before the parties thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views. If one party makes a proposal to the other who has a counter proposal in his mind which is not communicated to the proposer the direction to give effect to the counter proposal without anything, more, cannot be said to have been issued after consultation."

In the light of this judgment of their Lordships of the Supreme Court, it must be held that the appointment of respondents 4 to 11 in W. P. No. 3115/69 was not made after consultation with the Director and was therefore made in contravention of Section 5(1)(i) of the Act. G. O. Rt. No. 942 dated 17-7-1969 is therefore quashed. W. P. No. 3115 of 1969 is allowed with costs.

3. In W. P. No. 2952 of 1969 the facts are as as follows : Narasapur Taluk of West Godavary District was declared as a notified area under Section 3 of the Act and a Market Committee designated as "the Palakol Agricultural Market Committee' was constituted under Section 4 of the Act for that area. The strength of the Committee was fixed as 14. By G. O. Rt. No. 986 dated 24-7-1969 the Government appointed respondents 4 to 12 as members of the committee to represent growers under Section 5(1)(i) of the Act, and respondents 13 to 15 to represent traders under Section 5(1)(iv) of the Act. Of the eight persons appointed to represent growers, except R-8, the others were not recommended by the Director of Marketing and it is also admitted by the learned Government

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Pleader that the Government did not consult the Director regarding the appointment of the others. Similarly of the three persons appointed to represent traders. R-13 alone was out of the panel submitted by the Director under Section 5(1)(iv), but R. 14 and R. 15 were from outside the panel. It is thus clear that there was a clear contravention of the provisions of Section 5(1)(i) and the Proviso to Section 5(1)(iv) of the Act. The learned Government Pleader however submitted that it is not necessary to quash the entire G. O., but that it may be upheld at least to the extent of appointment of R-8 and R-13 since both of them were included in the panels submitted by the Director and it could therefore be said that the appointment of R-8 was made after consultation with the Director and the appointment of R-13 out of the panel submitted by the Director. The learned counsel for the petitioners submitted that the power of appointment under Section 5(1) of the Act is an integrated power which can be exercised but once in the manner provided by the Act and not in several stages. The learned counsel urged that the Act does not contemplate a piecemeal exercise of power by the Government and if any one of the appointments is found to be bad, then all the appointments must go so that the Government may exercise its power in accordance with law. There appears to be good reason for accepting the submission of the learned counsel. Suppose in a given case the Director recommends the names of 12 persons for appointment of eight members. Suppose the Government appoints four from the list submitted by the Director and four from outside the list. If the Government consults the Director again, the Director may be able to convince the Government that the four 'outsiders' ought not to be appointed or he may himself be convinced that some of the four 'outsiders' are really worthy of being appointed but he may convince the Government, in such an event, that some of the eight persons in the list submitted by him and not chosen by the Government ought to be preferred to those chosen by the Government from out of those recommended by him. Since the eight persons are to represent the growers of the entire area it is possible that several adjustments must be made to give representation to different areas within the 'notified area' and to producers of different committees. Conflicting interests may have to be counter-balanced and the consultation with the Director must therefore be in order to make all the appointments at the same time. If that be so, it follows that the Government must exercise its power all at once or not at all. There is also another consideration which takes us to the same end. Section 5(1)(i) empowers the Government to appoint not less than half the members from among growers of the notified area, after consultation with the Director. It follows that the Government cannot appoint less than half the members from growers. If they do. they would be acting in contravention of the provisions of Section 5(1)(i) of the Act. The Government obviously cannot also appoint less than half the members in the first instance and reserve to itself the power to appoint the rest at a later stage. If, in a case, the Court holds that the appointment of some members is bad and proceeds to uphold the appointment of the others who may be less than half the total strength, the Court, in effect, would be permitting the Government to appoint less than half the members in the first instance and the rest at a later stage. That would be against the provisions of Section 5(1)(i). We are therefore convinced that the power under Section 5(1)(i) must be exercised as a whole and all at once. We have not considered it necessary to refer to the cases cited by Mr. Choudari as we think that the 'Question of severance always a difficult 'question to resolve, has to be decided on the provisions and peculiarities of the individual statute'. It is enough to mention the cases. They are Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government, (1958) 1 All ER 625; Kingsway Investments Ltd. v. Kent C. C. (1969) 1 All ER 60; Sewpujanral Indrasanraj Ltd. v. Collector of Customs 1958 SCJ 1199 : (AIR 1958 SC 845). In view of the foregoing discussion G. O. Rt. No. 986 dated 24-7-1969 is quashed. W. P. No. 2952 of 1969 is allowed with costs.

4. In W. P. No. 3070 of 1969 G, O. Rt. No 956/69 dated 19-7-1969 by which respondents 1 to 12 were appointed as members of the Market Committee of Tadepalligudem, Respondents 1 to 9 to represent growers and respondents 10 to 12 to represent traders is questioned. It is undisputed that the names of Respondents 1 and 3 to 9 were not included in the list of persons recommended by the Director, and the Government never consulted the Director regarding their appointment. It is also undisputed that Respondents 10 to 12 were not in the panel furnished by the Director under Section 5(l)(iv) of the Act. G. O. Rt. No. 956 dated 19-7-1969 is therefore quashed. W. P. No. 3070 of 1969 is allowed with costs.

5. The facts of W. P. No. 366/70 are briefly as follows : The area comprising the taluks of Tuni, Kakinada Peddapuram, Pithapuram and Prattipadu was declared as a 'notified area' under S. 3 of the Act and the strength of its market committee was fixed at 16. According to the

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petitioner, the eighth respondent, who is the brother of the Minister of the Government of Andhra Pradesh for Panchayat Raj, evolved a scheme to get himself elected as the Chairman of the Market Committee and to that end, used his political influence to bring about all manner of illegalities and irregularities in the appointment and election of members etc. Under the statute the Government was required, after consultation with the Director, to appoint nine members from the growers of the area. The Government appointed Respondents 4 to 12. It is now admitted by the learned Government Pleader that while R-4, R-5, R-6, R-8, R-9 and R-10 were in the list submitted by the Director, R-7, R-ll and R-12 were not, and that the Government did not consult the Director regarding the appointment of R-7, R-11 and R-12. The Government was also required to appoint three members to represent traders from out of a panel furnished by the Director. It is now admitted by the learned Government Pleader that R-15 alone figured in the panel furnished by the Director and not R-13 and R-14. In the light of our earlier discussion in connection with W. P. No. 2952/69, we must hold that the appointment of respondents 4 to 15 to the Market Committee of Tuni is invalid. We may mention here that a perusal of the file relating to G. O. Rt. No. 902 dated 14-7-1969 shows that the Minister for Agriculture himself passed orders appointing R-4 to R-15 as members of the Tuni Market Committee, but the file does not show the basis or information on which the Minister acted when he appointed R-7, R-11, R-12, R-13 and R-14 ignoring the recommendations made by the Director.

6. Section 5(1)(iii) requires the members of the Gram Panchayats in the notified area to elect one member to the Market Committee. On 19-1-1970 the District Panchayat Officer issued notices to the Sar-Panches of the several Gram Panchayats in the notified area requesting them to attend a meeting to be held at Peddapuram on 12-2-1970 at 2 P. M. 'to elect a representative of Panchayats to the Tuni Marketing Committee.' On the face of it, the notices are illegal because it is the members of the several Gram Panchayats in the notified area that are required to elect a representative and not the Sar-Panches of the Gram Panchayats. Under Section 5(1)(ii) of the Act the members of all the Co-operative Marketing Societies situated in the notified area are required to elect one representative to the Market Committee. According to the petitioners there was never any election by the members of all the Co-operative Marketing Societies, but it was being given out that the 16th respondent had been elected to the Committee to represent Tuni Co-operative Marketing Society. In the counter affidavit filed on behalf of the Government and the other official respondents this allegation was not met. In the counter affidavit filed by the 8th respondent on behalf of the 16th respondent as well as the other respondents it was stated "it is not true to say that the 16th respondent was elected only as a member representing the Tuni Co-operative Marketing Society by the Board of Management of the said Society. He was elected as the representative of all Co-operative Marketing Societies situated in the taluks of Tuni, Prathipadu, Pithapuram, Peddapuram and Kakinada which constitute the notified area of the Tuni Market Committee, at a meeting convened by the Deputy Registrar. (Marketing and Fertilisers). Kakinada on 30-11-1969 at Tuni as per the provisions of sub-rule (3)(c) of Rule 5 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969". This statement is silent as to who were the participants at the meeting and whether the election was by the members of all the Co-operative Marketing Societies in the notified area or only by the members of the Tuni Co-operative Marketing Society. However, the learned counsel for the respondents produced before me a copy of the election notice issued by the Deputy Registrar of Co-operative Societies on 21-11-1969. This notice is addressed to the Presidents of the Co-operative Marketing Societies in Kakinada circle and requests the Presidents to intimate all the members of their societies to assemble in the premises of Sri Raja High School, Tuni on 30-11-1969 at 1 P. M. to elect from among themselves a representative to the Market Committee, Tuni. It is impossible to construe this notice as a notice to the members of the Co-operative Marketing Societies in the notified area announcing the date of election of a representative. It is also impossible to hold that the meeting, if any, held on 30-11-1969 was a meeting of the members of the Co-operative Marketing Societies in the notified area. The election of the 16th respondent must therefore be held to be void as he was not elected by the electorate entitled to elect. While this was so. on 30-1-1970 the Assistant Director of Marketing issued a notice to the members of the Market Committee proposing to hold a meeting of the members at Tuni on 12-2-1970 at 11-A. M. for conducting the election of Chairman and Vice-Chairman of the Market Committee. It will be noticed that even the illegal meeting of Sar-Panches for electing a representative to the Market Committee, though summoned earlier, was convened for 12-2-1970 at 2 P. M. at Peddapuram. It is impossible to understand why a meeting of the

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members of the Market Committee was convened by the Assistant Director for 12-2-1970 at 11 A. M. at Tuni. several miles away from Peddapuram in spite of the fact that a representative of the Panchayats was to be elected that day at 2 P. M. at Peddapuram. It is difficult to accept the case of the respondents that the Assistant Director of Marketing did not know that the representative of the Panchayats was to be elected that day at 2 P. M. The petitioners want us to infer that the date and time of election of Chairman and Vice-chairman was deliberately fixed to exclude the representative of the Panchayats from participating in such election. We cannot help but hold that the summoning of the meeting of the members of the Market Committee for 12-2-1970 at 11 A.M. at Tuni is tainted with great suspicion. Sri Babul Reddy learned counsel for the petitioners also referred us to other circumstances to strengthen the suspicion that all is not well with the appointment and election of memebers of the Market Committee. He pointed out to us that although the notified area consists of as many as 500 villages, out of the twelve persons appointed under Section 5(1)(i) and 5(1)(iv) three are from Jagapathinagaram and three from Gollaprolu. He submitted that Jagapathinagaram is the village of the eighth respondent, a person wielding lot of political influence as the brother of the Minister for Panchayat Raj. It is alleged in the affidavit filed in support of the Writ Petition, that he evolved a scheme to have his supporters appointed to the Market Committee so as to get himself elected as Chairman. Gollaprolu is stated to be the village of the son-in-law of the brother of the 8th respondent. The respondents contend that it was but an accident that date of election of the representative of the Panchayats was proposed to be held after the time when the meeting of the members of the Market Committee was proposed to be held. They also contend that the choice of three members from Jagapathinagaram and three from Gollaprolu was not actuated by any improper motive. Having regard to the several circumstances of the case namely that there was a contravention of Section 5(1)(i) in that there was no consultation with the Director of Marketing regarding the appointment of some of the members, that there was a contravention of Section 5(1)(ii) in that there was no meeting of the members of all the co-operative Marketing Societies in the notified area to elect a representative, that there was a contravention of Section 5(1)(iii)(b) in that while the provision required the representative to be elected by all the members of Gram Panchayats. notices were issued only to Sar-Panches, that there was a contravention of Section 5(1)(iv) in that the members were appointed outside the panel furnished by the Director of Marketing though the provision required that they should be out of the panel and that the date and time of election of a represenative of the Panchayats and the date and time of election of Chairman and Vice-Chairman were so fixed that it was impossible for the representative of Panchayats to participate in the election of Chairman and ViceChairman, we are forced to hold that nothing has been done in connection with the composition of the Market Committee of Tuni and election of its Chairman and Vice-Chairman in accordance with the statutory provisions. There is every room for suspicion that, as alleged by the petitioners, political influence has played a large part in directing every step taken in connection with the composition of the Market Committee of Tuni and the election of its Chairman and Vice-Chairman. We are told that the election of Chairman and Vice-Chairman was held on 12-2-1970 as this Court had not granted stay. We have no hesitation to declare the election void. This result is inevitable since we have found that the appointment or election of all but one member who participated in the election on 12-2-1970 is vitiated by illegality. W. P. No. 366/70 is allowed with costs. The appointment of respondents 4 to 15 to the Tuni Market Committee and the election of the 16th respondent to the committee are declared invalid. The elections held in pursuance of the notices dated 19-1-1970 and 30-1-1970 to elect a representative of Panchayats and Chairman and Vice-Chairman are also declared invalid.

7. In W. P. No. 3781/69 the facts are as follows : In exercise of its power under Section 3(3) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act the Government of Andhra Pradesh Published a notification dated 29-10-1968 declaring the area comprising the Taluks of Tadepalligudem, Tanuku. Kovvur and Polavaram in West Godavari District as a notified area. By G. O. Rt. No. 956 dated 19-7-1969 the Government also appointed members of the Market Committee for the notified area to represent growers and traders. This G. O. is the subject matter of Writ Petition No. 3070/69. On 7-10-1969 the Government of Andhra Pradesh in purported exercise of its power under Subsections (1) and (2) of Section 3 of Act XVI of 1966 and in partial modification of the notification dated 29-10-1968 published G. O. Ms. No. 1831 dated 7-10-1969 proposing to declare (1) Tadepalligudem Taluk (2) Tanuku Taluk and (3) the area comprising Kovvur and Polavaram taluks as separate notified areas. Objections

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and suggestions were invited from interested persons within 30 days of the publication of the notification in the Gazette. The petitioners who were two of the persons appointed to represent growers under G. O. Rt. No. 956 dated 19-7-1969 have filed this application for the issue of a writ to quash G. O. Ms. No. 1831 dated 7-10-1969. It is the contention of the petitioners that the power of the Government to declare notified areas under Section 3(3) having been once exercised came to an end and it was therefore not open to the Government to issue any fresh notification declaring areas already covered by the previous notification as notified areas. It is stated in the affidavit filed in support of the Writ Petition that the proposal to split up the Tadepalligudem market area is also not a bona fide exercise of power. The proposal has been initiated to satisfy the political ambitions of Sri Ch. Subba Rao Chowdary a member of the Legislative Council. The petitioners are obviously right in their contentions that the power of the Government to declare an area as a notified area can be exercised only once and that the Government is exhausted of its power as soon as it makes a declaration. If the Government wants to exclude areas included in the notified area from the notified area it must proceed under the provisions of Section 3(4) of the Act which enables the Government by notification, to (a) exclude from a notified area, any area comprised therein, or (b) include in any notified area, any area specified in such notification. In such an event, the Government must specify the area which it treats as the parent notified area and which areas are to be excluded from the notified area. The areas excluded from the notified area may thereafter be declared as one or more notified areas in accordance with the provisions of Section 3(1)(2) and (3). There would then be no bar to such areas being declared as notified areas since they have ceased to be parts of an area already notified. That is not what the Government has purported to do in the present case. The notification is not issued under Section 3(4) of the Act and there is no indication as to which area is being excluded from the original notified area. The procedure indicated by us and which is the only procedure permissible under the Act is not an empty or idle formality. The reason is this : persons appointed or elected to the Market Committee of a notified area, in the absence of any other statutory disability will not cease to be members of the market committee merely because some area is excluded from the notified area at a later stage. Their right to continue as members cannot be taken away by the simple mechanics of issuing a second notification under Section 3(3). The procedure indicated by us will also maintain continuity and give some meaning to the provisions of Section 4(1) which states that a market committee shall be a body corporate having perpetual succession. If on the other hand the Government has the right to exercise the power under Section 3(1),(2) and (3) as often as it chooses in respect of the same area or areas. Section 3(4) and Section 4(1) win be rendered meaningless. We therefore hold that G. O. Ms. No. 1831 dated 7-10-1969 issued under Section 3(1) and (2) of the Act is unauthorised and illegal. It is therefore quashed. The Writ Petition is allowed with costs.

8. It will be open to the Government to take appropriate steps in accordance with law.

9. Advocates fee Is fixed at Rupees Rs. 100/- in each of the Writ Petitions.

Petitions allowed.

**AIR 1969 ANDHRA PRADESH 399 (V. 56 C 102) "A. M. Ansari v. Board of Revenue"**

**ANDHRA PRADESH HIGH COURT**

Coram : 2 P. JAGANMOHAN REDDY, C.J. AND VAIDYA, J. ( Division Bench )

A. M. Ansari and others, Petitioners v. The Board of Revenue, Andhra Pradesh Represented by its Secretary, Hyderabad and others, Respondents.

Writ Petns. Nos. 489, 491, 537 to 541, 635, 684, 685, 687, 688, 830 to 832, 561, 1219, 715 to 719, 812, 813, 1216, 677, 638, 639, 695, 853 to 856, 636, 867, 870, 1146, 1285, 1260, 1261, 1284, 1292, 1293, 1294, 1309, 1310, 1340, 1447, 1697 and 1265 of 1967, D/- 21 -8 -1967.

(A) Stamp (Andhra Pradesh Extension and Amendment) Act (19 of 1959), Sch.1A, Art.31(c), Art.5(c) - STAMP DUTY - AGREEMENT - FOREST - LEASE - Agreement in respect of right to collect and take away minor forest produce - It is not lease - No stamp duty is payable under that Article.

The agreements to be executed by the forest contractors in respect of the right to collect and take away beedi leaves, bamboo or standing timber, as the case may be, are not leases of immoveable property within the meaning of Art. 31 (c) and therefore stamp duty is not payable thereunder. The agreement is only chargeable under Art. 5 (c). Case law discussed. (Para 16)

As long as the right is only to pluck the beedi leaves or to cut and take away the beedi leaves, bamboo or timber, the

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process to commence immediately and completed within a short period, it cannot be said that that right is a right in immoveable property or a benefit arising out of land. To create such a right, the right conferred by the agreement should be in respect of the trees or the shrubs or in respect of anything pertaining to the land, and where there is a sale of the produce it should be such as would indicate that the produce from the trees is reiatable to the normal amount of sustenance which that tree draws in order to live and grow, or what it derives from nutriment afforded by the land. (Para 13)

The expression "immoveable property" has not been defined in the Indian Stamp Act, but it has been defined in the Transfer of Property Act, the Registration Act and the General Clauses Act. Under the General Clauses Act, benefits arising out of land and thing attached to the earth are included in immovable property. Even under the General Clauses Act where the produce of trees or shrubs growing on land is sold, or where the right to cut and take away standing timber is conferred, they are not benefits arising out of the land, but it would only be a sale of the produce or the timber or bamboo simpliciter. But where a right to the several classes of produce is conferred for a long period, then the produce is from trees or plants attached to the earth from which sustenance is being drawn, and therefore, the right to such produce is said to be a benefit arising out of land. (Para 7)

(B) A.P. General Sales Tax Act (6 of 1957), S.2(c) - SALES TAX - SALE - AGRICULTURAL PRODUCE - FOREST - Sales Tax - "Dealer" - Sale of forest produce like beedi leaves, bamboos or standing timber by Government - Sale by Government being of its own goods it is not business and therefore Government is not a dealer entitled to collect sales tax - Sales tax not also leviable on sale of agricultural produce - Forest contractor is therefore not bound to pay the sales tax. (Para 19)

(C) Stamp (Andhra Pradesh Extension and Amendment) Act (19 of 1959), Sch.1A, Art.35(c) - STAMP DUTY - SALE - FOREST - MORTGAGE DEED - DEED - Sale of forest produce like beedi leaves, bamboos or standing timber by public auction - Purchaser to pay certain amount as security deposit - Security deposit is not mortgage deed and stamp duty cannot be demanded under Art.35(c). (Paras 21, 22)

Cases Referred : Chronological Paras

(1961) AIR 1961 AP 180 (V 48) : 20 Ele LR 314, R. Deshpande v. Muttam Reddy 12

(1959) AIR 1959 SC 735 (V 46) : 1959 Supp (2) SCR 339, Mahadeo v. State of Bombay 11

(1958) AIR 1958 SC 532 (V 45) : 1959 SCR 265, Shantabai v. State of Bombay 10

(1958) AIR 1958 AP 558 (V 45) : 9 STC 723, P. T. T. C. and Soda Merchants Union v. State of Andhra Pradesh 17

(1957) AIR 1957 AP 28 (V 44) : 1956 Andh WR 717, Ramakrishnaiah v. State of Andhra 12, 14, 18

(1957) AIR 1957 AssNag 179 (V 44) : 9 STC 60, Raja Bhairabendra v. Supdt. of Taxes, Dhubri 17

(1953) AIR 1953 SC 108 (V 40) : 1953 SCR 476, Firm C. J. Patel and Co. v. M. P. State 10

(1949) AIR 1949 PC 311 (V 36) : 76 Ind App 235, Mohan Lal Hargovind v. I. T. Commr. Nagpur 8, 10

(1949) AIR 1949 Mad 148 (V 36) : (1948) 2 Mad LJ 155, Venugopala Pillai v. Thirunavukkarasu 12,13,14

(1947) AIR 1947 All 190 (V 34) : ILR (1947) All 7 (FB), Rishidev Sondhi v. Dhampur Sugar Mills 20

(1931) AIR 1931 All 392 (V 18) : 1931 All LJ 608 (FB), In re. Mahant Raj Balamgir 15

(1927) AIR 1927 Mad 1038 (V 14) : ILR 50 Mad 923 (FB), Commr. of I. T. v. Yagappa Nadar 14

(1914) AIR 1914 Mad 362 : ILR 38 Mad 883, Natesa Gramani v. Thangavelu Gramani 14

(1897) ILR 20 Mad 58 : 6 Mad LJ 281 (FB), Seeni Chettiar v. Santhanathan Chettiar 14

(1892) ILR 15 Mad 134 (FB), Ref. Under Stamp Act S.46 20

(1884) ILR 7 Mad 209 (FB), Ref. From the Board of Revenue u/s. 46 of Indian Stamp Act 1879 20

(1878) 1 CPD 35 : 45 LJ QB 153, Marshall v. Green 12, 13, 14

T. Lakshmiah, (in W. P. Nos. 489, 491, 537 to 541, 635, 684, 685, 687, 688 and 830 to 832 of 1967); G. Haridha Reddy (in W. P. Nos. 638, 639, 677, 695, 853 to 856 and 636 of 1967); A. Raghuvir and Anand Reddy (in W. P. Nos. 715 to 719, 812, 813, 867, 870, 1216, 1146 and 1284 of 1967); Ramchandra Rao (in W. P. Nos. 561. (1219 of 1967); Ananda Reddy (in W. P. Nos. 1260, 1261, 1284, 1292, 1293 and 1447 of 1967); K. Mangachari (in W. P. Nos. 1265 of 1967); G. R Subbarayana (in W. P. No. 1697 of 1967); Ananda Reddy, B. Sivareddy and M. Prabhakar Reddy (in W. P. No. 1340/67); and Ananda Reddy, B. Sivareddy (in W. P. Nos. 1294, 1309, 1310 of 1967) for Petitioners; 2nd Govt. Pleader, for Respondents (in all Petitions).

Judgement

P. JAGANMOHAN REDDY, C. J. :- The petitioners in these 50 writ petitions pray (1) that the respondents be directed not to demand, contrary to law, payment

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of stamp duty on the deeds to be executed by them in respect of the right to collect and take away beedi leaves, bamboo or standing timber, as the case may be; (2) that they be further directed not to demand sales-tax from those petitioners who have not paid the same or those who have paid on some instalments but not on the others; and (3) that they be further prohibited from demanding payment of stamp duty on the amount of security to be deposited as if it is a mortgage, under Art. 35 (a) of the Stamp Act or in respect of deposits already made for the current year or in respect of contracts to be entered into in future. Prayers (1) and (3) are common to all the petitions and prayer (2) is only in respect of some petitions while in other petitions the payments have not been challenged. In view of the legal implications, it is necessary to consider all the three objections upon which the respective orders are being challenged in so far as they are applicable to the respective petitioners who have raised some or all of the objections.

2. It may be stated that each year the Forest Department of the Government of Andhra Pradesh, after giving a sale notice in respect of the forest produce viz., timber, fuel, bamboo, minor forest produce, beedi leaves, tanning barks, parks mohwa, in the respective jurisdictions of the Divisional Forest Officers, holds an auction on the date and time specified in accordance with the terms and conditions of that notice. It is stated in cl. (1) of the said notice that the right to cut and collect any of the forest produce enumerated above, for which the auction is being held, in the Units mentioned in the schedule A attached, will be sold in open auction by the District Forest Officer of the particular division or any other officer duly authorised by him at the specified place beginning at the specified time on a specified date, and the day following if necessary commencing at the same hour. The earnest money deposits will be received from a particular time on all days of sales. In case the officer conducting the sales decides to continue the sales on the subsequent day also, "he will announce it open" before concluding the sales of the first day.

Clause (2) specifies the period of contract. Clause (3) gives a list of contracts to be sold; Clause (4) says that the intending bidders are advised to inspect on the spot the coupes or other units and the produce they intend to purchase with a view to satisfy themselves about their correctness. Clause (5) deals with earnest money to be deposited, according to which no person will be allowed to bid at the sale unless he or she makes an earnest money deposit of Rs. 1000/- in respect of each unit he/she bids except where the upset price is Rs. 1000/- or less, in which case the earnest money deposit shall be Rs. 200/-. Under Cls. (5) and (15) the Divisional Forest Officer conducting the sale has the power without assigning any reasons to refuse or to accept the deposit of any intending bidder, to prohibit anyone from bidding at any stage of the auction, to reject the highest or any bid, to accept the highest or any bid or to sell the units separately or club together more than one unit or sell them after so rearranging that he may consider necessary.

Clause (18) says that the sale shall be signed by the highest bidder and the second highest bidder for each unit immediately after the sale is knocked down, at the appropriate places. They must also give certificates on the sale notice, which will be attached to the bid list to the effect that they have read and understood the terms of the sale notice and supplementary conditions, if any, and that they have agreed to abide by them. Under Clause (20) where the sale amount is Rs. 1000/- or less, the full sale amount less earnest money deposit should be paid by the successful bidder immediately after the conclusion of the sale of the day, but if the bid amount exceeds Rs. 1000/- the highest bidder shall pay l/4th auction amount or Rs. 10,000 less the earnest money deposit whichever is less at the close of the auctions of the date of sales. If the highest bidder fails to fulfil the above conditions, the earnest money deposit paid by him shall be forfeited and he shall have no rights whatsoever on the coupes for which he was the highest bidder and such coupes will be resold at his risk and loss. Clause (21) says that the sales are subject to the confirmation of the Divisional Forest Officer or other officer as the case may be.

3. Clause (23) which is the subject matter of challenge in these writ petitions, is as follows :

"Within 10 days of the receipt of confirmation orders of the competent authority the contractor shall pay :

a. the balance of the 1st instalment amount as may be fixed by the Divisional Forest Officer;

b. 6 1/4% of the bid amount as security deposit;

c. sales-tax over the bid amount at the rate current at the time of sale;

d. in respect of leases whose rental is below Rs. 10,000/- sales-tax on the entire amount is to be paid before execution of the agreement. In respect of the leases of rentals above Rs. 10,000/- sales-tax is to be paid along with each instalment proportionally."

Clause (24) provides that the contractor shall pay the other instalment amounts

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before the date fixed by the Divisional Forest Officer in the confirmation orders. The rest of the clauses deal with the procedure for bidding, solvency certificates to be produced, right to withdraw units from sale, conduct of sale etc. It would however be pertinent to notice a few of these clauses which will assist in the consideration of the contentions urged before us. Clause (26) says that the agreement should be executed within 10 days of the receipt of the confirmation orders after fulfilling conditions 21 and 23 of the sale notice, which we have already extracted above. There is of course power to extend this time. Clause (32) deals with taking charge of the coupes. The leases will be considered to be effective from the date of signing the agreement or from any other date whichever is later. The contractor shall be at liberty to enter, take possession and work the unit from that date after tendering a receipt signed by him/her or his/her accredited agent to the Range Officer concerned in the form appended. Clause (60) says that the contractor shall at all times comply with the provisions of the Indian Stamp (Andhra Pradesh Extension and Amendment) Act 1959 and the Andhra Pradesh Court-fees and Suits Valuation Act, 1956 and all rules from time to time in force thereunder and that the contractor shall pay the stamp duty fixed under the provisions of such Acts and Rules. The provisions of the sale notice shall be taken in all respects as subject to such Acts and Rules. Clause (64) applies the Abnus Leaves Act and Rules thereof to all Beedi leaves.

4. In all these petitions, it appears that the petitioners are called upon to pay stamp duty on the agreements to be executed by them as if they are leases of immoveable property. But the petitioners contend that the right to pluck, cut and take away beedi leaves, bamboos, standing timber, is not a right or interest in immoveable property so as to attract any of the clauses in Art. 31 of the Stamp Act. Sarvasri Lakshmayya, Subbarayan, Ananda Reddy and Mangachari, all contend that under the definition of the Stamp Act, lease means a tease of immoveable property and includes certain instruments specified in cls. (a) to (d) and since the right to pluck and cut any of the three varieties of the forest produce mentioned above is not a right in immoveable property, there can be no question of any lease. Since the agreement which is required to be executed by the petitioners is not a conveyance or deals with immoveable property, it is only chargeable with stamp duty as an agreement under Art. 5 (c) with Rs. 1-50.

5. In the counter, the Assistant Chief Conservator of Forests while referring to cl. (60) of the terms of sale, under which the petitioners had agreed to pay stamp duty, stated that prior to 1959, agreements of the Forest Department were exempt from stamp duty both in the Andhra and Telangana regions by virtue of Entry 10 and cls. (i) and (xi) of entry 11 of the Revenue Department Notification No. 13 dated 17-12-1938 of the Government of Madras and Rule 18 of the Executive Instructions contained in the Hyderabad Forest Contract Rules. But in view of the extension of the Indian Stamp Act to the whole of the State of Andhra Pradesh by the Indian Stamp (Andhra Pradesh Extension and Amendment) Act XIX of 1959, with effect from 1-4-1959 the Government through G. O. Ms. No. 1887 Revenue dated 17-10-1961 omitted entry 10 and cls. (i) to (xi) of entry 11 of the Revenue Department Notification No. 13 dated 17-12-1938. Consequent upon the extension of the Indian Stamp (Andhra Pradesh Extension and Amendment) Act, 1959 with effect from 1-4-1959, and repeal of the Hyderabad Stamp Act as from that date, all rules, notifications, instructions, etc., under the Hyderabad Act also stood repealed. Accordingly, the various contracts also became liable for stamp duty as in form No. 9 from 1961 onwards.

Ultimately, the matter was referred to the Board of Revenue and the Board of Revenue through its reference No. B. P. Rt. 820/66 dated 11-4-1966 gave its opinion that the agreements of the Forest Department come within the meaning of leases'and that they should be stamped as leases. In support of this opinion, it was contended in the counter that the contractors acquired a right not merely to the leaves already grown but also a right to use, collect and sell beedi leaves that would subsequently grow on the standing trees or also on trees and their branches that would subsequently grow taking nourishment from the land during the period of lease. They thus acquire an interest in immoveable property though for a limited period. Even if the documents are construed as licences coupled with a grant, the right acquired by the auction purchaser would be in the nature of some profits a prendre which being an interest in land is immoveable property. As the term 'immoveable property'is not defined in the Indian Stamp Act, the definition in the General Clauses Act, 1897, which includes land, benefits arising out of land and things attached to the earth or permanently fastened to anything attached to earth applies, and the auction of forest produce amounts to creating an interest in immoveable property. The leases being for a period less than one year, the instrument is rightly

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chargeable under Art. 31 (c) of Sch. I of the Stamp Act. It was further contended that under cl. (23) of the conditions of auction, the petitioners having agreed to pay the tax as a condition of the contract, they cannot now question the same, it being a part to the consideration.

6. The question which we have to consider is what is the nature of the right which the petitioners have acquired under the auction held for the sale of beedi leaves, cutting of bamboo or other forest produce, all of which has to be cut and taken away within a short period. i.e., in the case of beedi leaves within about nine months and in other cases within a year or so. In so far as taking charge of coupes is concerned, the right that is conferred upon the petitioners is stated in cl. 32, viz., that they will be at liberty to enter, take possession and work the unit from the date of signing of the agreement, and the right is one as per Cl. (1) to cut and collect beedi leaves, bamboo or timber. The agreement which the petitioners as are being asked to execute upon which stamp duty is required to be paid as on a lease, is a standard one, the terms of which would show that it was an agreement for sale and purchase of forest produce. Cl. 1 of the agreement, says that the forest produce sold and purchased under the agreement is specified in Sch. I thereof, which will show the area in which it is situated. Clause (2) says that the quantity of forest produce sold and purchased under the agreement is all the said forest produce which may now exist or may come into existence in the contract area, which the forest contractor may remove from the said area in accordance with the terms of the agreement during the period specified in the agreement and the forest contractor thereby agrees that the said forest produce may be extracted only during the aforesaid period. Clause 4 sets out the consideration payable by the contractor under the agreement and the mode of its payment as being specified in Sch. III, which, it is stated, does not include payment of sales-tax or stamp duty.

7. The agreement read with the conditions of sale shows that it is one for sale and purchase of forest produce and that it does not confer any right to the trees as such except the right to cut and take the bamboos and the standing timber and in the case of beedi leaves, to pluck them and take them away. No doubt the expression "immoveable property" has not been defined in the Indian Stamp Act, but it has been defined in the Transfer of Property Act, the Registration Act and the General Clauses Act. It is contended by the learned advocates for the petitioners that the definition given in the Transfer of Property Act and the Registration Act has to be taken into account, while Sri Madhava Reddy, the learned Government Pleader, contends that it is the definition in the General Clauses Act that should be applied. It may be stated that under the General Clauses Act, benefits arising out of land and things attached to the earth are included in 'immoveable property'. The question still to be considered even if the learned Government Pleader's contention is accepted, is what is meant by benefits arising out of land? It appears to us on an examination of the several authorities to which we shall refer presently, that where the produce of trees or shrubs growing on land is sold, or where the right to cut and take away standing timber is conferred, they are not benefits arising out of the land, but it would only be a sale of the produce or the timber or bamboo simpliciter. But where a right to the several classes of produce referred to above is conferred for a long period, then the produce is from trees or plants attached to the earth from which sustenance is being drawn, and therefore, the right to such produce is said to be a benefit arising out of land.

8. In Mohanlal Hargovind v. I. T. Commissioner, AIR 1949 PC 311 the appellant obtained a short term contract from the forest department of the Government, of collecting and removing tendu leaves for a sum payable in instalments as the consideration for the grant, with a permission to coppice and pollard the tendu trees. It was held that under the contract it was the tendu leaves and nothing but the tendu leaves that are acquired, that it is not the right to pick the leaves or to go on to the land for the purpose - those rights being merely ancillary to the real purpose of the contracts and if not expressed would be implied by law in the sale of a growing crop. Similarly the small right of cultivation given in the contracts is merely ancillary and is of no more significance than would be e. g., a right to spray a fruit tree given to the person who has brought the crop of apples. The question as to whether the expenditure incurred for the purposes of working the contract to pick and gather the tendu leaves from the forest was revenue expenditure for acquiring the raw material or was it capital expenditure. Lord Greene M. R. after examining terms of the contract which are similar, if not identical, to the terms and conditions of sale in the draft agreement in the instant case referred to cl. (1) which identifies the subject-matter of the contract, which was described as "the forest produce sold and purchased under the

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agreement" as that specified in Sch. I in the "contract area" therein indicated. By cl. 2, the quantity of the forest produce is defined as all the said produce "which may now exist or may come into existence in the contract area which the forest contractor may remove from the said area. . . .during the period from 5th day of September 1939 to the 30th day of June 1941. . .Schedule 1-A in that case is also similar to Schedule 2 of the standard agreement, which we had not extracted earlier. It provided that "the contractor shall commence his work before the. . .day of. . .19 , and shall, to the satisfaction of the office empowered to execute the contract on behalf of the Government, make continuous and adequate progress throughout the term of the contract". In considering this clause, it was observed at page 312 :

"The contracts grant no interest in land and no interest in the trees or plants themselves. They are simply and solely contracts giving to the grantees the right to pick and carry away leaves, which of course, implies the right to appropriate them as their own property . . . .The contracts are short-term contracts. The picking of the leaves under them has to start at once or practically at once and to proceed continuously. It is true that the rights under the contracts are exclusive but in such a case as this that is a matter which appears to their Lordships to be of no significance."

9. It may be noticed from the above observations that emphasis is laid on two things; one is, that the agreement is for sale of tendu leaves and the second, that it is for a short-term and the work is to commence immediately and to proceed continuously. In those circumstances, it was a contract for picking tendu leaves and tendu leaves alone and does not deal with any interest in land or the trees.

10. In Firm C. J. Patel and Co. v. M. P. State, AIR 1953 SC 108, their Lordships of the Supreme Court referred to the judgment of the Privy Council. The question which arose for determination was whether the petitioners had acquired any rights in property under the several agreements entered into between them and the State of Madhya Pradesh so that it can be said that their fundamental rights are affected when that State sought to take away their rights under the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act 1951. The petitioners in those cases entered into contracts and agreements with the previous proprietors of certain estates and mahals in the State under which it was said they acquired the rights to pluck, collect and carry away tendu leaves, to cultivate, culture and acquire lac, and to cut and carry away teak and timber and miscellaneous species of trees called hardwood and bamboos. After examining the provisions of the Act, Chandrasekhara Aiyar, J. referred to the judgment of the Privy Council in AIR 1949 PC 311 (supra). After stating that similar agreements came up for consideration before their Lordships of the Privy Council and after noticing the observations made by them said at page 110 :

"There is nothing in the Act to affect the validity of the several contracts and agreements. The petitioners are neither proprietors within the meaning of the Act nor persons having any interest in the proprietary right through the proprietors."

The question, whether they are rights pertaining to land and hence immoveable property, did not in that sense fall for consideration. In Shantabai v. State of Bombay, AIR 1958 SC 532, the document was one executed by a zamindar in favour of his wife, granting her a right to enter, cut and appropriate all kinds of wood from his zamindari forest. The document purported to be a lease for a period of twelve years and the consideration was stated to be Rs. 26,000/-, On 31-3-1951, the proprietary rights in the zamindari estate vested in the State by virtue of a notification issued under Section 3 of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act 1950, and thereafter the petitioner was stopped from cutting any wood from the forest. It was held by a majority of the Supreme Court (S. R. Das, C. J., Venkatarama Aiyar, S. K. Das and Sarkar, JJ.) that the petitioner could not complain of any infringement by the State of any fundamental right for the enforcement of which alone a petition under Art. 32 is maintainable. Bose, J., however, considered the interest as an interest in immoveable property and as the deed dealt with property of the value of over Rs. 26,000/- it required registration and since it was not registered, the petitioner had no fundamental rights. After examining the definitions in Sec. 3 (26) of the General Clauses Act, S. 3 of the Transfer of Property Act and Section 2 (6) of the Registration Act, he said at page 536 :

"Now it will be observed that 'trees'are regarded as immovable property because they are attached to or rooted in the earth. . . .Therefore trees except standing timber are immovable property.

Now, what is the difference between standing timber and a tree? It is clear that there must be a distinction because the Transfer of Property Act draws one in the definitions of 'immoveable property'and 'attached to the earth'; and it seems to me that the distinction must lie in the difference between a tree and

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timber. It is to be noted that the exclusion is only of 'standing timber'and not of 'timber trees'."

By reference to Webster's Collegiate Dictionary, he pointed out that timber is well enough known to be "wood suitable for building houses, bridges, ships etc., whether on the tree or cut and seasoned." Therefore, Bose, J., concluded that standing timber must be a tree that is in a state fit for those purposes and further a tree that is meant to be converted into timber so shortly that it can already be looked upon as timber for all practical purposes even though it is still standing. If not, it is still a tree, because unlike timber, it will continue to draw sustenance from the soil. He further observed :

"Now, of course, a tree will continue to draw sustenance from the soil so long as it continues to stand and live; and that physical fact of life cannot be altered by giving it another name and calling it "standing timber". But the amount of nourishment it takes, if it is felled at a reasonably early date, is so negligible that it can be ignored for all practical purposes and though, theoretically there is no distinction between one class of tree and another, if the drawing of nourishment from the soil is the basis of the rule, as I hold it to be, the law is grounded not so much on logical abstractions as on sound and practical common sense. It grew empirically from instance to instance and decision to decision until a recognisable and workable pattern emerged; and here, this is the shape it has taken."

As we said earlier, the emphasis is upon the length of the period during which the right to cut the standing trees is to be exercised and the amount of sustenance it would draw in order to determine whether it is a standing timber or standing tree. If it is to be done in a short period as a timber, it is not a benefit arising out of the land and is therefore not an immovable property.

11. In Mahadeo v. State of Bombay, AIR 1959 SC 735 the Supreme Court was again considering long term agreements by which some of the proprietors in the former State of Madhya Pradesh granted to the petitioners the right to take forest produce, mainly tendu leaves, from the forests included in zamindari and Malguzari villages of the grantors, prior to the vesting of their rights in the State under the Madhya Pradesh (Abolition of Proprietary Rights, Estates, Mahals, Alienated Lands) Act, 1950. Some of the documents on which the claim was founded were unregistered and the period during which the alleged agreements were to operate had already expired. Other agreements were made by registered documents and the terms during which they had to operate had yet to expire. In so far as rights were claimed on foot of unregistered agreements, it was held that the petitions could not be entertained. The document, if it conferred a part or share in the proprietary right, or even a right to profit a prendre needed registration to convey the right. If it created a bare licence, the licence came to an end with the interest of the licensors in the forest. If proprietary right was otherwise acquired, it vested in the State, and lastly, if the agreements created a purely personal right by contract, there was no deprivation of property, because the contract did not run with the land.

In considering these documents, the Supreme Court considered the nature of the right conferred by them, viz., whether the right to leaves can be regarded as a right to a growing crop or is it a grant which confers a benefit arising out of land. It was held that in all those cases, there was not a naked right to take the leaves of tendu trees together with a right of ingress and of regress from the land; that there were further benefits including the right to occupy the land, to erect buildings and to take other forest produce not necessarily standing timber, growing crop or grass. It was further held that the right of ingress and of regress over land vesting in the State can only be exercised if the State as the owner of the land allows it, and even apart from the essential nature of the transaction, the State can prohibit it as the owner of the land. In so far as the right to the leaves is concerned, it was observed : "Whether the right to the leaves can be regarded as a right to a growing crop has, however, to be examined with reference to all the terms of the documents and all the rights conveyed thereunder. If the right conveyed comprises more than the leaves of the trees, it may not be correct to refer to it as being in respect of 'growing crop'simpliciter." The difficulties caused by the definitions which exist in the General Clauses Act, the Sale of Goods Act, the Transfer of Property Act and the Registration Act were noticed and it was said that they must be placed alongside one another to get their ambits. At page 740, Hidayatullah J., speaking for the Court, observed :

"If the definitions are viewed together, it is plain that they do not tell us what ''immoveable property" is. They tell us what is either included or not included therein. One thing is clear, however, that things rooted in the earth as in the case of trees and shrubs, are immoveable property both within the General Clauses Act and the Transfer of Property Act, but in the latter,'standing timber', 'growing

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crop'and 'grass'though rooted in earth, are not included. Of these, 'growing crop'and 'grass'form the subject-matter of the sale of goods, and 'standing timber'comes within the last part of the definition of 'goods'in the Indian Sale of Goods Act, to be subject thereto if the condition about severing mentioned in the definition of 'goods'exists.

"It has already been pointed out that the agreements conveyed more than the tendu leaves to the petitioners.. .. These rights were spread over many years, and were not so simple as buying leaves so to speak in a shop. . . .In these circumstances, the agreements cannot be said to be contracts of sale of 'goods'simpliciter."

This is yet another instance where the duration of the contract and the nature of the right over the several subject-matters of the contract have to be taken into consideration in determining whether it constitutes a pure sale of goods or deals with immoveable property.

12. There are two Bench decisions of this Court which have also taken a similar view. In Ramakrishnaiah v. State of Andhra, 1956 Andh WR 717 : (AIR 1957 Andh Pra 28), Viswanatha Sastri, and Krishna Rao, JJ. while dealing with the Sales Tax Act had to consider whether the bamboos sold by the assessee can be said to be agricultural or horticultural produce grown on land, and whether the assessee had an interest as a tenant or otherwise in the land. In so far as the last point is concerned, it was held that the contract conveys no interest in the land to the assessee. The property in question was a Government forest and the assessee was granted the right to cut bamboos of a particular age in lieu of a lump sum payment. It was a short term contract for 11 months. The cutting of the bamboos by the assessee had to start at once and had to be completed within that period. Except to cut bamboos found in the coupes specified in the contract, the assessee had no right to the other produce of the forest. He had no right to the possession, much less to the exclusive possession, of the coupes where the bamboo clusters lay. The right to enter the forest with the permission of the officers of the Forest Department in order to cut bamboo trees was merely ancillary to the real purpose of the contract and did not create any interest in land in the assessee, and in the language of Lord Coleridge, C. J., in Marshall v. Green, (1875) 1 CPD 35 "the land is to be considered as a mere warehouse of the thing sold, and the contract is for goods." Viswanatha Sastri, J., observed at page 718 (of Andh WR) : (at p. 29 of AIR).

"The position is the same as if the bamboos had been stored by the Government in its godown and the assessee had bought the bamboos for a price with the implied or incidental right to go and fetch them and so reduce them into his possession and ownership. Ex. A-1 is in substance a contract of sale of bamboos fit for cutting in certain coupes in a Government forest and an immediate severance and realisation of the trees by the assessee was stipulated. By no stretch of language could the assessee be regarded as having acquired a leasehold or any other interest in the land or any right to the possession of the land. The mere fact that Ex. A-1 referred to the 'lease period'or 'leased area'is not of great significance, for the use of these phrases does not affect the legal rights of parties which depend upon the real nature of the transaction. Venugopala Pillai v. Thiruvukarasu (1948) 2 Mad LJ 155 : (AIR 1949 Mad 148)."

In another case, R. Deshpande v. Muttam Reddy, AIR 1961 Andh Pra 180 another Bench of this Court consisting of Chandra Reddy, C. J. and one of us (the present Chief Justice) were considering the question whether plucking of beedi leaves was a service rendered, coming within the mischief of Sec. 7 (d) of the Representation of the People Act, 1951 (as amended by Act 27 of 1956). Even though the several decisions were not cited before the Bench, it held that the nature of beedi leaves contract was such that no supply of goods or execution of any works to or for the Government was envisaged. The Government for a consideration, sells the beedi leaves in forest areas specified in the contract to the contractor who should within the period of the contract, pick the beedi leaves and remove them from the forest. At pages 182-183, it was observed :

"A perusal of the contract entered into with the 1st respondent clearly shows that the agreement is one for the sale of forest produce.

The preamble as well as the various clauses of the agreement make it clear.

xx xx xx xx

It is not uncommon, in daily commercial transactions of purchase and sale of goods, for parties to enter into agreements, whereunder one party agrees to buy and the other to sell produce or commodities which may be lying on some land or at some place from which the purchaser will have to collect it and for which purpose he is given certain facilities such as to go on the land or to place some obstacles etc."

13. These decisions fully support the proposition which we have enunciated at the very outset, namely, that as long as the right is only to pluck the beedi leaves or to cut and take away the beedi leaves, bamboo or timber, the process

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to commence immediately and completed within a short period, it cannot be said that that right is a right in immoveable property or a benefit arising out of land. To create such a right, the right conferred by the agreement should be in respect of the trees or the shrubs or in respect of anything pertaining to the land, and where there is a sale of the produce it should be such as would indicate that the produce from the trees is relatable to the normal amount of sustenance which that tree draws in order to live and grow, or what in the felicitous words of Lord Coleridge. C. J.. in (1875) 1 CPD 35 (supra) it derives from "nutriment afforded by the land."

14. While this is so, Mr. Madhava Reddy has cited the derision in (1948) 2 Mad LJ 155 : (AIR 1949 Mad 148) (supra) where Rajamannar, O. C. J. (as he then was) and Yahya Ali. J., held that an agreement of rent in respect of the toddy yield of cocoanut trees and the right to tap the cocoanut trees and obtain toddy and to enter upon the land for that purpose, was in the nature of immoveable property because it was a benefit which arise out of the land, and consequently that right to which the defendant was entitled was in the nature of a leasehold right. Rajamannar, O. C. J. (as he then was) who delivered the judgment of the Bench relied upon (1875) 1 CPD 35 (supra) which was also referred to by Viswanatha Sastri. J., in 1956 Andh WR 717 : (A1R 1957 Andh Pra 28) (supra). Seeni Chettiar v. Santhanathan Chettiar, (1897) ILR 20 Mad 58 (FB) and Natesa Gramani v. Thangavelu Gramani, ILR 38 Mad 883 : (A1R 1914 Mad 362). Not only in (1948) 2 Mad LJ 155 : (AIR 1949 Mad 148) (supra) but also in the cases referred to by Rajamannar, O. C. J. (as he then was) the documents which conferred a right to cut and enjoy the trees was for a long period, such, for instance in the first case, viz. Seeni Chettiar's case, (1897) ILR 20 Mad 58 (FB) they were for a period of 4 years from the date of contracts, and it was held that they conveyed an interest in immoveable property because it was contemplated that the assignee should derive the benefit from the further vegetation and from the nutriment to be afforded by the land. In Natesa Gramani's case. ILR 38 Mad 883 (AIR 1914 Mad 362) (supra) it was held that under the document which they were considering, the person who was entitled to take the toddy was entitled to an interest in the land because as Oldfield, J., in that case said :

"No doubt in the present case, in which plaintiff's right was to draw palmyra juice, cut such leaves as his doing so involved and take the fruits of the trees, his right to do so for two reasons entitled that he should benefit to adopt an expression from (1875) 1 CPD 35 (supra) by 'the nutriment afforded by the land.'" It is clear, therefore, that the facts which the Madras High Court were considering were clearly distinguishable. It is unnecessary for us to go to the extent which Mr. Lakshmayya invites us to go, to hold that that decision is in conflict with a Full Bench decision in Commissioner of Income-tax v. Yagappa Nadar, AIR 1927 Mad 1038 (FB). It is apparent that that case was dealing with the question whether revenue derived from the sale of toddy extracted from cocoanut trees is agricultural income within the meaning of Section 2 (1) of the Income-tax Act and whether the Income-tax Act applies to profits derived from the sale of such toddy. Dealing with the contention that the petitioner as the lessee of the trees was entitled to treat the proceeds as income from agriculture, and that he was the lessee of the trees, but not of the land on which they stand, it was observed :

"It is very doubtful whether it is possible to have a lease of the treas without the land on which they stand. Under the Transfer of Property Act leases are only in respect of immoveable property and no instance of a lease of moveable property has been suggested to us. No interest in the land has been transferred here and it would appear that what the petitioner has obtained is a mere license to the the trees and draw the juice."

There is nothing in the judgment to show for what period the right to tap the trees was given and whether income from sale of such toddy trees was agricultural income or not. Further whether the income is agricultural income or not would not be germane to the question whether it is a benefit from immoveable property, because all agricultural income would be derived from lands. What has to be considered is whether it is a lease of immoveable property, and that was not what was considered by the Full Bench case.

15. Mr. Subbarayan has sited a judgment in In Re Mahant Raj Balamgir, AIR 1931 All 392 (FB) which arose under the Stamp Act. The question which fell for consideration was whether the document executed in that case for purchasing standing timber in certain jungle for a certain consideration, was a lease of immoveable property or whether it was an agreement. It was held that the transaction was one of sale of goods or merchandise and the deed was an agreement of memorandum of agreement evidencing such sale, and was exempt from stamp duty under Sch. I Article 5 and that the mere fact that

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beyond the stipulation for a sale of goods there was however an agreement that in case rival proprietor raised any objection to the cutting of timber and removal of the same the vendor was to have the responsibility did not in any way detract from the character of the agreement. Referring to the definition of immoveable property in section 3 (25) of the General Clauses Act, Sulaiman, Ag. C. J. observed at page 393 :

"But here there was no idea of conferring a right on the purchaser to retain possession of timber which would remain attached or fastened to the earth. It is therefore quite clear that the standing timber, which had to be cut down and removed, was moveable property and not immoveable property. The agreement in question therefore cannot be the counterpart of a lease of immoveable property within the meaning of S. 2 (16) of the Stamp Act."

16. In the view we have taken, we reject the contention of the learned Government Pleader that the agreements are leases within the meaning of Art. 31 (c) of the Stamp Act and that stamp duty is payable thereunder.

17. The second question whether sales tax is leviable on transactions entered into between the contractor and the Government either in respect of sale of beedi leaves, bamboos or standing timber. The contention of Sri Lakshmaiah and the other learned advocates is that inasmuch as sale of this produce is a sale by the Government of its own goods, it is not business, and therefore the Government is not a dealer who is entitled to collect sales-tax, nor is sales-tax leviable on the sale of agricultural produce. According to the definition in Section 2 (e) of the Andhra Pradesh General Sales Tax Act (VI of 1957) "dealer" means "any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes -

(i) a State Government, local authority, a company, a Hindu undivided family or any society (including a co-operative Society), club, firm or association which carries on such business. (ii), (iii) etc....."

The definition postulates that a person must carry on business of buying, selling, supplying or distributing goods etc., all of which the State Government cannot be said to do or transact. The argument is that the State Government is not carrying on business, much less a business of selling, buying, supplying or distributing goods directly or otherwise. The word "business" has been defined by the Amendment Act VII of 1966 in section 2 (bbb) as -

(i) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture whether or not such trade, commerce, manufacture, adventure or concern is carried on or undertaken with a motive to make gain or profit and whether or not any gain or profit accrues therefrom; and

(ii) any transaction in connection with or incidental or ancillary to such trade, commerce, manufacture, adventure or concern."

From this definition it is clear that it must be established that the Government is carrying on trade or commerce in respect of the subject-matter of the contract, viz., beedi leaves, timber or bamboo. Sri Madhava Reddy says that the Government is carrying on an adventure. But even for that it must be an adventure in the nature of trade, commerce or manufacture, irrespective of the fact whether it is carried on with a motive to make gain or profit or whether a gain or profit accrues. Even the incidental or ancillary transactions must partake the nature of trade, commerce, manufacture, adventure or concern. The question is whether the sale of one's own goods can be said to be buying or selling or carrying on trade or commerce. As observed by one of us (the present Chief Justice), in P. T. C. and S. Merchants Union v. State of A. P., 9 S. T. C. 723 : (AIR 1958 Andh Pra 558) to which Subba Rao, C. J., as he then was, was a party, at page 746 (of STC) : (at p. 568 of AIR).

"Tax on the produce on a sale by him cannot obviously be intended to be levied as the person who grows agricultural products and has incidentally to sell the same, cannot be called a person engaged in buying, selling or supplying or distributing goods within the meaning of the definition of a dealer, that is, an agriculturist when selling the produce from his land can hardly be said to be a dealer. On the other hand, the income from the first sale of the produce from his lands would be agricultural income, as opposed to business income, liable to be taken in exercise of the legislative power conferred by item 46 of List II of Schedule VII of the Constitution."

In Raja Bhairabendra v. Superintendent of Taxes, 9 S. T. C. 60 : (AIR 1957 Assam 179) a Bench of the Assam High Court consisting of Sarjoo Prosad, C. J., and Deka, J. held that the sale by zamindar by auction the standing sal trees grown spontaneously in his zamindari under which the purchasers were permitted to fell the trees and sell them after sawing and other processes, does not attract sales-tax as the zamindar cannot

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be said to be carrying on business within the meaning of section 2 (3) of the Assam Sales Tax Act, 1947, and cannot, therefore, be said to be a dealer. Sarjoo Prosad, C. J., said that the words "carrying on business" connote a continuous trade or occupation involving time and labour as also some investments, which may be regarded as an independent trade or occupation by itself capable of being sold or transferred as such.

18. The decision cited by Mr. Madhava Reddy in AIR 1957 Andh Pra 28 (supra) - referred to already - does not assist the respondents. What was considered there was whether the agreement entered into by the assessee with the Government for the collection and disposal of bamboos in the bamboo coupes in Boddagiri Range at Amalapuram was in respect of agricultural produce, exempt from sales tax under the proviso to S. 2 (1) of the Madras General Sales Tax Act, which was in these terms :

"Provided that the proceeds of the sale by a person of agricultural or horticultural produce grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover."

Viswanatha Sastri, J., at page 718 (of Andh WR) : (at p. 29 of AIR) said that what is exempted from the 'turnover'by the proviso is the produce of land resulting from the application of human effort to the land in the shape of manuring, tilling, ploughing, planting, sowing, watering, weeding, pruning, harvesting etc., and that forest trees of spontaneous growth cannot be regarded as 'agricultural or horticultural produce grown on land'within the meaning of the proviso. But on the question whether that produce was grown on any land in which the assessee had an interest, whether as owner, usufructuary mortgagee, tenant or otherwise, in the land, he held, as we have already observed, that he is not a tenant. Ultimately however, it was held that the Government was entitled to collect sales tax under Section 8C of the Madras General Sales Tax Act as it then existed.

That section, which was inserted by section 7 of the Madras General Sales-tax (Amendment) Act, 1951 was deleted in 1954, was in these terms :

"Notwithstanding anything contained in this Act, the State Government shall, in respect of any sale of goods effected by them, be entitled to collect by way of tax any amount which a registered dealer effecting such sale would have been entitled to collect by way of tax under this Act."

Mr. Madhava Reddy says that though this was deleted, the amendment of the definition of dealer in section 2 (e) (i) of the Andhra Pradesh General Sales-tax Act read with section 2 (bbb) which was inserted by Act 7 of 1966, supplies the omission of Section 8C; but, as we have shown already, it does not, because the requirements of these provisions are not fulfilled.

19. Mr. Madhava Reddy then took shelter under clause 23 (c) of the conditions of sale, which under the proposed agreement would be deemed to have been incorporated. We have already seen what that condition is, viz., that "sales tax over the bid amount at the rate current at the time of sale" shall be paid by the contractor. This he says is a condition of the contract, and faintly suggested that it was part of the consideration. But in so far as the last contention is concerned, he realised that it is untenable, because consideration has been set out in paragraph 4 of the agreement to be the amount payable as specified in Sch. III, which does not in any way indicate the amount payable towards sales-tax. If sales-tax is to be collected, the Government has to collect it as a dealer, which argument again as has been shown already, is not sustainable. What is undertaken under the agreement is that sales tax, if any payable under the Sales Tax Act is to be paid. But if no sales tax is leviable at all, that clause does not bind the contractor for paying the amount as a condition of the contractor, because, as we have already said, it is neither a part of the consideration nor is it a levy permissible under the Sales Tax Act. If the Government is not liable to pay sales tax under the Act, it cannot bind the contractor for paying it.

20. Coming to the last question, viz., whether in respect of the security deposit, stamp duty is leviable under Art. 35 (a) of the Stamp Act as a mortgage, the learned Government Pleader was unable to sustain the validity of this stand taken by the Forest Department, and in our view, he is well justified in taking this stand. As long ago as in 1883 a Full Bench of 5 Judges of the Madras High Court in Reference from the Board of Revenue under Section 46 of the Indian Stamp Act, 1879, (1883) ILR 7 Mad 209 held that a contract stipulating that the Executive Engineer for the time being retain 10 per cent. on the value of the work done to cover compensation for default on the part of the contractor and as security for the proper performance of the contract, was a contract chargeable with a stamp duty under Section 5 (c) and not as a mortgage under Art. 44 (a) of Sch. I of the Stamp Act. In Reference under Stamp Act, S. 46, (1891) ILR 15 Mad 134 another Full Bench in 1891 Considered one of the conditions of

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licence granted in a muchilika executed by an abkari licensee, viz., "As a security for the due performance of the conditions of the contract, the licensee shall deposit with the Collector in cash, Government notes or stock notes, a sum equal to three months'rental," and the question was whether that was an agreement under Article 5 (c) or a mortgage under Article 44. The Board of Revenue had stated that neither the licence nor the muchilika taken separately or together fulfils the conditions of a mortgage as defined in the Stamp Act, i. e., neither thereby actually creates an interest in the deposit in favour of Government. The Board of Revenue was of opinion that it was an agreement under Article 5 (c) and chargeable with stamp duty of 8 annas. With this the Full Bench agreed. In Rishidev Sondhi v. Dhampur Sugar Mills, AIR 1947 All 190 a Full Bench of the Allahabad High Court held: "money is not moveable property." In that case the Inspector of Stamps was of the opinion that an instrument in which specific sums have been offered as security is a mortgage deed, as the amounts deposited with the other party are "specified property" within the meaning of S. 2 (17) of the Stamp Act. As observed already, Allsop. J., said that the instruments which were the subject-matter of that reference were not mortgage deeds.

21. These decisions fully support the stand taken by the petitioners that the security deposits are not chargeable with stamp duty as mortgage deeds. In W. P. No. 1265/67 the National Savings Certificates were endorsed in favour of the Government in the particular Department, but notwithstanding the effect that the Department could sell and realise the moneys, the petitioner was being subjected to payment of stamp duty, inasmuch as the Department is demanding stamp as a mortgage deed. The Department is not only demanding for the previous years and the current year, but also in respect of future contracts, stamp duty as mortgages in respect of security deposits. We find that the stand taken by the Department is wholly untenable and invalid in law.

22. For these reasons, all the writ petitions are allowed. The respondents are directed not to demand or collect stamp duty in respect of agreements under Art. 31 (c) as if they are leases, or on the security deposit under Art. 35 (c) as a mortgage. Further they are also directed not to demand or collect sales tax in those cases in which sales-tax has not been paid. The petitioners in each of the petitions will have his costs. Advocate's fee Rs. 50/- in each.

Petitions allowed.

AIR 1964 ANDHRA PRADESH 373 (Vol. 51, C. 97) "Narayana Reddi v. State of Andh. Pra."

ANDHRA PRADESH HIGH COURT

Coram : 2 SATYANARAYANA RAJU AND ANANTHANARAYANA AYYAR, JJ. ( Division Bench )

Gummadi Narayana Reddi and others, Petitioners v. State of A. P., Respondent.

Writ Petn. Nos. 13, 55 and 184 of 1963, D/- 17 -8 -1963.

(A) Constitution of India, Art.245 - Hyderabad Markets Act (2 of 1339 F), S.2(1) - LEGISLATURE - CONSTITUTIONALITY OF AN ACT - AGRICULTURAL PRODUCE - Validity - Provisions do not confer uncontrolled power on Government.

S. 2(1) of the Hyderabad Markets Act does not center uncontrolled power on the State Government to notify any commodities as "agricultural produce." The section establishes definite criteria and standards in that it defines the agricultural produce. AIR 1962 SC 97 and AIR 1959 SC 300 and AIR 1960 SC 554, Rel. on. (Para 13)

(B) Constitution of India, Art.19(1)(g) and Art.19(6) - Hyderabad Markets Act (2 of 1339 F), Pre. - FREEDOM OF TRADE - CONSTITUTIONALITY OF AN ACT - Validity - Right to carry business in fruits and vegetables - Provisions do not impose unreasonable restrictions.

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Provisions of the Hyderabad Markets Act do not impose unreasonable restrictions on the right of persons to carry on business in vegetables and fruits and are not repugnant to the rights granted under Part III of the Constitution. The regulatory provisions of the Act, are reasonable restrictions conceived in the interests of the growers of agricultural produce and the community at large. AIR 1959 SC 300 and AIR 1962 SC 97 Rel. on. (Para 14, 19)

The Act cannot also be challenged by contending that being a Telangana Act it cannot have for its objective protection of the interests of ryots growing vegetables and fruits outside the area. The purpose of the Act being to eliminate exploitation at the stage of marketing of agricultural produce the place of residence of the grower and the place where the produce is grown are not material. The Act governs the purchase and sale of agricultural produce and for the application of the Act only two tests must be satisfied :

(1) Whether it is agricultural produce ?

(2) Whether there is a transaction of sale or purchase of that produce within the area covered by the Act ? AIR 1962 SC 1517 Rel. on (Para 27)

(C) Hyderabad Markets Act (2 of 1339 F), S.1 - AGRICULTURAL PRODUCE - EQUALITY - Provisions do not contravene Art.14 of the Constitution - Application of the Act to cities of Hyderabad and Secunderabad satisfies test of permissible classification.

Constitution of India, Art.14.

The provisions of the Hyderabad Markets Act in so far as they have been confined to the cities of Hyderabad and Secunderabad do not constitute unfair discrimination and do not offend Art. 14 of the Constitution. The application of the Act to the cities of Hyderabad and Secunderabad satisfies the test of permissible classification. The classification is founded on an intelligent differentia which distinguishes the cities from towns and villages in the area covered by the Act. The differentia has also a reasonable relation to the object sought to be achieved by the statute in question. AIR 1959 SC 942, Rel. on. (Para 23)

The provisions of the Act cannot also be challenged on the ground that there being no law similar to the Act in force in Andhra area there is discrimination which is hit by Art. 14. Under S. 119 of the States Reorganisation Act the Act continues till repealed by the appropriate legislature and the classification being a geographical classification based on historical reasons it is not contrary to the equal protection clause in Art. 14. AIR 1962 SC 981 and AIR 1963 SC 853, Rel. on. (Para 24)

(D) Constitution of India, Art.301, Art.366 and Art.305 - Hyderabad Markets Act (2 of 1339 F), S.1 - FREEDOM OF TRADE - AGRICULTURAL PRODUCE - CONSTITUTIONALITY OF AN ACT - Validity - Provisions of the Act valid.

The Hyderabad Markets Act being an "existing law" within the meaning of Art. 366 of the Constitution is saved by Art 305 and the provisions of the Act cannot be challenged on the ground that the Act, the rules and the bye-laws, in so far as they are sought to be made applicable to vegetables and the persons carrying on business therein in the Telangana area are unconstitutional and are violative of the rights guaranteed under Art 301 of the Constitution and that the said provisions also affect inter-state trade and commerce. (Para 28)

Cases Retched Courtwise Chronological Paras

('59) AIR 1959 SC 300 (V 46) : (1959) Supp (1) SCR 92, Arunachala Nadar v. State of Madras 12, 15

('59) AIR 1959 SC 942 (V 46) : (1959) Supp (2) SCR 563, Moti Das v. S.P. Sahi 20

('60) AIR 1960 SC 554 (V 47) : 1960 SCJ 611 : 1960 Cri LJ 735, Hamdard Dawakhana v. Union of India 9

('62) AIR 1962 SC 97 (V 49) : 1962-2 SCR 659, Mohammad Hussain v. State of Bombay 11, 19

('62) AIR 1962 SC 981 (V 49) : (1962) Supp (2) SCR 257, Bhaiyalal Shukla v. State of Madhya Pradesh 24

('62) AIR 1962 SC 1517 (V 49), Muhammad Bhai v. State of Gujarat 26

('63) AIR 1963 SC 853 (V 50), Anant Prasad v. State of Andhra Pradesh 24

K. Ramachandra Rao and K. Venkateswara Rao, for Petitioners (in W. P. No. 13 of 1963); M/s. P.A. Choudary and Manohar Singh, for Petitioners; (in W. P. Nos. 55 and 184 of 1963); 3rd Govt. Pleader, for Respondents (in all the Petns.)

Judgement

SATYANARAYANA RAJU, J. :- These petitions under Article 226 of the Constitution, are for the issue of a writ of mandamus or other appropriate writ, direction or order, to the State of Andhra Pradesh to forbear from enforcing G. O. Ms. No. 2271, Agriculture, dated 29th November, 1962, or any of the provisions of the Hyderabad Markets Act (II of 1339 Fasil) or the rules or bye-laws thereunder, on respect of vegetables and fruits.

2. The petitioners are ryots engaged in the cultivation of vegetables wholesale commission agents and fruit merchants in and around the Cities of Hyderabad and Secunderabad.

3. The material averments in the affidavits filed in support of the petitions are these :

There are three wholesale markets in the Cities of Secunderabad and Hyderabad, in which vegetables and fruits are sold. They are Hissamganj in Secunderabad, and Mirialamandi and Subzimandi in Hyderabad. From times immemorial, the wholesale commission agents, the growers and the retail purchasers have been carrying on business in those market's according to certain well recognised and well established usages, customs and practices. After the vegetables and fruits are brought to the markets by the growers, the commission agents invite the retail dealers to offer their bids. The rates vary from hour to hour depending on the quantities available and on the demand for particular varieties. When the bids are accepted, the commodities are weighed and delivered to the retail dealers.

For the services rendered by them, the commission agents are paid their commission by the growers as well as the retail dealers. The commission agents serve as useful intermediaries for bringing together the growers and the retail dealers. The growers receive financial aid from the commission agents. The retail dealers do not have the necessary finance to pay for the commodities purchased by them. The commission agents also extend credit to the retail dealers. The mode of business transacted in the markets has been highly beneficial to all the parties concerned. If the notification issued by the Government, declaring vegetables and fruits to be agricultural produce for the purposes of the Act, is to be enforced it would be detrimental to the business of the petitioners.

4. The allegations made by the petitioners, and in particular, the averment that the mode of business now in vogue in the markets is highly beneficial to all the parties concerned, are denied by the Government in their counter affidavit. It

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is stated that there are several unwholesome practices which are prevalent in the markets which are not advantageous either to the growers or to the consumers. It is stated that the Act, the rules, the bye-laws and the notification constitute reasonable restrictions imposed in the public interest.

5. The contentions raised on behalf of the petitioners cover a wide ground, and they may be summarised as follows :

(1) Section 2(1) of the Act, which empowers the Government to notify and include any produce within the ambit of "agricultural produce", confers uncanalised and uncontrolled power on the Government without prescribing any criteria or standards or principles on which a produce of land could be so notified.

(2) The provisions of the Act impose unreasonable restrictions on the petitioners' right to carry on business in vegetables and fruits and.' are repugnant to the rights guaranteed under Part III of the Constitution.

(3) The provisions of the Act and the rules find the bye-laws, in so far as they are confined only to the Telangana area and the persons carrying on business therein, are discriminatory.

(4) The provisions of the Act in so far as they are sought to be made applicable to vegetables and fruits and persons carrying on business in those commodities in the Telangana area, are violative of the provisions of Article 301 of the Constitution as they affect the freedom of inter-state trade and commerce.

6. Before dealing with the contentions raised on behalf of the petitioners, it is necessary to refer to the material provisions of the Act. The Act was passed to provide for the establishment of open markets for the purchase and sale of cotton and of other agricultural produce and live stock in the State of Hyderabad and for the better regulation of such markets. It was amended by Act XXII of 1956. Section 3 provides for the constitution of markets and market committees and empowers the Government to notify the place which is declared to be a market for agricultural produce or cotton or for both. The said notification shall specify the limits of such markets and these limits shall include the local area determined by the Government.

Section 5 empowers the Government to make rules, either generally or specially, for the management and conduct of any market or group of markets. Section 6 empowers the Government to make bye-laws. Section 16 provides that no person shall work as a broker, load carrier, measurer or surveyor or godown-keeper within the limits of a market, so long as he is not employed by the Market Committee or has received a licence therefrom. Section 17 provides that no private market shall be established at places declared to be markers by the Government or at places adjacent thereto, except with the written sanction of the Government signed by a Secretary to the Government. Section 18 provides penalties for contravention of the provisions of the Act. These are the main provisions of the Act. As already stated, vegetables and fruits have been included within the definition of agricultural produce by the notification issued by the Government.

7. We will now deal with the contentions raised by the petitioners.

8. Section 2 is the definition section. The definition of 'agricultural produce' contained in S. 2(1) is as follows :

" 'Agricultural produce' means every produce of land other than cotton declared by the Government by a notification in the Jarida (Gazette) to be agricultural produce for the purposes of this Act."

9. As supporting his contention that the Legislature has not specified the criteria and prescribed the standards or principles on which a particular produce of land is to be notified as agricultural produce, Sri K. Ramachandra Rao, the learned counsel for the petitioners, has relied upon a decision of the Supreme Court, Hamdard Dawafchana v. Union of India, 1960 SCJ 611 : (AIR 1960 SC 554). There the facts were these : The Hamdard Dawakhana alleged that soon after the Drug and Magic Remedies (Objectionable Advertisement) Act came into force, they were intimated by the Drugs Controller, Delhi, that the provisions of Section 3 of the Act had been contravened by them and they were directed to recall their products sent to Bombay and other States. Subsequently, objections were taken by the Drugs Controllers of other States with regard to the advertisements of medicines and drugs prepared by the petitioners. The petitioners contended before the Supreme Court that the power given to the rule-making authority under clause (d) of Section 3 of the Act was unconstitutional. That provision ran as follows :

Section 3 - "Subject to the provisions of this Act, no person shall take any part in the publication of any advertisement referring to any drug in terms which suggest or are calculated to lead to the use of that drug for.........

(d) the diagnosis, cure, mitigation, treatment or prevention of any venereal disease or 'any other disease or condition which may be specified in rules made under' this Act." (Italics (here in ' ') ours).

10. Their Lordships have held that the power of specifying diseases and conditions as given in S. 3(d) goes beyond the permissible boundaries of valid delegation and that the delegation was unconstitutional in that the administrative authority had not been supplied with proper guidance. It is also held that Parliament has established no criteria, no standards and has not prescribed any principle on which a particular disease or condition is to be specified in the Schedule. This was based on the conclusion that the words "or any other disease or condition which may be specified in rules made under this Act," conferred uncanalised and uncontrolled power on the Executive. This decision is distinguishable.

11. The Hyderabad Agricultural Markets Act is modelled on the Bombay Agricultural Produce Markets Act. Their Lordships of the Supreme Court had occasion to consider the provisions of the Bombay Act in Mohammed Hussain v. State of Bombay, AIR 1962 SC 97. Section 29 of that Act provides that the State Government may by notification in the Official Gazette add to, amend or cancel any of the items of agricultural produce specified in the Schedule to the Act. It was contended that this Section gave a completely unregulated power to the State Government to include any crop within the Schedule without any guidance or control whatsoever. Their Lordships held that

"in enacting S. 29, the Legislature had not stripped itself of its essential powers or assigned to the administrative authority anything but an accessory or subordinate power which was deemed necessary to carry out the purpose and

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policy of the Act."

They rejected the contention that Sec. 29 gave uncontrolled power to the State Government and was therefore unconstitutional.

12. In Arunachala Nadar v. State of Madras, AIR 1959 SC 300 the Supreme Court considered a similar contention with regard to the provisions of the Madras Commercial Crops Markets Act (XX of 1933). That Act specified certain crops as commercial crops in the definition section and added that the words "commercial crop" used in that Act would include any other crop or product notified by the State Government in the Fort. St. George Gazette as a commercial crop for the purposes of that Act. In view of this inclusive definition of "commercial crop" in the Madras Act, it was open to the State Government to include any crop within the meaning of the words "commercial crop" which was to be regulated by that Act. The Act had a schedule, when it was originally passed, in which certain crops were included. Under that Act, therefore, it was open to the State Government to bring any crop other than those specified originally in the Schedule within its regulatory provision.

13. There is thus no distinction so far as the main provisions are concerned between the impugned Act and the Madras Act whose constitutional validity was upheld by the Supreme Court. We may add that S. 2(1) of the impugned Act establishes definite criteria and standards in that it defines agricultural produce as produce of the land. We are, therefore, unable to accede to the petitioner's contention that S. 2(1) confers uncontrolled power on the State Government to notify commodities as agricultural produce.

14. It is next contended that the provisions of the Act impose unreasonable restrictions on the petitioners' right to carry on business in vegetables and fruits and are repugnant to the rights granted under Part III of the Constitution. As already stated, the preamble introduced the Act with a recital that

"It is expedient to provide for the establishment of open markets for the purchase and sale of cotton and of other agricultural produce and livestock in the State of Hyderabad and for the better regulation of such markets."

15. Tracing the historical background of the Madras Commercial Crops Markets Act, which is similar to the present Act, their Lordships of the Supreme Court observed in AIR 1959 SC 300 :

"Marketing legislation is now a well-settled feature of all commercial countries. The object of such legislation is to protect the producers of commercial crops from being exploited by the middlemen and profiteers and to enable them to secure a fair return for their produce."

These observations are equally applicable in considering the validity of the present Act. The Act empowers the Government to establish markets for agricultural produce or cotton or for both. There is a provision for the constitution of Market Committee Fund which shall be utilised for the establishment and improvement of the markets, for the construction and repair of buildings necessary for the purposes of the market and the health, convenience and safety of the persons using the market. When the Government has notified any place to be a market persons other than those licensed for the purpose are prohibited from trading within the limits of the market. There is also a provision that no private market shall be established at places declared to be markets or at places adjacent thereto.

16. Among other things, the Rules framed under the Act provide for settlement by arbitration of all disputes between a buyer and a seller or their agents regarding the quality or weight, the price or rate to be paid, the allowance for wrappings, dirt or impurities or deductions for any cause; for prohibiting brokers from acting both on behalf of the seller and the buyer in any transaction for the manner in which the auction shall be conducted and bids made or accepted in the market; for providing godowns and storage facilities for cotton and other agricultural produce.

17. The bye-laws provide for the management of the affairs of the market and for the conditions of purchase and sale therein.

18. Hyderabad and Secundersbad have a population of more than 14 lakhs and are the largest vegetable and fruit consuming centres in the State. It is averred in the counter-affidavit filed on behalf of the State Government that there are unhealthy trade practices prevailing in the markets where vegetables and fruits are sold. In particular it is stated that commission agents are charging a high rate of commission both from the sellers and the retailers; that consumers are made to pay more than 30 to 40 per cent than what the grower gets because of the intervention of middlemen and that the commission agents very often create artificial scarcity of commodities by purchasing the entire produces from the sellers at a cheap rate and withholding supplies. It is stated that due to these practices and due to emergency created by the Chinese aggression and due to the creation of artificial scarcity by the commission agents, there has been an enormous rise in the prices of vegetables and fruits and compared with the prices prevailing in the corresponding periods of the previous year, there has been an increase of two to three times in the prices of these commodities and it was therefore that the Government had decided to enforce the provisions of the Act. These averments have not been controverted by the petitioners.

19. The purpose and object of the Act is not to eliminate middlemen altogether but to control their activities in such a way as to promote the interests of the community at large. Dealing with a somewhat identical attack on the validity of the provisions of the Bombay Agricultural Produce Markets Act, on which the present Act is modelled, their Lordships of the Supreme Court have held in AIR 1962 SC 97 that the material provisions of the Act are constitutional and infra vires and do not impose unreasonable restrictions on the right to carry on trade in the agricultural produce regulated by the Act. A similar view was taken by the Supreme Court with regard to the validity of the Madras Commercial Crops Markets Act, which is somewhat similar in its scope and purpose. We hold that the provisions of the Act do not impose unreasonable restrictions on the right of citizens to carry on trade. The regulatory provisions of the Act are reasonable restrictions conceived in the interests of the growers of agricultural produce and the community at large.

20. It is then contended that the restrictions imposed by the Act have been confined to the Cities of Hyderabad and Secunderabad and that they constitute unfair discrimination and offend Article 14 of the Act. As pointed out by their Lordships of the Supreme Court in Moti Das v. S.P. Sahi, AIR 1959 SC 942 at pp. 946 and 947 :

"It is now well settled by a series of decisions of this Court that while Art. 14 forbids

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class legislation, it does not forbid reasonable classification for the purpose of legislation, and in order to pass the test of permissible classification, two conditions must be fulfilled, namely (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases such as, geographical, or according to objects or occupations and the like. The decisions of this Court further establish that there is a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional guarantee; that it must be presumed that the legislature understands and correctly appreciates the needs of its own people and that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds; and further that the legislature is free to recognise degree of harm and may confine its restrictions to those cases where the need is deemed to be the clearest."

21. Article 14, therefore, permits classification if there is a reasonable basis for the differentiation.

22. Judged by the test laid down by their Lordships of the Supreme Court, the question for consideration is whether there could be a differentiation between the Cities of Hyderabad and Secunderabad and the other areas covered by the Act. As already indicated, the Act deals with the regulation of purchase and sale of agricultural produce and the establishment of markets for such produce. It provides for the formation of market areas and market committees. There is undoubtedly a difference between conditions obtaining in the Cities of Hyderabad and Secunderabad and other towns and villages which are covered by the Act. The cities have a large population of over fourteen lakhs of people. They are the largest vegetable and fruit consuming centres in the State. As stated by the petitioners themselves, there are three wholesale markets in the Cities, namely Hissam Gunj in Secunderabad, Miriyal Mandi and Sabzi Mandi in Hyderabad. There are certain usages and practices prevailing in these markets which are not found elsewhere.

23. If what is stated in the counter-affidavit filed on behalf of the State represents the correct position, we have no doubt that the application of the Act to the Cities of Hyderabad and Secunderabad satisfies the test of permissible classification. The classification is founded on an intelligent differentia which distinguishes the Cities from towns and villages in the area covered by the Act. The differentia has also a reasonable relation to the object sought to be achieved by the statute in question.

24. The next contention is that no law similar to the impugned Act is in force in the Andhra area and, therefore, there is discrimination which is hit by Art. 14. Under the States Re-organisation Act, 1956, certain districts which formed part of the erstwhile State of Hyderabad have been added on to the State of Andhra, which has been renamed the State of Andhra Pradesh consists of two areas, one of which came to that State from the former Part A State of Madras and the other from the former Part B State of Hyderabad. These two areas naturally had different laws. Under S. 119 of the States Re-organisation Act, all laws in force are to continue till repealed or altered by the appropriate legislature. Following the ratio of Bhaiyalal Shukla v. State of Madhya Pradesh, AIR 1962 S. C. 981, their Lordships of the Supreme Court held in Anant Prasad v. State of Andhra Pradesh, AIR 1963 SC 853, that a geographical classification based on historical reasons could be upheld as being not contrary to the equal protection clause in Art. 14. Therefore, the attack on the basis of violation of Art. 14 must be repelled in this case on the authority of the decision of the Supreme Court.

25. The next of the contentions raised on behalf of the petitioners is (and this is raised in Writ Petitions Nos. 55 and 184 of 1963) that the Telangana Act cannot have for its objective protection of the interests of ryots growing vegetables and fruits outside the area. In elaborating this point, it is stated by learned counsel for the petitioners that 99 per cent of the fruits consumed in the Cities come from Maratwada area and that the Act to the extent to which it benefits the growers of vegetables and fruits outside the limits of the State, is not a valid piece of legislation. The purpose of the Act is to eliminate exploitation at the stage of marketing of agricultural produce. The place of residence of the grower and the place where the produce is grown are not material. The Act governs the purchase and sale of agricultural produce. For the Act to apply, two tests must be satisfied :

(1) Whether it is agricultural produce ?

(2) Whether there is a transaction of sale or purchase of that produce) within the area covered by the Act ?

26. A similar contention was raised before their Lordships of the Supreme Court in Muhammadbhai v. State of Gujarat, AIR 1962 SC 1517 at P 1527. There it was urged that the provisions of the Bombay Agricultural Produce Market Act not only affected transactions between traders and traders but also affected produce not grown within the market area if it was sold in the market area. Repelling this, contention, their Lordships stated :

"This is undoubtedly so. But if control has to be effective in the interest of the agricultural producer such incidental control of produce grown outside the market area and brought into the market yard for sale is necessary as otherwise the provisions of the Act would be evaded by alleging that the particular produce sold in the market yard was not grown in the market area. For the same reasons transactions between traders and traders have to be controlled, if the control in the interest of agricultural producers and the general public has to be effective."

27. For the reasons stated in the above decision, we are unable to accede to the contention of the learned counsel for the petitioners under this head.

28. There remains another contention which is that the Act, the rules and the bye-laws, in so far as they are sought to be made applicable to vegetables and the persons carrying on business therein in the Telangana area unconstitutional' and are violative of the rights guaranteed urn et Article 301 of the Constitution and that the said provisions also affect inter-State trade and commerce and the Government have no power to impose any restriction on the same.

29. Article 305 provides as follows :

"Nothing in artices 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct;

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and nothing in article 301 shall affect the operation of any law made before the commencement of the Constitution (Fourth Amendment) Act, 1955, in so far as it relates to, or prevent Parliament or the Legislature of a State from making any law relating to any such matter as is referred to in sub-clause (ii) of Clause (6) of article 19."

30. According to this Article the provisions of Art. 301 do not affect the provisions of any existing law except in so far as the President may otherwise direct and there is no such direction by the President. "Existing law" has been denned in Art. 366, clause (10), to mean :

"any law, ordinance, order, bye-law or regulation passed or made before the commencement of this Constitution by any Legislature, authority .or persons having power to make such a Jaw, ordinance, order, bye-law, rule or regulation."

By Art. 372 all laws in force in the territory of India immediately before the commencement of the Constitution shall continue to be in force until altered, or repealed or amended by a competent legislature. Being an existing law, the impugned Act is saved by Art 305 of the Constitution.

31. It is also contended by the learned Government Pleader that by reason of the proclamation of emergency, the petitioners are not entitled to invoke the rights guaranteed under Part III of the Constitution. It is unnecessary to go into this question by reason of the con-elusions reached by us.

32. All the contentions raised on behalf of the petitioners having been negatived, these writ petitions must fail and are dismissed with costs. Advocate's fee in each Rs. 100/-.

Petitions dismissed.

AIR 1964 ANDHRA PRADESH 421 (Vol. 51, C. 111) "Sudarshan v. Dist. Collector"

ANDHRA PRADESH HIGH COURT

Coram : 2 P. CHANDRA REDDY, C.J. AND GOPAL RAO EKBOTE, J. ( Division Bench )

Pakanti Sudarshan Reddy and others, Petitioners v. District Collector, Warangal and others, Respondents.

Writ Petn. No. 589 of 1961, D/- 13 -2 -1963.

(A) Hyderabad District Municipalities Act (18 of 1956), S.27(1)(c) - MUNICIPALITIES - ELECTION - WORDS AND PHRASES - Municipalities - Election of members - Disqualifications - Holding an "office of profit" - Expressions "Office" and "Office of profit" - Meaning - Continuing as member and receiving a small amount of sitting fee for attending Committee meetings does not amount to holding an "Office of profit" under the Committee and is not a disqualification for election.

An office is a right to exercise a "public or private employment" or to hold a position which has certain duties attached to it. It means a position or a place to which certain duties are attached more or less of a public character and it is a sort of permanent position held by successive incumbents. It may be with or without a remuneration. (Para 3)

The expression "Office of profit" means that an office must be held under the Government, or Municipality or local authority to which any pay, salary, emoluments or allowance is attached. The word "profit" connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material, but the amount of money receivable by a person in connection with the office he holds may be

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material in deciding whether the office really carries any profit. AIR 1954 SC 653, foll.; 13 Ele. LR 66 and AIR 1960 Pat 558, Ref.; 4 Ele. LR 422, Not followed. (Para 5)

The consideration in determining whether an office is an office of profit is not whether the holder himself makes profit out of the office, but whether the office was one which enables him to make profit. In case of members of a municipal committee receiving a sitting tee for attending the meetings, if the intention in paying the amount is only to provide such sum which will cover approximately the out of pocket expenses, which these members are likely to incur, it can by no stretch of imagination be called as an office or place which provides profits or remuneration to the members. (Para 3)

Members of a municipal committee who are paid a small amount of sitting fee as a consolidated fee for the out or pocket expenses which they are to incur for attending the meetings of the Society though hold an "Office" cannot be said to hold an "Office of profit" so as to entail disqualification for election as members. Such members themselves constitute the Municipal Committee and are not subordinate to the Committee. They cannot also be said to hold an office or a place of profit under the Municipal Committee." 3 Ele. L.R. 439 and AIR 1958 Rel. on.

(Such members are not disentitled under S. 27(1)(c) of the Hyderabad District Municipal Act, for election to the Committee). (Paras 5 and 6)

(B) Hyderabad District Municipalities Act (18 of 1956), S.27 - MUNICIPALITIES - OBJECT OF AN ACT - Municipalities - Provision require strict construction - Object of the provision is to secure purity of Committee and independence of members - Conditions to be proved before a member can be disqualified.

Section 27 being of a disqualifying nature has to be rightly, construed. The object of the section is to ensure purity of Municipal Committee and secure independence of the members of the Committee. It is tended that the Municipal Committee should not contain persons who are under the obligations of the Government, Municipality or any local authority. Before any person can be said to be suffering from any disqualification, the following three thongs must be satisfactorily proved :

(1) that he holds an office or any place (2) that it is an office or place of profit and (3) that it is in an office under the Government, Municipality or any local authority. (Para 3)

(C) Hydrabad District Municipalities Act (18 of 1956), S.27(1)(c) and S.2(19) - MUNICIPALITIES - AGRICULTURAL PRODUCE - LOCAL AUTHORITY - Municipalities - Office of profit under local authority - Chairman of a market Committee constituted under Hydrabad Agricultural Market Act is not a person holding an office of profit under local authority-Not disqualified to be elected as a member. (Para 7)

(D) Hydrabad District Municipalities Act (18 of 1956), S.10 and S.11 - MUNICIPALITIES - ELECTION - AMENDMENT - Municipalities - Amendment to electoral roll bringing it in accordance with Assembly Constituency rolls, adopted a day before election - Election not rendered invalid.

Elections to a Municipal Committee held on 26-04-1961 were challenged on the grounds inter alia, that electoral roll on the basis of which elections were held were not finalized. It was alleged that were held number of person whose names were omitted. Amendments to the electoral rolls were made even on 23rd April, 1961 and these amendments were adopted for the purposes of Municipal election on 25-04-1961. It was contended that the electoral rolls which were adopted for the purposes of Municipal election before the programme of election was finalised, alone ought to have been used and as the subsequent amendments made to the electoral rolls which were published on 25th April, 1961 were also used, the election could not be considered as having been validly held.

Held, on a consideration of Ss. 10 and 11 of the Act that the elections could not be challenged on the ground that amendment to electoral rolls were made and adopted on the day before the elections. Provisions of Ss. 10 and 11 clearly pointed out that as and when the electoral rolls were revised or amended by the concerned authorities for the Assembly constituencies the duty was cast on the prescribed authority to adopt the same as soon as such amendments were made for the purposes of Municipality. Petitioner could not challenge the adoption of amended electoral rolls. (Para 9)

(E) Constitution of India, Art.226 - WRITS - ELECTION - MUNICIPALITIES - HIGH COURT - Other remedy open - Election dispute - Municipal elections - Objection that all persons qualified to vote were not entered in the electoral roll - Provision in the Municipal Act for Settlement of such objections - High Court cannot enquire - Remedy of person aggrieved is under the Act.

Hyderabad District Municipalities Act (18 of 1956), S.10, S.11, S.12 and S.13.

The election tribunal or the High Court in writ petitions have no jurisdiction to enquire whether all persons qualified to vote were entered in the rolls. (Para 11)

Under the Hyderabad District Municipalities Act the jurisdiction to prepare the electoral rolls is vested in certain authorities under the Act and the Rules and the provisions of that Act and the Rules give finality to the decision of these authorities. It would be, therefore, futile to challenge the validity of the election in a writ petition on the ground that some persons qualified to vote were not included in the electoral rolls. AIR 1958 Andh Pra 458 and 1958 Andh LT 674, Rel. on; (S) AIR 1957 SC 304 and AIR 1958 Pat 149, Explained and Dist.; AIR 1959 Pat 409, Ref. (Para 11)

(F) Hyderabad District Municipalities Act (18 of 1956), S.298 and S.309(i) - MUNICIPALITIES - ELECTION - Municipalities - Rules under R.38(2) and R.43 - Election to Municipal Committee - Counterfoils of ballot papers containing serial number of elector and his name - Ballot papers issued not disclosing any identity of elector - Secrecy of voting not violated.

The mere fact that counter-foils of the ballot papers are maintained in which serial number of the elector as appears in the electoral roll and his name are entered does not violate in any manner the secrecy of voting when ballot papers actually issued to the voters do not contain any distinct mark, which would disclose as to who the elector is AIR 1953 Mad 932 and 1 D E C 330, Dist. (Para 14)

Cases Referred : Courtwise Chronological Paras

('54) AIR 1954 SC 653 (V 41) : ILR (1956) Mys 109, Ravanna Subanna v. G.S. Kaggeerappa 5

('57) (S) AIR 1957 SC 304 (V 44) : 1957 SCR 68, Chief Commr., Ajmer v. Radhey Shyam Dani 10, 12

('58) AIR 1958 AP 458 (V 45) : ILR (1958) Andh-Pra 466, Venkateswara Rao v. State of Andhra Pradesh 12

('58) 1958 Andh LT 674 : 1958-2 Andh WR 456, Subbayya v. The State 12

('58) AIR 1958 Bom 325 (V 45) : 15 Ele LR 100, Ram Narain v. Ramchandra 6

('53) AIR 1953 Mad 932 (V 40) : 1953-2 Mad LJ 279, Narasimhalu v. Narasimham 15

('58) AIR 1958 Pat 149 (V 45) : 1957 BLJ R 672, Parmeshwar Mahaseth v. The State of Bihar 12

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('59) AIR 1959 Pat 409 (V 46), Sabhir Ahmad v. Dist Magistrate of Darbhanga 12

('60) AIR 1960 Pat 556 (V 47) : 20 Ele L R 169, Karu Lal v. Fida Hussain 4

('58) 19 Ele L R 417 (Punj), Lachhman Singh v. Harparkash Kaur 4

1 D E C 330, Upadhyay Ambika Prasad v. Lakshmi Mohan Misra 15

('53) 3 Ele L R 439, Yograj Singh Shanker Singh v. Sitarara Hirachand 6

('53) 4 Ele L R 422, In the matter of, Vindhya Pradesh Legistative Assembly Members 3

('53) 6 Ele L R 104, Bhola Nath v. Krishna Chandra Gupta 6

('57) 13 Ele L R 60, Parasu Ram v. Chandra Chudamani Dev 4

('58) 18 Ela L R 378, Ramdayal Ayodhya Prasad Gupta v. K.R. Patil 4

Ch. Sankara Sastry, for Petitioner; 3rd Government Pleader, for Respondents 1 and 2; K. Madhava Reddy, for 5th Respondent.

Judgement

EKBOTE, J. :- This is an application under Art. 226 of the Constitution of India for the issue of a writ of Mandamus directing the respondents 1 and 2 not to give effect to the election held on 26-04-1961 in respect of the Municipality of Warangal.

2. The material facts lie within a narrow compass and are for the most part uncontroversial. The Government issued a Notification on 11th March, 1961 under S. 17 of the Hyderabad District Municipalities Act, 18 of 1956, hereinafter called the Act, calling upon all the constituencies of the City Municipality, Warangal, to elect members before 27th April, 1981. The District Collector, Warangal, in pursuance of the said Notification under S. 20 of the Act, appointed various dates for nomination etc., according to which the last date for making nominations was fixed as 20th March, 1961 and 26th April, 1961 was fixed as the date of poll. Accordingly, the elections were held on 26th April, 1961 under the supervision of the 2nd respondent, who is the Returning Officer for the purposes of the said elections. Respondents 3 to 36 were declared from various constituencies. The petitioners, who are either the tax payers or the voters residing in the Municipal area of Warangal, filed this application questioning the validity of the election held on 26th April 1961 on various grounds.

3. Firstly, it was urged by the learned Advocate for the petitioners that respondents 3 to 12 being the sitting members of the City Municipality, Warangal, on the material dates of the election were holding office or place of profit under the City Municipality, Warangal, and were, therefore, disqualified in order to appreciate this contention, it becomes necessary to look into S. 27(1)(c) of the Act Section 27, as far as it is relevant for our purpose, is as follows :

"27. (1) Subject to the provisions of this Act a person shall be disqualified for being elected as member of a Committee if such person at the date of election -

(a) ........................

(b) ........................

(c) holds any office or place of profit under the Government or under the Municipality or under any local authority."

The object of S. 27 clearly appears to be to ensure .purity of Municipal Committee and secure independence of the members of the Committee; it is intended that the Municipal Committee should not contain persons who are under the obligation of the Government, Municipality or any local authority. In order to ensure free and fearless discussion, it becomes necessary to see that the persons who compose the Committee are not in any way under the influence of the Government, the Municipality, or any local authority. This is evidently to avoid conflict between a member's duty and his interest. Section 27 being of a disqualifying nature will have to be rigidly construed. It is true that the expression office of profit has not been defined in the Act. It does not seem possible to so define the expression, as it is likely to coyer different kinds of offices or places, which now exist under the said authorities. Section 27, however, is clear that before any person can be said to be suffering from any disqualification, the following three things must be satisfactorily proved :

(1) that he holds an office or any place,

(2) that it is an office or place of profit, and

(3) that it is an office under the Government, Municipality, or any local authority.

It is not the contention of the petitioners that respondents 3 to 12 hold office or place of profit under the Government, either the State or the Union, or under any local authority. The submission is that as they were sitting members of the City Municipality, Warangal, and as such were receiving Rs, 5 for every meeting which they attended, they would be deemed to have been holding office or place of profit under the Municipality on the date when they sought their re-election. It is unnecessary in our view to discuss elaborately what the word "Office" connotes. It is sufficient to say that 'office' means a position or place to which certain duties are attached more or less of a public character, and that it is a sort of permanent position held by successive incumbents. An office may be with or without remuneration and may or may not be under the said authorities. It is "a right to exercise a public or private employment" or to hold a position which has certain duties attached to it.

The connotation being very general it would not be correct to say that the membership of Municipal Committee is not an office. In fact, the Act itself describes it in some provisions as the office. The crucial question, however, is whether it is an office of profit. Now the only contention is that as every member gets Rs. 5 as sitting fees and as all the members reside in the City of Warangal, they do not spend Rs. 5 towards their conveyance charges, and the balance which is left with them should therefore be construed as a profit which is derived from attending the meeting of the Committee. We are unable to give any effect to this argument.

The learned Advocate called in aid a decision in In the matter of, Vindhya Pradesh Legislative Assembly Members. 4 Ele LR 422. In that case a question which was referred by the President to the Election Commission was whether the members of the Legislative Assembly, who were appointed members of the respective District Advisory Councils and who were getting travelling allowance and daily allowance, had become disqualified to be members of the Assembly. The Election Commission gave opinion that membership of the Vindhya Pradesh District Advisory Councils was an 'office' and that the members held that office under the Government of Vindhya Pradesh. Members of the Assembly who had, therefore, actually attended any meeting of a Council must be said to have held such an office.

The Commission also gave opinion that where a member of a Council is merely entitled to a bona fide travelling allowance or daily allowance as distinguished from sitting fees or attendance fees which purports to cover and presumably covers only his actual out-of-pocket expenses and the amount of allowance is not fixed at such a high figure as to make it mere cloak for giving a profit there is no 'profit'. Consequently, the payment of one and a half first

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class railway fare to the members of the Dist. Advisory Councils was not a source of profit to the members. It was also opined that the daily allowance at the rate of Rs. 5-0-0 per diem which was being credited to the members of the Legislative Assembly for the sessions of the Assembly was such a reasonable amount that it cannot be said to yield any profit to the members of the Councils who went to attend the meetings thereof. The Election Commission, however, was of the opinion that by making the daily allowance rate the same for resident and non-resident members the Govt. laid itself open to the charge of offering a certain amount of profit though a small profit, to the resident members, and as the quantum of profit is not the material consideration, members residing in the District Headquarters who had attended any of the meetings of the Advisory Councils, should be deemed to have held offices of profit under the Govt. and therefore incurred the disqualification.

It is this last portion of the opinion which is relied upon by Mr. Sastry, who appears for the petitioners. His contention is that any member of the Municipality attending any meeting from any remote corner of Warangal, can so attend by spending not more than eight annas on conveyance. The member, therefore, makes a profit of Es. 4-8-0 for every meeting which he attends. It is his contention, therefore, that we should hold that the members hold office of profit under the Municipality.

4. We do not think that we can accept the approach of the Election Commission to this question as correct. The consideration in all such cases, which ought to be borne in mind is, in our opinion, not whether the holder himself made profit out of the office, but whether the office was one which enables him to make profit. In other words, was it the intention of the Legislature, or the Government, which provided the daily allowance or travelling allowance for such members, that the office of members of Municipality should carry any profit or remuneration ? If the intention in so providing the daily or travelling allowance is not to make the office remunerative, it is clear that it cannot be called as an office of profit. In other words, if the intention is only to provide such sum which will cover approximately the out-of-pocket expenses, which these members are likely to incur, it can by no stretch of imagination be called as an office or place which provides profits or remuneration to the members. In this connection the following cases lend strength to the proposition that merely because some provision is made for daily allowance or travelling allowance, it cannot be said that the office is an office of profit. These cases generally hold that when the provision is made to meet the actual expenses incurred by the member in undertaking to attend the meeting and various other expenses connected with the duties of the Committee and when the amount paid is by no means generous, it can never be emoluments by way of profit or gain for any work done by such members. See :

Parasu Ram v. Chudamani Dev, 13 Ele LR 66 : Ramdayal Ayodhya Prasad Gupta v. K.R. Patil, 18 Ele LR 378; Lachhman Singh v. Harparkash Kaur, 19 Ele LR 417 (Punj); Karu Lal v. Fida Hussain, 20 Ele LR 169 : (AIR 1980 Pat 556).

5. This question also was considered by the Supreme Court. In Ravanna Subanna v. G.S. Kaggeerappa, AIR 1954 SC 653 at pp. 656, 657, their Lordships observed :

"The plain meaning of the expression (office of profit) seems to be that an office must be held under Government to which any pay, salary, emoluments or allowance is attached. The word 'profit' connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material; but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit. It appears from the rules that the Taluk Development Committee is constituted as a part of the scheme for re-organisation of rural development.

It is a sort of Advisory body consisting of 10 members and is presided over by a non-official Chairman. The Chairman has no executive duties to perform which are left entirely to the Amildar of the Taluk who is the 'ex officio' Secretary to the Committee while a Special Revenue Inspector is to act as Assistant Secretary. The Chairman is to preside over meetings which are to be convened by the Secretary in consultation with him and the rules provide that the Chairman will be entitled to a fee of Rs. 6 for each sitting he attends.

From the facts stated above, we think it can't reasonably be inferred that the fee of Rs. 6 which the non-official Chairman is entitled to draw for each sitting of the Committee, he attends, is not meant to be a payment by way of remuneration or profit, but it is given to him as a consolidated fee for the out-of-pocket expenses which he has to incur for attending the meetings of the committee. We do not think that it was the intention of the Government which created these Taluk Development Committees which were to be manned exclusively by non-officials, that the office of the Chairman or of the members should carry any profit or remuneration."

In view of the said dicta of the Supreme Court, there can be little doubt that Rs. 5 which are paid to the members for attending the meetings of the Municipal Committee are given to them as a consolidated fee for the out-of-pocket expenses which they are to incur for attending the meetings of the Committee and that there is no intention of making the Municipal Member's office as an office or place which should carry any profit or remuneration. The conclusion, therefore, is irresistible that the Municipal membership is not an office of profit.

6. In this connection the contention of Mr. Sastry that these members hold office of profit under the Municipality cannot also be accepted as sound. It must be remembered that Municipal Committees are a body corporate and have perpetual succession, and they can sue or be sued in their corporate capacity. This corporate capacity is lent to the Committee by the statute. The members who are elected to this Committee constitute the Committee. It is, therefore, meaningless to say that the members who constitute the Committee are subordinate to the Committee, or holding an office or place of profit under the Committee. No authority is shown to substantiate this proposition by the learned Advocate for the petitioners.

It is useful in this connection to refer to the following two decisions : Yograj Singh Shanker Singh) v. Sitaram Hirachand, 3 Ele LR 439; Bhola Nath v. Krishnachandra Gupta, 6 Ele LR 104. In both these cases, it was held that a member of the Legislative Assembly of a State drawing a fixed salary and daily allowance and travelling allowance does not hold art office of profit under the Government. Similarly in, Ram Naraian v. Ramchandra, 15 Ele LR 100 : (AIR 1958 Bom 325) it was decided by a Bench of the Bombay High Court that though a member of the Legislative Council of a State who receives a monthly salary holds an office of profit, he does not hold an office of profit "under the Government of India or the State Government", within the meaning of Art. 191(1)(a) of the Constitution.

It cannot be forgotten that members of the Municipal Committee are elected by the voters on the

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basis of adult franchise. They are entitled to hold the office until their term of office expires. Nobody can remove them from this office before the end of their term of office. No disciplinary action can be taken against them by anybody. It is for the electors who have chosen them as their representatives to reconsider at the time of the next election, if they otter for re-election, whether their previous conduct had been such as to entitle them to be returned to the Municipal Committee. Except this limitation there does not seem to be any other limitation on their office.

The principal tests for deciding whether an office or place is under the Government, Municipality, or any local authority are firstly what authority has the power to make an appointment to the office concerned, and secondly what authority can take disciplinary action against, or remove or dismiss, the holder of office, and thirdly by whom and from what source his remuneration is paid. It is needless to point out that the first two tests are more important than the third one. It may be that the members are paid their sitting fees allowance from the Municipal fund. But it is not denied that the members are neither appointed by the Committee, nor the Committee is authorised to take any disciplinary action against the members, or remove or dismiss them. No provision of the Act was brought to our notice which creates such a position. We are, therefore, not persuaded to agree with the submission made by Mr. Sastry that members of Municipal Committee hold office of profit under the Municipality and as such they are disqualified.

7. Secondly, it was urged by the learned Advocate for the petitioners that respondent No. 21 is and has bet 11 a member of the Market Committee appointed under the provisions of the Hyderabad Agriculture Market Act, that he is also the Chairman of the same Committee and that he is, therefore, a person holding an office of profit under local authority within the meaning of S. 27(1)(c) of the Act, as respondent No. 21 gets some allowance. The petition is not clear as to what allowance the Chairman gets. The Market Committee constituted under the Hyderabad Agriculture Market Act is said to be a local authority. Now the expression 'local authority' is defined in the Act. Section 218 of the Act is in the following terms :

"Local authority includes a Municipal Corporation, Municipal and Town Committee, District Board and Cantonment Board."

More or less the same definition occurs in the Hyderabad General Clauses Act. In view of this definition it is doubtful whether Market Committee can be called a local authority for the purposes of this Act. Assuming, without of course deciding however, that the Market Committee is a local authority, in the tight of the abovesaid discussion, it is futile to contend that the Chairman of the Market Committee holds an office of profit under the Market Committee. Market Committee again is a statutory body and performs various Junctions under the Act. The Chairman is elected by the Committee. The office which he holds is not remunerative in the sense in which it is generally understood. Nor it is the intention of the Legislature or the Government to make that office an office of gain or remuneration. We do not, therefore, think that the Chairman of a Market Committee holds any office or place of profit under the Market Committee and as such he is disqualified for being elected to the Municipal Committee, Warangal.

8. Thirdly, it was contended by Mr. Sastry that the electoral rolls on the basis of which elections to this Municipality were held were not finalised. There were number of persons whose names were omitted. Amendments to the electoral rolls were made even on 23rd April, 1981 and these amendments were adopted for the purposes of Municipal election on 25-4-1961. In these circumstances his submission is two-fold. Firstly he says that the electoral rolls which were adopted for the purposes of Municipal election before the programme of election was finalised, alone ought to have been used and as the subsequent amendments made to the electoral rolls which were published on 25th April, 1981 were also used, the election cannot be considered as having, been validly held. Secondly, he contends that no opportunity was given to the petitioners or for that matter to others, to submit objections and as the amended list was published on 25th April, 1961 and the elections were held on 26th April, 1961, it could not be said that the voters according to the amended list could vote in such elections.

9. What is, however, overlooked by Mr. Sastry is, that according to S. 10 of the Act every person-whose name is included in such part of the electoral roll for any Assembly constituency as relates to Municipality or any portion thereof shall be entitled to be included in the electoral roll for the Municipality prepared for the purposes of the Act and no person shall be entitled to be included in such roll.

According to Sub-S. (2) of S. 10 the electoral rolls for the Assembly constituency which consist of or comprise the Municipality or any portion thereof as soon as they are published or revised or amended in pursuance of the Representation of the People Act, 1950 would be adopted as the electoral roll for the Municipality such electoral roll shall remain in force until the publication of the fresh electoral roll for the Municipality under Sub-S. (2). It is these persons whose names appear in the electoral roll for the Municipality who are entitled to vote. It is thus clear from the provisions of S. 10 that the electoral roll prepared for the purposes of Assembly constituencies is adopted for the purposes of Municipality. Such adoptions are made from time to time as and when the electoral rolls of the. Assembly constituencies are published, revised or amended. Now, according to S. 11 of the Act the prescribed authority may after making such enquiry as he thinks fit, direct amendments to the electoral rolls for any Municipality for the purpose of bringing it in accord with the electoral roll for the relevant Assembly constituencies. From a combined reading of these two sections it follows that the Assembly electoral rolls are adopted for the purposes of Municipalities. The prescribed authority is authorised to amend the electoral rolls only with a purpose to bring it in accord with the Assembly electoral rolls. How these electoral rolls should be published and how the amendments carried out under S. 11 again are to be published is being shown in detail in G. O. Ms. 192 dated 12th February, 1930.

It is not denied that before the election programme was announced the electoral rolls of the Assembly were adopted for the purposes of Municipal elections of Warangal. There can, therefore, be no-objection as far as the adoption of those electoral rolls are concerned. In fact no objection was so taken to those rolls before us. It is admitted that the amendments to the Assembly electoral rolls which were in force were made by addition of certain names therein on 23rd April, 1961. These amended Assembly electoral rolls were adopted on 25th April 1961 for the Municipality. We fail to see how can an objection be taken to such an adoption of the Assembly electoral rolls. No provision has been brought to our notice whereby the electoral rolls adopted before the riling of the nomination papers must alone form the basis for actual voting. Section 11 of the Act empowers the election authority to make amendments to the electoral roll for any

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Municipality for the purposes of bringing it in accord with the electoral rolls of the relevant Assembly constituencies.

In the present case there is no allegation that the constituencies of the Municipality have been altered, nor is there any allegation that the respective electoral rolls of the constituencies were defective in any material particular. There is no provision in the Act or the Rules that the electoral roll, as it stood when the date of the election was notified, should not be amended and brought upto date before the election. In fact even according to the Representation of the People Act there can be amendments to the electoral roll after the programme of the election is announced. It is true that under S. 26 of the Act only those whose names find place in the electoral rolls as they stood on the date of the filing of the nomination papers can stand as candidates and those whose names appear thereafter in an electoral roll obviously cannot stand. But that does not mean that the electoral rolls cannot be subsequently amended in order to provide as wide a franchise as possible.

It cannot be disputed that the electors being generally lethargic woke up only when the elections are approaching when the interested candidates or political parties go round to find out whether the names of their supporters find place in the Municipal electoral rolls. When they find some omission or mistakes the electors are persuaded to get their names included or corrected. It is with that view that the Rules under the Representation of the People Act provide that any person can give an application to the Chief Electoral Officer for inclusion of his name in the electoral roll, in case the application is to be made at any time after the issue of the notification calling upon the constituency to elect a member or members and before the completion of that election. In other cases, the application will lie to the Electoral Registration Officer of the constituency. The difference in charges to get the amendment made also denotes that such amendments can be made before the completion of election.

There can thus be a finalised roll before the nominations are actually received. This electoral roll can further be amended before the constituencies actually go to the poll. The persons whose names appear in the electoral roll can cast their votes. This procedure which is applicable to the general Elections of the Legislature appears to have been followed in respect of elections to the Municipalities also. That is why Sections 10 and 11 of the Act do not provide anything restricting such amendments. It is true that there should be some finality given to the electoral rolls before they are actually used either for the purposes of receiving nomination papers or for the purposes of casting votes. But these electoral rolls are finalised before the nomination papers are received, or before the actual voting takes place. Provisions of Sections 10 and 11 clearly point out that as and when the electoral rolls are revised or amended by the concerned authorities for the Assembly constituencies the duty is cast on the prescribed authority to adopt the same as soon as such amendments are made for the purposes of Municipality. The Officer concerned would have been guilty of omitting to adopt, if he had not adopted, the Assembly electoral roils amended by the respective authorities on 23rd April 1961, We do not therefore find any reason for complaint when the Assembly electoral rolls were adopted on 25th April 1961.

10. The next contention in this regard that no opportunity was provided to the petitioners or others to file objections in regard to the electoral roll adopted on 25th April 1961 cannot be accepted as sound and correct. Reliance in this connection was placed on the decision of the Supreme Court in Chief Commissioner, Ajmer v. Radhey Snyam Dani, 1957 SCR 68 : ( (S) AIR 1957 SC 304). It appears from the facts of that case that Sub-Section (2) of Section 30 of the Ajmer-Merwara Municipalities Regulation, 1925 as amended provided that "every person who would be entitled under the Representation of the People Act, 1950 (XLIII of 1950) to be registered in the electoral roll for a Parliamentary Constituency if that Constituency had been co-extensive with the Municipality, and whose name is registered in the electoral roll for the Parliamentary Constituency composing the Municipality, shall be entitled to be enrolled as an elector of the Municipality" and Section 43 enabled the Chief Commissioner to make rules consistent with the Regulation for the preparation and revision of electoral rolls and the adjudication of claims to be enrolled and objections to enrolment. In exercise of these powers some rules were framed which inter alia provide that electoral roll for the particular Municipality shall be the same as the final printed roll for the Parliamentary constituency representing the area covered by the Municipality. The election programme was notified and the electoral rolls were published.

The validity of the notification and the electoral roll was challenged in that case. It was held that under S. 30(2) of the Ajmer-Merwara Municipalities Regulation, 1925, the electoral roll for the Parliamentary constituency was only treated as the basis for the electoral roll of the Municipality and that the rules in so far as they made no provision for the revision of the electoral roll, for the adjudication of claims to be included therein or for entertaining objections to such inclusion are defective and therefore the electoral roll of the Ajmer Municipality which was authenticated and published by the appellant on 8th August 1955 was not in conformity with the provisions of Section 30(2) and the relevant provisions of the Regulation and could not form the basis of any valid elections to be held to the Ajmer Municipal Committee.

It will be noticed that in that case the point for consideration was with regard to making rules consistent with the Regulation for the preparation and revision of electoral rolls and the adjudication of claims to be enrolled and objections to enrolment. This case, therefore, is clearly distinguishable. Sections 10 and 11 of the Act provide that the Assembly electoral roll for the time being in force in such part of the constituency of the Assembly as is included for Municipality for the purposes of the Act be deemed to be the list of voters for such Municipality. The Act therefore makes the relevant part of the Assembly Electoral roll as the electoral roll of the Municipality. The Act does not contain any provision similar to Section 43 of the Ajmer-Merwara Municipalities Regulation, 1925 for making rules for the preparation and revision of electoral roll.

11. Consequently the petitioners are not entitled to object to this electoral roll. It cannot be forgotten that the electoral rolls of the Assembly constituency are prepared under the provisions of the Representation of the People Act, 1950 and the Registration of Electors Rules, 1960. For raising objections in regard to the preparation, revision and amendment of such rules a machinery is provided under that Act and the Rules. If the petitioners or any others wanted their names to be included in the Assembly electoral rolls they had any amount of opportunity to do so. Even after the election programme was announced, they could have availed themselves of the opportunities provided under that Act and the Rules. No direct amendment can be made or objection entertained by the prescribed authority under Section 11 of the Act. What Section 11 enjoins is that the prescribed authority

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may make necessary amendments only for the purpose of bringing the Municipal electoral roll in accord with the Assembly electoral roll. The purpose of Section 11, therefore, is very limited in its scope. The grievance, therefore, that the petitioners had no opportunity to object is not correct. The complaint that several hundred voters' names were not included cannot be accepted.

The Election Tribunal, or for that matter the High Court in Writ Petitions have no jurisdiction to enquire whether all persons qualified to vote were entered in the rolls. The jurisdiction to prepare the electoral rolls is vested in certain authorities under the Act and the Rules referred to above and the provisions of that Act and the Rules gave finality to the decision of those authorises. It would be, therefore, futile to challenge the validity of the election on the ground that some persons qualified to vote were not included in the electoral rolls. If the petitioners were not vigilant enough to see that the Assembly electoral roll is brought upto date and that the adoption of the same is made by the Municipality, they have to blame themselves for their negligence. They cannot, however, make a grouse that the electoral roll omits to include several voters who are entitled to vote. If their contention is accepted that unless all the electors of the City Municipality are not included in the electoral roll, there will be no final electoral roll on the basis of which elections can take place, then there will be no final electoral roll at any stage, nor there can be any election at all. Some names would always be found to be missing or incorrectly entered. It is too much to expect that such electoral rolls would be final in the sense that every person entitled to vote is entered in it accurately.

12. In this connection, it is useful to refer to a decision of this Court in Venkateswara Rao v. State of Andhra Pradesh, AIR 1958 Andh. Pra. 458 K. Subba Rao, C.J., as he then was, who spoke for the Bench observed :

"While we appreciate the contention of the learned counsel that the Government or the authority concerned should have made a provision by prescribing a reasonable time for filing objections before an election authority, we are satisfied, having regard to the qualifications prescribed for a person entitled to be placed on the Municipal electoral roll, the manner in which the electoral rolls of the Municipalities are prepared and the time, as a matter of fact available to the petitioners and others to raise objections if they choose that the electorate, in the present case have not in any way been prejudiced."

In that case Ss, 44 and 45 of the Madras District Municipalities Act which are identical to Ss. 10 and 11 of the Act were under the consideration of the Court. Almost similar objections in regard to electoral rolls were raised, which were negatived. In that case this Court had occasion to consider elaborately the decision of the Supreme Court in (S) AIR 1957 SC 304. It was similarly found therein that a deeper scrutiny of that decision of the Supreme Court would bring out the essential difference between the provisions of the Act under the review of the Supreme Court and those of the Madras District Municipalities Act. A decision to the same effect is that of Subbayya v. The State. 1958 Andh. LT 674. Mr. Shanker Sastry invited our attention to the two decisions of the Patna High Court in support of his contention that the electoral roll, which was not finalised according to him cannot validly form the basis of Municipal election.

The first case is Parmeshwar Mahaseth v. The state of Bihar, AIR 1958 Pat. 149. It is true that it was found in that case that electoral rolls have not been finalised and published properly and therefore the election held on such electoral rolls was declared to be invalid. That decision, however, has to be understood in relation to the facts of that particular case and the Municipal Election Law prevalent in the State of Bihar. As it is apparent from the decision that the relevant provisions of the Election Rules and the Bihar and Orissa Municipal Act elaborately set out in the judgment - did not dispense with the preparation of a separate register of the voters ward by ward, of course, on the basis of the electoral roll of the Assembly constituency. Section 15 of that Act envisages a separate register of voters, and the Election Rules, their Lordships observe, do not and cannot over-ride that statutory provision. Rule 3 lays down the qualification for registration as electors. Rule 6(b) describes the disqualifications. Section 19 empowers the State Government to make rules inter alia to regulate and determine the authority which shall decide disputes arising under any rules made under that section.

Their Lordships drew the conclusion from the said provisions that the effect of those provisions is that the adoption of the Assembly electoral rolls did not entirely do away with the investigation of the claims to be enrolled therein and objections to such enrolments, otherwise the prescription of qualifications and disqualifications in the Act would be meaningless. As the abovesaid provisions of the Act and the Rules referred to were not followed and the electoral rolls were not prepared and published according to them, it was obvious that the decision of the Supreme Courts in (S) AIR 1957 SC 304 applied to that case with full vigour.

For the reasons which we have given above while discussing the case of (S) A. I. R. 1957 SC 304, the case of AIR 1958 Pat. 149 would also be inapplicable to the facts of this case. There is marked difference between the scheme of the Bihar and Orissa Municipal Act and the Election Rules made thereunder and the Act and Rules which fall for our consideration here. The other cases relied upon by Mr. Sastry is Sabhir Ahmad v. District Magistrate of Darbhanga, A I. R. 1959 Pat. 409. While we fully agree, with respect, with the dicta of the said decision that "it is indisputable that an important document like electoral roll on which depends the exercise of civil rights of the people should be prepared after due publicity and after thorough examination of the claims and objections of the voters, it is obvious that when the very foundation of the election is imperfect, the election cannot stand. Therefore, the preparation of the electoral roll postulates that fair and full opportunity was given to the citizens to lay claims for enrolment as voters or to raise objections to the enrolment of other persons as voters," it is not possible for us to agree with the conclusions of that decision obviously because the Bihar and Orissa Municipal Act and the Rules made thereunder are substantially different from the Act and the Rules made thereunder.

13. We have already held that the petitioners and those who wanted to put in objections or claims had ample opportunity to do so before the electoral rolls were published, revised or amended by the competent authorities under the Registration of Electors Rules 1960 and even after the published, revised or amended Assembly electoral rolls were adopted for the purposes of Municipality, the petitioners and others could have raised objections to such adoption within the narrow scope available to them under S. 11 of the Act. As they have not availed of those opportunities, they have no reason to complain that the electoral rolls were not final or that they had no opportunity to put in their objections or claims.

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14. Finally, it was argued that the counter foils of ballot papers contain serial numbers and the names of the voters which violate the principles of secrecy of election and as such the entire election is invalid. We are not impressed with this argument also. Rule 30 of the Rules under the Hyderabad District Municipalities Act enjoins that votes shall be given by ballot in the prescribed manner. Rule 31 prescribes the method of voting. Rule 33 provides for the arrangement for secrecy of voting. It provides that each polling station shall be so arranged that the voters can record their votes "screened from observation". Rule 35 says that the ballot paper shall be marked with such official mark as may be specified by the Government, which mark shall be kept secret. Rule 36 provides for ballot boxes to be locked and sealed before commencement of poll. Rule 38 is of materiality. While R. 38(1) provides for the procedure before recording of votes. Rule 38(2) specifically refers to the point under our consideration, Rule 38(2) is in the following terms :

"38 (2). The Polling Officer shall at the time of delivery of the ballot paper or papers to a voter, put against the serial number of that voter, in the constituency list, a mark to denote that such voter has received a ballot paper or ballot papers and shall also keep a record of the serial number or numbers of the ballot papers supplied to the voter in such manner as the Returning Officer may subject to the general or special instructions issued in that behalf by the Government, direct."

Rule 43 states that the ballot paper to be used for the purposes of voting at an election under these rules shall contain a serial number and such distinguishing marks as the Government may decide. Rule 47 provides that after the close of the poll in the presence of any candidates or their election or polling agents who may be present, the ballot boxes may be closed and sealed. The Presiding Officer also would make up into separate packets the unused ballot papers, the marked copy of the list of voters and any other paper directed by the Returning Officer to be kept in a sealed packet along with other papers mentioned in the said Rule. Rule 48 enjoins upon the Presiding Officer to keep an account of ballot papers, Rule 69 provides that the Returning Officer shall keep in his own custody the packets of ballot papers and all other papers relating to the election. Rule 70 says that the election papers as mentioned above shall not be opened and their contents shall not be inspected by, or produced before, any person or authority except under the order of a competent court or of a tribunal.

Finally Rule 71 provides the packets referred to in sub-rule (1) of Rule 70 shall be retained for a period of one year and shall thereafter be destroyed subject to any direction to the contrary given by the Government or by a competent court or by a Tribunal and all other papers relating to the election shall be retained until the termination of the general election for the constituency to which they relate and shall thereafter be destroyed.

Along with these Rules Section 298 of the Act must also be kept in view. It is in the following terms :

"298 (1) Every Officer, Clerk, agent or other person who performs any duty in connection with the recording or counting of votes at an election shall maintain, and aid in maintaining, the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy."

Sub-Section (2) of that Section provides for punishment for violation of Sub-Section (1). These are the relevant provisions which provide for the secrecy of ballot. In the light of these provisions, it is clear that there is nothing like absolute secrecy of ballot. But the maintenance of secrecy is only subject to the various provisions mentioned in the Act or the Rules made thereunder. That is so even under the Representation of the People Act, 1951 and the Rules made thereunder.

While Section 128 of the Representation of the People Act, 1951, is identical with Section. 298 of the Act, Rule 38(2) extracted above is identical with Rule 38(2) of the Conduct of Election Rules, 1961 made under the Representation of the People Act, 1951. Even under the Madras District Municipalities. Act and the Rules made thereunder, substantially similar provisions appear therein. Section 56 of the Madras District Municipalities Act is similar to S. 298 of the Act and Rule 15 under the Madras District Municipalities Act is almost identical with Rule 38 under the Act. The only difference between, Rule 15(4) under the Madras District Municipalities Act and Rule 38(2) under the Act is that whereas the Rule under the Madras Act specifically provides, that the polling officer shall enter on the counterfoil or on the first of the counter-foils, as the case may be the name and number of the elector in the electoral roll, Rule 38(2) of the Act merely provides that the polling officer shall put a mark against the serial number of that voter in the constituency list to denote that such voter has received the ballot paper and shall also make a record of serial number or numbers of the bellot papers.

It is evident that counter-foils of the ballot papers can be maintained under the said Rule. No serious objection, therefore, can be taken to the use and maintenance of the counterfoils to the ballot papers as is the case under the Madras District Municipalities Rules. We do not, therefore, see any violation of Rule 43 in the instant case. We have already stated that the practice followed in the instant case is identical with the one which provides in the other area of our State and is also prevalent, in Madras as the Rules quoted above are similar.

It is useful to quote a passage from Halsbury's Laws of England, Vol. 12, page 297, para. 579 Hailsham Edition, which makes the position abundantly clear that exactly the same system is followed, in the U. K. It is as follows :

"Immediately before a ballot paper is delivered to an elector it must be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register must be called out and the number of such elector, and the distinctive letter of the polling district in which the elector is registered, must be marked on the counter-foil, and a mark must be placed in the register against the number of the elector to denote that he has received a bellot paper, but without showing the particular ballot paper which he has received."

We are not therefore prepared to accept the argument that because counter-foils of the ballot papers are maintained in which serial number of the elector as appears in the electoral roll and his name are entered it violates in any manner the secrecy of voting. It is not denied that ballot papers actually issued to the voters did not contain any distinct mark, which would disclose as to who the elector is. If that is so, then it is not possible to detect from the ballot papers as to whom the ballot paper was given or that any particular voter voted for a particular candidate. The secrecy which is required to be maintained is in reference to the ballot papers. It .cannot be extended to either the counter-foils of the ballot papers which are validly

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maintained under the Rules, or to the particular electoral roll on which marks are maintained to denote that the ballot papers are issued to those electors. This record is necessary to check the personation of the elector or multiple issue of the ballot papers to the same person. It becomes also necessary to maintain and preserve such record in order to provide necessary evidence if any complaint is made regarding personation or any other such thing. The Act and the Rules provided for that and it cannot, therefore, be successfully contended that because of this record secrecy of bellot is violated. We have already pointed out in detail the various provisions which enjoin upon the authorities concerned to seal these counter-foils and the particular elector roll on which marks are made in the presence of the candidates or their agents and after the packets are sealed they are kept in the custody of the Returning Officer, and these packets can be opened only under the orders of a Court or a Tribunal, and can be destroyed only after their utility is over.

These provisions therefore take ample care to see that secrecy of ballot is not violated. It must be remembered that in this way the counter-foil and the electoral roll that is marked are kept finally under the supervision of the Court or the Tribunal. It is true that the Presiding and the Returning Officers at the moment are Government servants. The conduct of the Municipal elections under the direction and through the agency of the Government may be looked upon with some disfavour on the ground of its being contrary to the spirit of local autonomy. It is true that if an independent body like Election Commission which is in charge of the Legislative elections is established in every State and charged with the duty of superintendence, direction and control of preparation of the electoral rolls for the conduct of all elections to the Municipal Corporation, District Municipalities, Zilla Parishads and Samithis and Panchayats, it will inspire greater confidence and ensure free and fair elections to the various local bodies. But the absence of any such independent election machinery does not, in our opinion, mean that the present machinery through which the elections are held cannot be trusted to ensure the secrecy of voting.

It is too much to argue that when the counterfoils and the electoral roll marked are in the custody of the Presiding or Returning Officer, they being Government servants, secrecy is likely to be violated. It cannot be forgotten while advancing such an argument that the counter-foils and the electoral rolls are sealed in packets in the presence of the candidates or their agents and can be opened only in the presence of the Court or a Tribunal. Thus, the whole matter is entirely removed from the influence of party politics. We agree that free elections constitute the bedrock of democracy although it does not imply that the elections are necessarily pleasant or satisfactory to human intelligence. In the conflict of personality and the parties and principles which constitute an election, the intelligent and sensitive minds abhor what is vulgar and unreasonable. That cannot however be helped. Often times, an election is as painful as birth pangs, but it is a natural and constructive process. As we have adopted the same, we have to trust the machinery.

No allegation is made that in this particular instance the counter-foils or the electoral roll marked were not sealed as required by Rules, or they are tampered with in any manner. In the absence of any such allegation, we are not prepared to accept that the principle of secrecy is violated in the instant case or that the Rules are such that they violate the principle of secrecy of ballot.

15. Mr. Sastry relied upon Narasimhalu v. Narasimham, AIR 1953 Mad 932 and Upadhyay Ambika Prasad v. Lakshmi Mohan Misra, 1 DEC 330. In both these cases, the ballot papers were marked in such manner as to indicate the identity of the elector. In the light of the discussion as above, these decisions do not lend any strength to the argument of Mr. Sastry because in the present case it is conceded that ballot papers issued to the voters did not contain any distinguishing marks which enable the identity of voters. No decision was cited before us which says that the counter-foils or the elector roll marks under the Rules also violate the principle of secrecy. We do not therefore see that by maintenance of counterfoils or the marked electoral roll any provisions of the Act or Rules made thereunder is violated. This argument, therefore, also must be rejected.

16. Before we part with the case, we must make an observation that the petitioners do not seem to have been prompted with any bona fide desire to get any election dispute settled. They ought to have been vigilant if they want to be enlightened citizens who believe in the principle of local bodies' autonomy. They ought to have taken suitable steps to see that the electoral rolls are properly prepared and adopted and that various rules and the provisions of the Act are properly implemented. They do not seem to have participated at any stage in the process of election. They have not taken the advantage of S. 21 or S. 24 of the Act which provide appeals against the wrongful acceptance or rejection of nomination papers and for the decision of election disputes by a Tribunal. Instead, they have directly rushed to this Court with a petition under Art. 228 of the Constitution. We have no doubt that it is the defeated candidates who must have set the petitioners to fight out their election disputes in this manner. As there is no ground to hold that Respondents 1 and 2 have not discharged the duties enjoined on them under the Act or the Rules made thereunder or that they purported to perform the duties contrary to the provisions of the Act or the Rules made thereunder, it follows that Writ of Mandamus cannot be issued. This petition, in our opinion, is utterly devoid of any merit and deserves to be dismissed. The petition therefore, is dismissed with costs, two sets. Advocate's fee Rs. 250/- each.

Petition dismissed.

AIR 1964 ANDHRA PRADESH 421 (Vol. 51, C. 111) "Sudarshan v. Dist. Collector"

ANDHRA PRADESH HIGH COURT

Coram : 2 P. CHANDRA REDDY, C.J. AND GOPAL RAO EKBOTE, J. ( Division Bench )

Pakanti Sudarshan Reddy and others, Petitioners v. District Collector, Warangal and others, Respondents.

Writ Petn. No. 589 of 1961, D/- 13 -2 -1963.

(A) Hyderabad District Municipalities Act (18 of 1956), S.27(1)(c) - MUNICIPALITIES - ELECTION - WORDS AND PHRASES - Municipalities - Election of members - Disqualifications - Holding an "office of profit" - Expressions "Office" and "Office of profit" - Meaning - Continuing as member and receiving a small amount of sitting fee for attending Committee meetings does not amount to holding an "Office of profit" under the Committee and is not a disqualification for election.

An office is a right to exercise a "public or private employment" or to hold a position which has certain duties attached to it. It means a position or a place to which certain duties are attached more or less of a public character and it is a sort of permanent position held by successive incumbents. It may be with or without a remuneration. (Para 3)

The expression "Office of profit" means that an office must be held under the Government, or Municipality or local authority to which any pay, salary, emoluments or allowance is attached. The word "profit" connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material, but the amount of money receivable by a person in connection with the office he holds may be

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material in deciding whether the office really carries any profit. AIR 1954 SC 653, foll.; 13 Ele. LR 66 and AIR 1960 Pat 558, Ref.; 4 Ele. LR 422, Not followed. (Para 5)

The consideration in determining whether an office is an office of profit is not whether the holder himself makes profit out of the office, but whether the office was one which enables him to make profit. In case of members of a municipal committee receiving a sitting tee for attending the meetings, if the intention in paying the amount is only to provide such sum which will cover approximately the out of pocket expenses, which these members are likely to incur, it can by no stretch of imagination be called as an office or place which provides profits or remuneration to the members. (Para 3)

Members of a municipal committee who are paid a small amount of sitting fee as a consolidated fee for the out or pocket expenses which they are to incur for attending the meetings of the Society though hold an "Office" cannot be said to hold an "Office of profit" so as to entail disqualification for election as members. Such members themselves constitute the Municipal Committee and are not subordinate to the Committee. They cannot also be said to hold an office or a place of profit under the Municipal Committee." 3 Ele. L.R. 439 and AIR 1958 Rel. on.

(Such members are not disentitled under S. 27(1)(c) of the Hyderabad District Municipal Act, for election to the Committee). (Paras 5 and 6)

(B) Hyderabad District Municipalities Act (18 of 1956), S.27 - MUNICIPALITIES - OBJECT OF AN ACT - Municipalities - Provision require strict construction - Object of the provision is to secure purity of Committee and independence of members - Conditions to be proved before a member can be disqualified.

Section 27 being of a disqualifying nature has to be rightly, construed. The object of the section is to ensure purity of Municipal Committee and secure independence of the members of the Committee. It is tended that the Municipal Committee should not contain persons who are under the obligations of the Government, Municipality or any local authority. Before any person can be said to be suffering from any disqualification, the following three thongs must be satisfactorily proved :

(1) that he holds an office or any place (2) that it is an office or place of profit and (3) that it is in an office under the Government, Municipality or any local authority. (Para 3)

(C) Hydrabad District Municipalities Act (18 of 1956), S.27(1)(c) and S.2(19) - MUNICIPALITIES - AGRICULTURAL PRODUCE - LOCAL AUTHORITY - Municipalities - Office of profit under local authority - Chairman of a market Committee constituted under Hydrabad Agricultural Market Act is not a person holding an office of profit under local authority-Not disqualified to be elected as a member. (Para 7)

(D) Hydrabad District Municipalities Act (18 of 1956), S.10 and S.11 - MUNICIPALITIES - ELECTION - AMENDMENT - Municipalities - Amendment to electoral roll bringing it in accordance with Assembly Constituency rolls, adopted a day before election - Election not rendered invalid.

Elections to a Municipal Committee held on 26-04-1961 were challenged on the grounds inter alia, that electoral roll on the basis of which elections were held were not finalized. It was alleged that were held number of person whose names were omitted. Amendments to the electoral rolls were made even on 23rd April, 1961 and these amendments were adopted for the purposes of Municipal election on 25-04-1961. It was contended that the electoral rolls which were adopted for the purposes of Municipal election before the programme of election was finalised, alone ought to have been used and as the subsequent amendments made to the electoral rolls which were published on 25th April, 1961 were also used, the election could not be considered as having been validly held.

Held, on a consideration of Ss. 10 and 11 of the Act that the elections could not be challenged on the ground that amendment to electoral rolls were made and adopted on the day before the elections. Provisions of Ss. 10 and 11 clearly pointed out that as and when the electoral rolls were revised or amended by the concerned authorities for the Assembly constituencies the duty was cast on the prescribed authority to adopt the same as soon as such amendments were made for the purposes of Municipality. Petitioner could not challenge the adoption of amended electoral rolls. (Para 9)

(E) Constitution of India, Art.226 - WRITS - ELECTION - MUNICIPALITIES - HIGH COURT - Other remedy open - Election dispute - Municipal elections - Objection that all persons qualified to vote were not entered in the electoral roll - Provision in the Municipal Act for Settlement of such objections - High Court cannot enquire - Remedy of person aggrieved is under the Act.

Hyderabad District Municipalities Act (18 of 1956), S.10, S.11, S.12 and S.13.

The election tribunal or the High Court in writ petitions have no jurisdiction to enquire whether all persons qualified to vote were entered in the rolls. (Para 11)

Under the Hyderabad District Municipalities Act the jurisdiction to prepare the electoral rolls is vested in certain authorities under the Act and the Rules and the provisions of that Act and the Rules give finality to the decision of these authorities. It would be, therefore, futile to challenge the validity of the election in a writ petition on the ground that some persons qualified to vote were not included in the electoral rolls. AIR 1958 Andh Pra 458 and 1958 Andh LT 674, Rel. on; (S) AIR 1957 SC 304 and AIR 1958 Pat 149, Explained and Dist.; AIR 1959 Pat 409, Ref. (Para 11)

(F) Hyderabad District Municipalities Act (18 of 1956), S.298 and S.309(i) - MUNICIPALITIES - ELECTION - Municipalities - Rules under R.38(2) and R.43 - Election to Municipal Committee - Counterfoils of ballot papers containing serial number of elector and his name - Ballot papers issued not disclosing any identity of elector - Secrecy of voting not violated.

The mere fact that counter-foils of the ballot papers are maintained in which serial number of the elector as appears in the electoral roll and his name are entered does not violate in any manner the secrecy of voting when ballot papers actually issued to the voters do not contain any distinct mark, which would disclose as to who the elector is AIR 1953 Mad 932 and 1 D E C 330, Dist. (Para 14)

Cases Referred : Courtwise Chronological Paras

('54) AIR 1954 SC 653 (V 41) : ILR (1956) Mys 109, Ravanna Subanna v. G.S. Kaggeerappa 5

('57) (S) AIR 1957 SC 304 (V 44) : 1957 SCR 68, Chief Commr., Ajmer v. Radhey Shyam Dani 10, 12

('58) AIR 1958 AP 458 (V 45) : ILR (1958) Andh-Pra 466, Venkateswara Rao v. State of Andhra Pradesh 12

('58) 1958 Andh LT 674 : 1958-2 Andh WR 456, Subbayya v. The State 12

('58) AIR 1958 Bom 325 (V 45) : 15 Ele LR 100, Ram Narain v. Ramchandra 6

('53) AIR 1953 Mad 932 (V 40) : 1953-2 Mad LJ 279, Narasimhalu v. Narasimham 15

('58) AIR 1958 Pat 149 (V 45) : 1957 BLJ R 672, Parmeshwar Mahaseth v. The State of Bihar 12

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('59) AIR 1959 Pat 409 (V 46), Sabhir Ahmad v. Dist Magistrate of Darbhanga 12

('60) AIR 1960 Pat 556 (V 47) : 20 Ele L R 169, Karu Lal v. Fida Hussain 4

('58) 19 Ele L R 417 (Punj), Lachhman Singh v. Harparkash Kaur 4

1 D E C 330, Upadhyay Ambika Prasad v. Lakshmi Mohan Misra 15

('53) 3 Ele L R 439, Yograj Singh Shanker Singh v. Sitarara Hirachand 6

('53) 4 Ele L R 422, In the matter of, Vindhya Pradesh Legistative Assembly Members 3

('53) 6 Ele L R 104, Bhola Nath v. Krishna Chandra Gupta 6

('57) 13 Ele L R 60, Parasu Ram v. Chandra Chudamani Dev 4

('58) 18 Ela L R 378, Ramdayal Ayodhya Prasad Gupta v. K.R. Patil 4

Ch. Sankara Sastry, for Petitioner; 3rd Government Pleader, for Respondents 1 and 2; K. Madhava Reddy, for 5th Respondent.

Judgement

EKBOTE, J. :- This is an application under Art. 226 of the Constitution of India for the issue of a writ of Mandamus directing the respondents 1 and 2 not to give effect to the election held on 26-04-1961 in respect of the Municipality of Warangal.

2. The material facts lie within a narrow compass and are for the most part uncontroversial. The Government issued a Notification on 11th March, 1961 under S. 17 of the Hyderabad District Municipalities Act, 18 of 1956, hereinafter called the Act, calling upon all the constituencies of the City Municipality, Warangal, to elect members before 27th April, 1981. The District Collector, Warangal, in pursuance of the said Notification under S. 20 of the Act, appointed various dates for nomination etc., according to which the last date for making nominations was fixed as 20th March, 1961 and 26th April, 1961 was fixed as the date of poll. Accordingly, the elections were held on 26th April, 1961 under the supervision of the 2nd respondent, who is the Returning Officer for the purposes of the said elections. Respondents 3 to 36 were declared from various constituencies. The petitioners, who are either the tax payers or the voters residing in the Municipal area of Warangal, filed this application questioning the validity of the election held on 26th April 1961 on various grounds.

3. Firstly, it was urged by the learned Advocate for the petitioners that respondents 3 to 12 being the sitting members of the City Municipality, Warangal, on the material dates of the election were holding office or place of profit under the City Municipality, Warangal, and were, therefore, disqualified in order to appreciate this contention, it becomes necessary to look into S. 27(1)(c) of the Act Section 27, as far as it is relevant for our purpose, is as follows :

"27. (1) Subject to the provisions of this Act a person shall be disqualified for being elected as member of a Committee if such person at the date of election -

(a) ........................

(b) ........................

(c) holds any office or place of profit under the Government or under the Municipality or under any local authority."

The object of S. 27 clearly appears to be to ensure .purity of Municipal Committee and secure independence of the members of the Committee; it is intended that the Municipal Committee should not contain persons who are under the obligation of the Government, Municipality or any local authority. In order to ensure free and fearless discussion, it becomes necessary to see that the persons who compose the Committee are not in any way under the influence of the Government, the Municipality, or any local authority. This is evidently to avoid conflict between a member's duty and his interest. Section 27 being of a disqualifying nature will have to be rigidly construed. It is true that the expression office of profit has not been defined in the Act. It does not seem possible to so define the expression, as it is likely to coyer different kinds of offices or places, which now exist under the said authorities. Section 27, however, is clear that before any person can be said to be suffering from any disqualification, the following three things must be satisfactorily proved :

(1) that he holds an office or any place,

(2) that it is an office or place of profit, and

(3) that it is an office under the Government, Municipality, or any local authority.

It is not the contention of the petitioners that respondents 3 to 12 hold office or place of profit under the Government, either the State or the Union, or under any local authority. The submission is that as they were sitting members of the City Municipality, Warangal, and as such were receiving Rs, 5 for every meeting which they attended, they would be deemed to have been holding office or place of profit under the Municipality on the date when they sought their re-election. It is unnecessary in our view to discuss elaborately what the word "Office" connotes. It is sufficient to say that 'office' means a position or place to which certain duties are attached more or less of a public character, and that it is a sort of permanent position held by successive incumbents. An office may be with or without remuneration and may or may not be under the said authorities. It is "a right to exercise a public or private employment" or to hold a position which has certain duties attached to it.

The connotation being very general it would not be correct to say that the membership of Municipal Committee is not an office. In fact, the Act itself describes it in some provisions as the office. The crucial question, however, is whether it is an office of profit. Now the only contention is that as every member gets Rs. 5 as sitting fees and as all the members reside in the City of Warangal, they do not spend Rs. 5 towards their conveyance charges, and the balance which is left with them should therefore be construed as a profit which is derived from attending the meeting of the Committee. We are unable to give any effect to this argument.

The learned Advocate called in aid a decision in In the matter of, Vindhya Pradesh Legislative Assembly Members. 4 Ele LR 422. In that case a question which was referred by the President to the Election Commission was whether the members of the Legislative Assembly, who were appointed members of the respective District Advisory Councils and who were getting travelling allowance and daily allowance, had become disqualified to be members of the Assembly. The Election Commission gave opinion that membership of the Vindhya Pradesh District Advisory Councils was an 'office' and that the members held that office under the Government of Vindhya Pradesh. Members of the Assembly who had, therefore, actually attended any meeting of a Council must be said to have held such an office.

The Commission also gave opinion that where a member of a Council is merely entitled to a bona fide travelling allowance or daily allowance as distinguished from sitting fees or attendance fees which purports to cover and presumably covers only his actual out-of-pocket expenses and the amount of allowance is not fixed at such a high figure as to make it mere cloak for giving a profit there is no 'profit'. Consequently, the payment of one and a half first

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class railway fare to the members of the Dist. Advisory Councils was not a source of profit to the members. It was also opined that the daily allowance at the rate of Rs. 5-0-0 per diem which was being credited to the members of the Legislative Assembly for the sessions of the Assembly was such a reasonable amount that it cannot be said to yield any profit to the members of the Councils who went to attend the meetings thereof. The Election Commission, however, was of the opinion that by making the daily allowance rate the same for resident and non-resident members the Govt. laid itself open to the charge of offering a certain amount of profit though a small profit, to the resident members, and as the quantum of profit is not the material consideration, members residing in the District Headquarters who had attended any of the meetings of the Advisory Councils, should be deemed to have held offices of profit under the Govt. and therefore incurred the disqualification.

It is this last portion of the opinion which is relied upon by Mr. Sastry, who appears for the petitioners. His contention is that any member of the Municipality attending any meeting from any remote corner of Warangal, can so attend by spending not more than eight annas on conveyance. The member, therefore, makes a profit of Es. 4-8-0 for every meeting which he attends. It is his contention, therefore, that we should hold that the members hold office of profit under the Municipality.

4. We do not think that we can accept the approach of the Election Commission to this question as correct. The consideration in all such cases, which ought to be borne in mind is, in our opinion, not whether the holder himself made profit out of the office, but whether the office was one which enables him to make profit. In other words, was it the intention of the Legislature, or the Government, which provided the daily allowance or travelling allowance for such members, that the office of members of Municipality should carry any profit or remuneration ? If the intention in so providing the daily or travelling allowance is not to make the office remunerative, it is clear that it cannot be called as an office of profit. In other words, if the intention is only to provide such sum which will cover approximately the out-of-pocket expenses, which these members are likely to incur, it can by no stretch of imagination be called as an office or place which provides profits or remuneration to the members. In this connection the following cases lend strength to the proposition that merely because some provision is made for daily allowance or travelling allowance, it cannot be said that the office is an office of profit. These cases generally hold that when the provision is made to meet the actual expenses incurred by the member in undertaking to attend the meeting and various other expenses connected with the duties of the Committee and when the amount paid is by no means generous, it can never be emoluments by way of profit or gain for any work done by such members. See :

Parasu Ram v. Chudamani Dev, 13 Ele LR 66 : Ramdayal Ayodhya Prasad Gupta v. K.R. Patil, 18 Ele LR 378; Lachhman Singh v. Harparkash Kaur, 19 Ele LR 417 (Punj); Karu Lal v. Fida Hussain, 20 Ele LR 169 : (AIR 1980 Pat 556).

5. This question also was considered by the Supreme Court. In Ravanna Subanna v. G.S. Kaggeerappa, AIR 1954 SC 653 at pp. 656, 657, their Lordships observed :

"The plain meaning of the expression (office of profit) seems to be that an office must be held under Government to which any pay, salary, emoluments or allowance is attached. The word 'profit' connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material; but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit. It appears from the rules that the Taluk Development Committee is constituted as a part of the scheme for re-organisation of rural development.

It is a sort of Advisory body consisting of 10 members and is presided over by a non-official Chairman. The Chairman has no executive duties to perform which are left entirely to the Amildar of the Taluk who is the 'ex officio' Secretary to the Committee while a Special Revenue Inspector is to act as Assistant Secretary. The Chairman is to preside over meetings which are to be convened by the Secretary in consultation with him and the rules provide that the Chairman will be entitled to a fee of Rs. 6 for each sitting he attends.

From the facts stated above, we think it can't reasonably be inferred that the fee of Rs. 6 which the non-official Chairman is entitled to draw for each sitting of the Committee, he attends, is not meant to be a payment by way of remuneration or profit, but it is given to him as a consolidated fee for the out-of-pocket expenses which he has to incur for attending the meetings of the committee. We do not think that it was the intention of the Government which created these Taluk Development Committees which were to be manned exclusively by non-officials, that the office of the Chairman or of the members should carry any profit or remuneration."

In view of the said dicta of the Supreme Court, there can be little doubt that Rs. 5 which are paid to the members for attending the meetings of the Municipal Committee are given to them as a consolidated fee for the out-of-pocket expenses which they are to incur for attending the meetings of the Committee and that there is no intention of making the Municipal Member's office as an office or place which should carry any profit or remuneration. The conclusion, therefore, is irresistible that the Municipal membership is not an office of profit.

6. In this connection the contention of Mr. Sastry that these members hold office of profit under the Municipality cannot also be accepted as sound. It must be remembered that Municipal Committees are a body corporate and have perpetual succession, and they can sue or be sued in their corporate capacity. This corporate capacity is lent to the Committee by the statute. The members who are elected to this Committee constitute the Committee. It is, therefore, meaningless to say that the members who constitute the Committee are subordinate to the Committee, or holding an office or place of profit under the Committee. No authority is shown to substantiate this proposition by the learned Advocate for the petitioners.

It is useful in this connection to refer to the following two decisions : Yograj Singh Shanker Singh) v. Sitaram Hirachand, 3 Ele LR 439; Bhola Nath v. Krishnachandra Gupta, 6 Ele LR 104. In both these cases, it was held that a member of the Legislative Assembly of a State drawing a fixed salary and daily allowance and travelling allowance does not hold art office of profit under the Government. Similarly in, Ram Naraian v. Ramchandra, 15 Ele LR 100 : (AIR 1958 Bom 325) it was decided by a Bench of the Bombay High Court that though a member of the Legislative Council of a State who receives a monthly salary holds an office of profit, he does not hold an office of profit "under the Government of India or the State Government", within the meaning of Art. 191(1)(a) of the Constitution.

It cannot be forgotten that members of the Municipal Committee are elected by the voters on the

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basis of adult franchise. They are entitled to hold the office until their term of office expires. Nobody can remove them from this office before the end of their term of office. No disciplinary action can be taken against them by anybody. It is for the electors who have chosen them as their representatives to reconsider at the time of the next election, if they otter for re-election, whether their previous conduct had been such as to entitle them to be returned to the Municipal Committee. Except this limitation there does not seem to be any other limitation on their office.

The principal tests for deciding whether an office or place is under the Government, Municipality, or any local authority are firstly what authority has the power to make an appointment to the office concerned, and secondly what authority can take disciplinary action against, or remove or dismiss, the holder of office, and thirdly by whom and from what source his remuneration is paid. It is needless to point out that the first two tests are more important than the third one. It may be that the members are paid their sitting fees allowance from the Municipal fund. But it is not denied that the members are neither appointed by the Committee, nor the Committee is authorised to take any disciplinary action against the members, or remove or dismiss them. No provision of the Act was brought to our notice which creates such a position. We are, therefore, not persuaded to agree with the submission made by Mr. Sastry that members of Municipal Committee hold office of profit under the Municipality and as such they are disqualified.

7. Secondly, it was urged by the learned Advocate for the petitioners that respondent No. 21 is and has bet 11 a member of the Market Committee appointed under the provisions of the Hyderabad Agriculture Market Act, that he is also the Chairman of the same Committee and that he is, therefore, a person holding an office of profit under local authority within the meaning of S. 27(1)(c) of the Act, as respondent No. 21 gets some allowance. The petition is not clear as to what allowance the Chairman gets. The Market Committee constituted under the Hyderabad Agriculture Market Act is said to be a local authority. Now the expression 'local authority' is defined in the Act. Section 218 of the Act is in the following terms :

"Local authority includes a Municipal Corporation, Municipal and Town Committee, District Board and Cantonment Board."

More or less the same definition occurs in the Hyderabad General Clauses Act. In view of this definition it is doubtful whether Market Committee can be called a local authority for the purposes of this Act. Assuming, without of course deciding however, that the Market Committee is a local authority, in the tight of the abovesaid discussion, it is futile to contend that the Chairman of the Market Committee holds an office of profit under the Market Committee. Market Committee again is a statutory body and performs various Junctions under the Act. The Chairman is elected by the Committee. The office which he holds is not remunerative in the sense in which it is generally understood. Nor it is the intention of the Legislature or the Government to make that office an office of gain or remuneration. We do not, therefore, think that the Chairman of a Market Committee holds any office or place of profit under the Market Committee and as such he is disqualified for being elected to the Municipal Committee, Warangal.

8. Thirdly, it was contended by Mr. Sastry that the electoral rolls on the basis of which elections to this Municipality were held were not finalised. There were number of persons whose names were omitted. Amendments to the electoral rolls were made even on 23rd April, 1981 and these amendments were adopted for the purposes of Municipal election on 25-4-1961. In these circumstances his submission is two-fold. Firstly he says that the electoral rolls which were adopted for the purposes of Municipal election before the programme of election was finalised, alone ought to have been used and as the subsequent amendments made to the electoral rolls which were published on 25th April, 1981 were also used, the election cannot be considered as having, been validly held. Secondly, he contends that no opportunity was given to the petitioners or for that matter to others, to submit objections and as the amended list was published on 25th April, 1961 and the elections were held on 26th April, 1961, it could not be said that the voters according to the amended list could vote in such elections.

9. What is, however, overlooked by Mr. Sastry is, that according to S. 10 of the Act every person-whose name is included in such part of the electoral roll for any Assembly constituency as relates to Municipality or any portion thereof shall be entitled to be included in the electoral roll for the Municipality prepared for the purposes of the Act and no person shall be entitled to be included in such roll.

According to Sub-S. (2) of S. 10 the electoral rolls for the Assembly constituency which consist of or comprise the Municipality or any portion thereof as soon as they are published or revised or amended in pursuance of the Representation of the People Act, 1950 would be adopted as the electoral roll for the Municipality such electoral roll shall remain in force until the publication of the fresh electoral roll for the Municipality under Sub-S. (2). It is these persons whose names appear in the electoral roll for the Municipality who are entitled to vote. It is thus clear from the provisions of S. 10 that the electoral roll prepared for the purposes of Assembly constituencies is adopted for the purposes of Municipality. Such adoptions are made from time to time as and when the electoral rolls of the. Assembly constituencies are published, revised or amended. Now, according to S. 11 of the Act the prescribed authority may after making such enquiry as he thinks fit, direct amendments to the electoral rolls for any Municipality for the purpose of bringing it in accord with the electoral roll for the relevant Assembly constituencies. From a combined reading of these two sections it follows that the Assembly electoral rolls are adopted for the purposes of Municipalities. The prescribed authority is authorised to amend the electoral rolls only with a purpose to bring it in accord with the Assembly electoral rolls. How these electoral rolls should be published and how the amendments carried out under S. 11 again are to be published is being shown in detail in G. O. Ms. 192 dated 12th February, 1930.

It is not denied that before the election programme was announced the electoral rolls of the Assembly were adopted for the purposes of Municipal elections of Warangal. There can, therefore, be no-objection as far as the adoption of those electoral rolls are concerned. In fact no objection was so taken to those rolls before us. It is admitted that the amendments to the Assembly electoral rolls which were in force were made by addition of certain names therein on 23rd April, 1961. These amended Assembly electoral rolls were adopted on 25th April 1961 for the Municipality. We fail to see how can an objection be taken to such an adoption of the Assembly electoral rolls. No provision has been brought to our notice whereby the electoral rolls adopted before the riling of the nomination papers must alone form the basis for actual voting. Section 11 of the Act empowers the election authority to make amendments to the electoral roll for any

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Municipality for the purposes of bringing it in accord with the electoral rolls of the relevant Assembly constituencies.

In the present case there is no allegation that the constituencies of the Municipality have been altered, nor is there any allegation that the respective electoral rolls of the constituencies were defective in any material particular. There is no provision in the Act or the Rules that the electoral roll, as it stood when the date of the election was notified, should not be amended and brought upto date before the election. In fact even according to the Representation of the People Act there can be amendments to the electoral roll after the programme of the election is announced. It is true that under S. 26 of the Act only those whose names find place in the electoral rolls as they stood on the date of the filing of the nomination papers can stand as candidates and those whose names appear thereafter in an electoral roll obviously cannot stand. But that does not mean that the electoral rolls cannot be subsequently amended in order to provide as wide a franchise as possible.

It cannot be disputed that the electors being generally lethargic woke up only when the elections are approaching when the interested candidates or political parties go round to find out whether the names of their supporters find place in the Municipal electoral rolls. When they find some omission or mistakes the electors are persuaded to get their names included or corrected. It is with that view that the Rules under the Representation of the People Act provide that any person can give an application to the Chief Electoral Officer for inclusion of his name in the electoral roll, in case the application is to be made at any time after the issue of the notification calling upon the constituency to elect a member or members and before the completion of that election. In other cases, the application will lie to the Electoral Registration Officer of the constituency. The difference in charges to get the amendment made also denotes that such amendments can be made before the completion of election.

There can thus be a finalised roll before the nominations are actually received. This electoral roll can further be amended before the constituencies actually go to the poll. The persons whose names appear in the electoral roll can cast their votes. This procedure which is applicable to the general Elections of the Legislature appears to have been followed in respect of elections to the Municipalities also. That is why Sections 10 and 11 of the Act do not provide anything restricting such amendments. It is true that there should be some finality given to the electoral rolls before they are actually used either for the purposes of receiving nomination papers or for the purposes of casting votes. But these electoral rolls are finalised before the nomination papers are received, or before the actual voting takes place. Provisions of Sections 10 and 11 clearly point out that as and when the electoral rolls are revised or amended by the concerned authorities for the Assembly constituencies the duty is cast on the prescribed authority to adopt the same as soon as such amendments are made for the purposes of Municipality. The Officer concerned would have been guilty of omitting to adopt, if he had not adopted, the Assembly electoral roils amended by the respective authorities on 23rd April 1961, We do not therefore find any reason for complaint when the Assembly electoral rolls were adopted on 25th April 1961.

10. The next contention in this regard that no opportunity was provided to the petitioners or others to file objections in regard to the electoral roll adopted on 25th April 1961 cannot be accepted as sound and correct. Reliance in this connection was placed on the decision of the Supreme Court in Chief Commissioner, Ajmer v. Radhey Snyam Dani, 1957 SCR 68 : ( (S) AIR 1957 SC 304). It appears from the facts of that case that Sub-Section (2) of Section 30 of the Ajmer-Merwara Municipalities Regulation, 1925 as amended provided that "every person who would be entitled under the Representation of the People Act, 1950 (XLIII of 1950) to be registered in the electoral roll for a Parliamentary Constituency if that Constituency had been co-extensive with the Municipality, and whose name is registered in the electoral roll for the Parliamentary Constituency composing the Municipality, shall be entitled to be enrolled as an elector of the Municipality" and Section 43 enabled the Chief Commissioner to make rules consistent with the Regulation for the preparation and revision of electoral rolls and the adjudication of claims to be enrolled and objections to enrolment. In exercise of these powers some rules were framed which inter alia provide that electoral roll for the particular Municipality shall be the same as the final printed roll for the Parliamentary constituency representing the area covered by the Municipality. The election programme was notified and the electoral rolls were published.

The validity of the notification and the electoral roll was challenged in that case. It was held that under S. 30(2) of the Ajmer-Merwara Municipalities Regulation, 1925, the electoral roll for the Parliamentary constituency was only treated as the basis for the electoral roll of the Municipality and that the rules in so far as they made no provision for the revision of the electoral roll, for the adjudication of claims to be included therein or for entertaining objections to such inclusion are defective and therefore the electoral roll of the Ajmer Municipality which was authenticated and published by the appellant on 8th August 1955 was not in conformity with the provisions of Section 30(2) and the relevant provisions of the Regulation and could not form the basis of any valid elections to be held to the Ajmer Municipal Committee.

It will be noticed that in that case the point for consideration was with regard to making rules consistent with the Regulation for the preparation and revision of electoral rolls and the adjudication of claims to be enrolled and objections to enrolment. This case, therefore, is clearly distinguishable. Sections 10 and 11 of the Act provide that the Assembly electoral roll for the time being in force in such part of the constituency of the Assembly as is included for Municipality for the purposes of the Act be deemed to be the list of voters for such Municipality. The Act therefore makes the relevant part of the Assembly Electoral roll as the electoral roll of the Municipality. The Act does not contain any provision similar to Section 43 of the Ajmer-Merwara Municipalities Regulation, 1925 for making rules for the preparation and revision of electoral roll.

11. Consequently the petitioners are not entitled to object to this electoral roll. It cannot be forgotten that the electoral rolls of the Assembly constituency are prepared under the provisions of the Representation of the People Act, 1950 and the Registration of Electors Rules, 1960. For raising objections in regard to the preparation, revision and amendment of such rules a machinery is provided under that Act and the Rules. If the petitioners or any others wanted their names to be included in the Assembly electoral rolls they had any amount of opportunity to do so. Even after the election programme was announced, they could have availed themselves of the opportunities provided under that Act and the Rules. No direct amendment can be made or objection entertained by the prescribed authority under Section 11 of the Act. What Section 11 enjoins is that the prescribed authority

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may make necessary amendments only for the purpose of bringing the Municipal electoral roll in accord with the Assembly electoral roll. The purpose of Section 11, therefore, is very limited in its scope. The grievance, therefore, that the petitioners had no opportunity to object is not correct. The complaint that several hundred voters' names were not included cannot be accepted.

The Election Tribunal, or for that matter the High Court in Writ Petitions have no jurisdiction to enquire whether all persons qualified to vote were entered in the rolls. The jurisdiction to prepare the electoral rolls is vested in certain authorities under the Act and the Rules referred to above and the provisions of that Act and the Rules gave finality to the decision of those authorises. It would be, therefore, futile to challenge the validity of the election on the ground that some persons qualified to vote were not included in the electoral rolls. If the petitioners were not vigilant enough to see that the Assembly electoral roll is brought upto date and that the adoption of the same is made by the Municipality, they have to blame themselves for their negligence. They cannot, however, make a grouse that the electoral roll omits to include several voters who are entitled to vote. If their contention is accepted that unless all the electors of the City Municipality are not included in the electoral roll, there will be no final electoral roll on the basis of which elections can take place, then there will be no final electoral roll at any stage, nor there can be any election at all. Some names would always be found to be missing or incorrectly entered. It is too much to expect that such electoral rolls would be final in the sense that every person entitled to vote is entered in it accurately.

12. In this connection, it is useful to refer to a decision of this Court in Venkateswara Rao v. State of Andhra Pradesh, AIR 1958 Andh. Pra. 458 K. Subba Rao, C.J., as he then was, who spoke for the Bench observed :

"While we appreciate the contention of the learned counsel that the Government or the authority concerned should have made a provision by prescribing a reasonable time for filing objections before an election authority, we are satisfied, having regard to the qualifications prescribed for a person entitled to be placed on the Municipal electoral roll, the manner in which the electoral rolls of the Municipalities are prepared and the time, as a matter of fact available to the petitioners and others to raise objections if they choose that the electorate, in the present case have not in any way been prejudiced."

In that case Ss, 44 and 45 of the Madras District Municipalities Act which are identical to Ss. 10 and 11 of the Act were under the consideration of the Court. Almost similar objections in regard to electoral rolls were raised, which were negatived. In that case this Court had occasion to consider elaborately the decision of the Supreme Court in (S) AIR 1957 SC 304. It was similarly found therein that a deeper scrutiny of that decision of the Supreme Court would bring out the essential difference between the provisions of the Act under the review of the Supreme Court and those of the Madras District Municipalities Act. A decision to the same effect is that of Subbayya v. The State. 1958 Andh. LT 674. Mr. Shanker Sastry invited our attention to the two decisions of the Patna High Court in support of his contention that the electoral roll, which was not finalised according to him cannot validly form the basis of Municipal election.

The first case is Parmeshwar Mahaseth v. The state of Bihar, AIR 1958 Pat. 149. It is true that it was found in that case that electoral rolls have not been finalised and published properly and therefore the election held on such electoral rolls was declared to be invalid. That decision, however, has to be understood in relation to the facts of that particular case and the Municipal Election Law prevalent in the State of Bihar. As it is apparent from the decision that the relevant provisions of the Election Rules and the Bihar and Orissa Municipal Act elaborately set out in the judgment - did not dispense with the preparation of a separate register of the voters ward by ward, of course, on the basis of the electoral roll of the Assembly constituency. Section 15 of that Act envisages a separate register of voters, and the Election Rules, their Lordships observe, do not and cannot over-ride that statutory provision. Rule 3 lays down the qualification for registration as electors. Rule 6(b) describes the disqualifications. Section 19 empowers the State Government to make rules inter alia to regulate and determine the authority which shall decide disputes arising under any rules made under that section.

Their Lordships drew the conclusion from the said provisions that the effect of those provisions is that the adoption of the Assembly electoral rolls did not entirely do away with the investigation of the claims to be enrolled therein and objections to such enrolments, otherwise the prescription of qualifications and disqualifications in the Act would be meaningless. As the abovesaid provisions of the Act and the Rules referred to were not followed and the electoral rolls were not prepared and published according to them, it was obvious that the decision of the Supreme Courts in (S) AIR 1957 SC 304 applied to that case with full vigour.

For the reasons which we have given above while discussing the case of (S) A. I. R. 1957 SC 304, the case of AIR 1958 Pat. 149 would also be inapplicable to the facts of this case. There is marked difference between the scheme of the Bihar and Orissa Municipal Act and the Election Rules made thereunder and the Act and Rules which fall for our consideration here. The other cases relied upon by Mr. Sastry is Sabhir Ahmad v. District Magistrate of Darbhanga, A I. R. 1959 Pat. 409. While we fully agree, with respect, with the dicta of the said decision that "it is indisputable that an important document like electoral roll on which depends the exercise of civil rights of the people should be prepared after due publicity and after thorough examination of the claims and objections of the voters, it is obvious that when the very foundation of the election is imperfect, the election cannot stand. Therefore, the preparation of the electoral roll postulates that fair and full opportunity was given to the citizens to lay claims for enrolment as voters or to raise objections to the enrolment of other persons as voters," it is not possible for us to agree with the conclusions of that decision obviously because the Bihar and Orissa Municipal Act and the Rules made thereunder are substantially different from the Act and the Rules made thereunder.

13. We have already held that the petitioners and those who wanted to put in objections or claims had ample opportunity to do so before the electoral rolls were published, revised or amended by the competent authorities under the Registration of Electors Rules 1960 and even after the published, revised or amended Assembly electoral rolls were adopted for the purposes of Municipality, the petitioners and others could have raised objections to such adoption within the narrow scope available to them under S. 11 of the Act. As they have not availed of those opportunities, they have no reason to complain that the electoral rolls were not final or that they had no opportunity to put in their objections or claims.

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14. Finally, it was argued that the counter foils of ballot papers contain serial numbers and the names of the voters which violate the principles of secrecy of election and as such the entire election is invalid. We are not impressed with this argument also. Rule 30 of the Rules under the Hyderabad District Municipalities Act enjoins that votes shall be given by ballot in the prescribed manner. Rule 31 prescribes the method of voting. Rule 33 provides for the arrangement for secrecy of voting. It provides that each polling station shall be so arranged that the voters can record their votes "screened from observation". Rule 35 says that the ballot paper shall be marked with such official mark as may be specified by the Government, which mark shall be kept secret. Rule 36 provides for ballot boxes to be locked and sealed before commencement of poll. Rule 38 is of materiality. While R. 38(1) provides for the procedure before recording of votes. Rule 38(2) specifically refers to the point under our consideration, Rule 38(2) is in the following terms :

"38 (2). The Polling Officer shall at the time of delivery of the ballot paper or papers to a voter, put against the serial number of that voter, in the constituency list, a mark to denote that such voter has received a ballot paper or ballot papers and shall also keep a record of the serial number or numbers of the ballot papers supplied to the voter in such manner as the Returning Officer may subject to the general or special instructions issued in that behalf by the Government, direct."

Rule 43 states that the ballot paper to be used for the purposes of voting at an election under these rules shall contain a serial number and such distinguishing marks as the Government may decide. Rule 47 provides that after the close of the poll in the presence of any candidates or their election or polling agents who may be present, the ballot boxes may be closed and sealed. The Presiding Officer also would make up into separate packets the unused ballot papers, the marked copy of the list of voters and any other paper directed by the Returning Officer to be kept in a sealed packet along with other papers mentioned in the said Rule. Rule 48 enjoins upon the Presiding Officer to keep an account of ballot papers, Rule 69 provides that the Returning Officer shall keep in his own custody the packets of ballot papers and all other papers relating to the election. Rule 70 says that the election papers as mentioned above shall not be opened and their contents shall not be inspected by, or produced before, any person or authority except under the order of a competent court or of a tribunal.

Finally Rule 71 provides the packets referred to in sub-rule (1) of Rule 70 shall be retained for a period of one year and shall thereafter be destroyed subject to any direction to the contrary given by the Government or by a competent court or by a Tribunal and all other papers relating to the election shall be retained until the termination of the general election for the constituency to which they relate and shall thereafter be destroyed.

Along with these Rules Section 298 of the Act must also be kept in view. It is in the following terms :

"298 (1) Every Officer, Clerk, agent or other person who performs any duty in connection with the recording or counting of votes at an election shall maintain, and aid in maintaining, the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy."

Sub-Section (2) of that Section provides for punishment for violation of Sub-Section (1). These are the relevant provisions which provide for the secrecy of ballot. In the light of these provisions, it is clear that there is nothing like absolute secrecy of ballot. But the maintenance of secrecy is only subject to the various provisions mentioned in the Act or the Rules made thereunder. That is so even under the Representation of the People Act, 1951 and the Rules made thereunder.

While Section 128 of the Representation of the People Act, 1951, is identical with Section. 298 of the Act, Rule 38(2) extracted above is identical with Rule 38(2) of the Conduct of Election Rules, 1961 made under the Representation of the People Act, 1951. Even under the Madras District Municipalities. Act and the Rules made thereunder, substantially similar provisions appear therein. Section 56 of the Madras District Municipalities Act is similar to S. 298 of the Act and Rule 15 under the Madras District Municipalities Act is almost identical with Rule 38 under the Act. The only difference between, Rule 15(4) under the Madras District Municipalities Act and Rule 38(2) under the Act is that whereas the Rule under the Madras Act specifically provides, that the polling officer shall enter on the counterfoil or on the first of the counter-foils, as the case may be the name and number of the elector in the electoral roll, Rule 38(2) of the Act merely provides that the polling officer shall put a mark against the serial number of that voter in the constituency list to denote that such voter has received the ballot paper and shall also make a record of serial number or numbers of the bellot papers.

It is evident that counter-foils of the ballot papers can be maintained under the said Rule. No serious objection, therefore, can be taken to the use and maintenance of the counterfoils to the ballot papers as is the case under the Madras District Municipalities Rules. We do not, therefore, see any violation of Rule 43 in the instant case. We have already stated that the practice followed in the instant case is identical with the one which provides in the other area of our State and is also prevalent, in Madras as the Rules quoted above are similar.

It is useful to quote a passage from Halsbury's Laws of England, Vol. 12, page 297, para. 579 Hailsham Edition, which makes the position abundantly clear that exactly the same system is followed, in the U. K. It is as follows :

"Immediately before a ballot paper is delivered to an elector it must be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register must be called out and the number of such elector, and the distinctive letter of the polling district in which the elector is registered, must be marked on the counter-foil, and a mark must be placed in the register against the number of the elector to denote that he has received a bellot paper, but without showing the particular ballot paper which he has received."

We are not therefore prepared to accept the argument that because counter-foils of the ballot papers are maintained in which serial number of the elector as appears in the electoral roll and his name are entered it violates in any manner the secrecy of voting. It is not denied that ballot papers actually issued to the voters did not contain any distinct mark, which would disclose as to who the elector is. If that is so, then it is not possible to detect from the ballot papers as to whom the ballot paper was given or that any particular voter voted for a particular candidate. The secrecy which is required to be maintained is in reference to the ballot papers. It .cannot be extended to either the counter-foils of the ballot papers which are validly

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maintained under the Rules, or to the particular electoral roll on which marks are maintained to denote that the ballot papers are issued to those electors. This record is necessary to check the personation of the elector or multiple issue of the ballot papers to the same person. It becomes also necessary to maintain and preserve such record in order to provide necessary evidence if any complaint is made regarding personation or any other such thing. The Act and the Rules provided for that and it cannot, therefore, be successfully contended that because of this record secrecy of bellot is violated. We have already pointed out in detail the various provisions which enjoin upon the authorities concerned to seal these counter-foils and the particular elector roll on which marks are made in the presence of the candidates or their agents and after the packets are sealed they are kept in the custody of the Returning Officer, and these packets can be opened only under the orders of a Court or a Tribunal, and can be destroyed only after their utility is over.

These provisions therefore take ample care to see that secrecy of ballot is not violated. It must be remembered that in this way the counter-foil and the electoral roll that is marked are kept finally under the supervision of the Court or the Tribunal. It is true that the Presiding and the Returning Officers at the moment are Government servants. The conduct of the Municipal elections under the direction and through the agency of the Government may be looked upon with some disfavour on the ground of its being contrary to the spirit of local autonomy. It is true that if an independent body like Election Commission which is in charge of the Legislative elections is established in every State and charged with the duty of superintendence, direction and control of preparation of the electoral rolls for the conduct of all elections to the Municipal Corporation, District Municipalities, Zilla Parishads and Samithis and Panchayats, it will inspire greater confidence and ensure free and fair elections to the various local bodies. But the absence of any such independent election machinery does not, in our opinion, mean that the present machinery through which the elections are held cannot be trusted to ensure the secrecy of voting.

It is too much to argue that when the counterfoils and the electoral roll marked are in the custody of the Presiding or Returning Officer, they being Government servants, secrecy is likely to be violated. It cannot be forgotten while advancing such an argument that the counter-foils and the electoral rolls are sealed in packets in the presence of the candidates or their agents and can be opened only in the presence of the Court or a Tribunal. Thus, the whole matter is entirely removed from the influence of party politics. We agree that free elections constitute the bedrock of democracy although it does not imply that the elections are necessarily pleasant or satisfactory to human intelligence. In the conflict of personality and the parties and principles which constitute an election, the intelligent and sensitive minds abhor what is vulgar and unreasonable. That cannot however be helped. Often times, an election is as painful as birth pangs, but it is a natural and constructive process. As we have adopted the same, we have to trust the machinery.

No allegation is made that in this particular instance the counter-foils or the electoral roll marked were not sealed as required by Rules, or they are tampered with in any manner. In the absence of any such allegation, we are not prepared to accept that the principle of secrecy is violated in the instant case or that the Rules are such that they violate the principle of secrecy of ballot.

15. Mr. Sastry relied upon Narasimhalu v. Narasimham, AIR 1953 Mad 932 and Upadhyay Ambika Prasad v. Lakshmi Mohan Misra, 1 DEC 330. In both these cases, the ballot papers were marked in such manner as to indicate the identity of the elector. In the light of the discussion as above, these decisions do not lend any strength to the argument of Mr. Sastry because in the present case it is conceded that ballot papers issued to the voters did not contain any distinguishing marks which enable the identity of voters. No decision was cited before us which says that the counter-foils or the elector roll marks under the Rules also violate the principle of secrecy. We do not therefore see that by maintenance of counterfoils or the marked electoral roll any provisions of the Act or Rules made thereunder is violated. This argument, therefore, also must be rejected.

16. Before we part with the case, we must make an observation that the petitioners do not seem to have been prompted with any bona fide desire to get any election dispute settled. They ought to have been vigilant if they want to be enlightened citizens who believe in the principle of local bodies' autonomy. They ought to have taken suitable steps to see that the electoral rolls are properly prepared and adopted and that various rules and the provisions of the Act are properly implemented. They do not seem to have participated at any stage in the process of election. They have not taken the advantage of S. 21 or S. 24 of the Act which provide appeals against the wrongful acceptance or rejection of nomination papers and for the decision of election disputes by a Tribunal. Instead, they have directly rushed to this Court with a petition under Art. 228 of the Constitution. We have no doubt that it is the defeated candidates who must have set the petitioners to fight out their election disputes in this manner. As there is no ground to hold that Respondents 1 and 2 have not discharged the duties enjoined on them under the Act or the Rules made thereunder or that they purported to perform the duties contrary to the provisions of the Act or the Rules made thereunder, it follows that Writ of Mandamus cannot be issued. This petition, in our opinion, is utterly devoid of any merit and deserves to be dismissed. The petition therefore, is dismissed with costs, two sets. Advocate's fee Rs. 250/- each.

Petition dismissed.

AIR 1961 ANDHRA PRADESH 138 (Vol. 48, C. 40) "Sree Rama Coconut Co. v. State of Andh. Pra."

ANDHRA PRADESH HIGH COURT

Coram : 1 BASI REDDY, J. ( Single Bench )

Firm, Sree Rama Coconut Co., by its Secretary P.V. Jagannadham Patnaik, Kanchili, Srikakulam District and others, Petitioners v. The State of A.P., represented by its Secretary, Agricultural Department, Hyderabad and another, Respondents.

Writ Petn. No. 439 of 1959, D/- 5 -11 -1959.

Constitution of India, Art.254(1) - REPUGNANCY BETWEEN STATUTES - AGRICULTURAL PRODUCE - Repugnancy between Central Act and State Act - Tests of repugnancy laid down - Madras Commercial Crops Markets Act (20 of 1933) is not repugnant to Coconut Committee Act (1944).

The test for determining whether there is repugnancy between two statutes is to see :

(a) Whether there is a direct conflict between the two provisions;

(b) Whether Parliament intended to lay down an exhaustive Code in respect of the subject-matter of the Central Act replacing the Act of the State Legislature;

(c) Whether the law made by Parliament and the law made by the State Legislature occupy the same field. The fact that the two laws deal with the same subject is not a conclusive test for determining the question of repugnancy because two statutes may deal with the same general subject and yet operate in different fields. (Paras 10, 12)

The Madras Commercial Crops Markets Act (20 of 1933) read with G. O. MS. No. 91, Agriculture D/- 10-01-1958 deals with the subject of Coconuts but the dominant purpose of the Madras Act is the establishment and maintenance of markets and the regulation of buying and selling of commercial crops Within the precincts of such markets. The matters dealt with by the Madras Act fell within the Provincial Legislative List under the Government of India Act, 1935, and fall within the State List under the Constitution. The Coconut Committee Act (1944) on the other hand was passed by the Federal Legislature on its being empowered to do so by the Governor-General in the exercise of his residual powers of legislation conferred on him by S. 104 of the Government of India Act, 1935. The matter with which the Central Act deals was not covered by any of the Legislative Lists in the Seventh Schedule to the Government of India Act. The policy and purpose of the Central Act are not identical with those of the Madras Act. The Central Act does not touch the subject of markets, There is no direct conflict between the provisions, of the two statutes; nor is the Central Act intended to be a complete exhaustive code in respect of coconuts; nor again do the two laws occupy the same field. There is thus no repugnancy, no conflict and no clash between the Central Act and the Madras Act read along with the impugned G. O. : AIR 1959 SC 300 and AIR 1959 SC 648 and (S) AIR 1956 SC 676 and AIR 1939 FC 74 and (1896) AC 348 and (1930) 43 CLR 472, Rel. on. (Paras 11, 12, 18, 19, 20, 21, 22, 24, 26, 27)

Cases Referred : Courtwise Chronological Paras

('56) (S) AIR 1956 SC 676 (V 43) : 1956 SCR 393, Tika Ramji v. State of U.P. 12

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('59) AIR 1959 SC 300 (V 46) : 1959 SCJ 297, Arunachala Nadar v. State of Madras 3, 17

('59) AIR 1959 SC 648 (V 46) : 1959 SCJ 1069, Deepchand v. State of Uttar Pradesh 10

('39) AIR 1939 FC 74 (V 26) : 1939 FCR 193, Shyamakant Lal v. Rambhajan Singh 23

('58) Writ Petn. No. 666 of 1958. (Andh Pra) 3

(1859) 22 How 227 : 16 Law Ed 243, Sinnot v. Davenport 6

(1896) 1896 AC 348 : 65 LJPC 26, Attorney General for Ontario v. Attorney General for Dominion of Canada 23

(1926) 37 CLR 466 : 1926 Argus LR 214, Clyde Engineering Co. Ltd. v. Cowburn, Metters Ltd. 8

(1930) 43 CLR 472, Ex parte Mclean 26

(1937) 1937 AC 260 : 106 LJ PC 17, Forbes v. Attorney General for Manitoba 9

(1940) 312 US 52 : 85 Law Ed 581, Hines v. Davidowitz 5

D. Sreerama Sastry, for Petitioners; 3rd Govt. Pleader, for 1st Respondent; Advocate-General and J.V. Suryanarayana Rao, for 2nd Respondent.

Judgement

ORDER :- This is a petition under Art. 226 of the Constitution for the issue of a writ in the nature of mandamus directing the respondents, the Government of Andhra Pradesh and the Srikakulam Market Committee, to forbear from enforcing G. O. Ms. No. 91, Agriculture, D/- 10-01-1958, which declares the area within the limits of the District of Srikakulam as a notified area for the purposes of the Madras Commercial Crops Markets Act, 1933, in respect of coconuts.

2. The petitioner firms are doing business in the purchase and export of coconuts mostly to traders outside the State of Andhra Pradesh. The question that is mooted in this writ petition is whether the Madras Commercial Crops Markets Act, 1933, in so far as it is sought to be applied to the petitioners by virtue of the said G. O., is repugnant to the provisions of the Indian Coconut Committee Act, 1944. The former will be referred to hereinafter as the Madras Act and the latter as the Central Act.

If, as contended by the petitioners, the Madras Act is repugnant to the Central Act, the latter must prevail and the former would be void to the extent of the repugnancy, as enjoined by Art. 254(1) of the Constitution. The Madras Act did not in terms include coconuts within its ambit, but in exercise of the powers conferred on it by Ss. 3 and 4 of the Madras Act, the State Government has notified coconut as a "commercial crop" for the purposes of that Act by the G. O. referred to above.

3. It must be mentioned even at the outset that the Madras Act fell for consideration by the Supreme Court and their Lordships in Arunachala Nadar v. State of Madras, AIR 1959 SC 300, held it to be a valid piece of marketing legislation and ruled that it did not impose unreasonable restrictions on the citizens fundamental right to carry on business. The question of its repugnancy to any of the provisions of the Central Act was, however, not raised before their Lordships; nor was the point taken before the Madras High Court which dealt with the matter in the first instance.

This Court too had to consider the validity of the Madras Act in Writ Petition 666 of 1958 and although some of the petitioners herein were parties there also and although various contentions were raised, the contention now raised in this Writ Petition was however not advanced then. In that Writ Petition this court overruled all the contentions urged against the constitutional validity of the Madras Act and dismissed the Writ Petition.

4. In the present case the sum and substance of the contention of the petitioners, is that the Central Act has occupied the entire field in respect of coconuts and, is a complete and exhaustive code with regard thereto and inasmuch as the Madras Act with the aid of the impugned G. O., seeks to enter the same field, it is to that extent repugnant to the Central Act and is void and inoperative.

5. At this stage the meaning and scope of the rule as to repugnancy may be considered. In a catena of cases the Supreme Court of the United States, in considering the validity of State Laws in the light of Federal laws touching the same subject, has made use of the following expressions to convey the same idea : conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment; and interference.

But, as pointed out by Mr. Justice Black in Hines v. Davidowitz, (1940) 312 US 52 : 85 Law Ed. 581 none of these expressions provides an infallible constitutional test, or an exclusive constitutional yardstick. In the final analysis, there can be no one crystal clear distinctly marked formula." The function of the Court in each case is to determine whether under the circumstances of that particular case, the State law stands as an obstacle to the accomplishment and execution of the full purpose; and objectives of the Federal law.

6. In Sinnot v. Davenport (1859) 22 How 227 : 16 Law Ed. 243 the Supreme Court of the United States adopted the following test : The governing principle is that for an Act of Congress completely to displace the State law,

"the repugnance or conflict should be direct and positive, so that the two Acts could not be reconciled or consistently stand together."

7. Nicholas in his "Australian Constitution", 2nd Edn. p. 303, refers to three tests for determining the question of inconsistency :

1. There may be inconsistency in the actual terms of the competing statutes.

2. Though there may be no direct conflict, the State law may be inoperative because the Commonwealth law is intended to be a complete exhaustive code.

3. Even in the absence of intention, a conflict may arise when both States and Commonwealth seek to exercise their powers over the same subject-matter.

8. In a case reported in (1926) 37 C. L. R. 466 at p. 489 (Clyde Engineering Co., Ltd. v. Cowburn, Metters Ltd.), Isaacs, J. laid down what he regarded as a conclusive test of inconsistency :

"If, however, a competent legislature expressly or implicitly evinces its intention to cover the whole

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field, that is a conclusive test of inconsistency where another legislature assumes to enter to any extent upon the same field."

9. The analogous Canadian doctrine of the "occupied field" was succinctly stated by the Judicial Committee in Forbes v. Attorney General for Manitoba (1937) AC 260 at p. 274 :

"The doctrine of the 'occupied field' applies only where there is a clash between Dominion legislation and provincial legislation within an area common to both."

10. In the case of Deepchand v. State of Uttar Pradesh, 1959 SCJ 1069 at 1088 : (AIR 1959 SC 648 at p. 665), Subba Rao, J., speaking for the Supreme Court, formulated three criteria for ascertaining whether there is repugnancy between two statutes :

1. Is there a direct conflict between the two provisions ?

2. Did Parliament intend to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature ? And

3. Do the law made by Parliament and the law made by the State Legislature occupy the same field ?

11. As will be seen presently, in the instant case there is no question of any inconsistency in the actual terms of the two enactments; nor is the Central Act intended to be an exhaustive code in respect of coconuts. The only question that arises is whether the two Acts cover the same ground and occupy the same field.

12. It is true that in a broad sense the Central Act and the Madras Act, read with the impugned G. O., deal with the same subject viz., coconuts; but that is hardly a conclusive test for determining the question of repugnancy. Two statutes may deal with the same general subject and yet operate in different fields. As was pointed out by Bhagwati, J. in delivering the judgment of the Supreme Court in Tika Ramji v. State of U.P., (S) AIR 1956 SC 676 at p. 697 :

"Repugnancy falls to be considered when the law made by Parliament and the law made by the State Legislature occupy the same field because, if both these pieces of legislation deal with separate and distinct matters though of a cognate and allied character, repugnancy does not arise."

13. It is now necessary to compare and contrast the provisions of the two enactments to ascertain whether there is any irreconcilable inconsistency between them. The Madras Act was enacted by the Madras Legislative Council in the year 1933 under the Government of India Act, 1919, and has been kept alive and amended from time to time. The preamble makes plain the policy underlying the Act by reciting that it is expedient to provide for the better regulation of the buying and selling of commercial crops in the Presidency of Madras and for that purpose to establish markets and make rules for their proper administration.

This measure was obviously conceived in the interest of the growers of commercial crops by providing markets where the growers could come into direct contact with the buyers and where the business transacted in the markets could be controlled and canalized. By this device it was intended to protect the growers from being exploited by middlemen and to secure for them the best possible price for their products. The provisions of the Madras Act fall broadly into two groups : the first group provides the machinery for controlling the trade in commercial crops and the second group imposes restrictions on the carrying on of the said trade.

Section 2(1)(a) defines "commercial crop" to mean cotton, groundnut, or tobacco and includes any other crop or product notified by the State Government in the Fort St. George Gazette as a commercial crop for the purposes of the Act. Section 3 authorises the State Government to issue a notification declaring their intention to exercise control over the purchase and sale of such commercial crop or crops in a particular area and to call for objections or suggestions to be made within a prescribed time.

After the receipt of objections and suggestions and after considering them, the State Government issues a notification under S. 4 declaring the area specified in the notification under S. 3 or any portion thereof to be a notified area for the purposes of the Act in respect of the commercial crop or crops specified in the notification under S. 3. Under S. 4-A the State Government has to establish a Market Committee for every notified area and it shall be the duty of the Market Committee to enforce the provisions of the Act and the rules and bye-laws made thereunder.

Sub-Section 2 of S. 4-A makes it incumbent on the Market Committee to establish in a notified area such number of markets providing for such facilities, as the State Government may from time to time direct, for the purchase and sale of the commercial crop or crops concerned. Sections 6 to 10 provide for the constitution of Market Committees and it is worthy of note that the membership of the Committees is drawn from the representatives of the growers of commercial crops, persons licensed under the Act and buyers and sellers of commercial crops in the notified area.

14. Section 11 makes provision for finance and empowers the Market Committee to levy a fee on any commercial crop bought and sold in the notified area at such rates as the State Government may by notification determine. Section 11-A further enables the Market Committee to levy a subscription for collecting and disseminating among the subscribers information as to any matter relating to crop statistics or marketing in respect of the commercial crop or any of the commercial crops concerned. Section 12 provides that all moneys received by a Market Committee shall be paid into a fund to be called the "Market Committee Fund" and all expenditure incurred by the Market Committee under and for the purposes of the Act shall be defrayed out of the said fund.

15. The next set of provisions are contained in S. 5 and they impose restrictions on trading in commercial crops in the notified area. Section 5(1) says that no person shall, within a notified area, set up, establish, or use, or continue or allow to be continued, any place for the purchase or sale of the notified commercial crop, except under and in

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accordance with the conditions of a licence granted to him by the Collector.

The first proviso to that section lays down that after the establishment in such area of a market for the purchase and sale of a notified commercial crop, no licence for the purchase or sale of such commercial crop shall be granted or renewed in respect of any place situated within such distance of the market as may from time to time be fixed by the State Government. The second proviso enables the Market Committee to exempt from the provisions of the above Sub-Section any person who carries on the business of purchasing or selling any commercial crop in quantities not exceeding those prescribed by the rules made under the Act.

The third proviso authorises the said Committee to exempt a person selling a commercial crop which has been grown by him or a Co-operative Society selling a commercial crop which has been grown by any of its members. Sub-Sec. 2 of S. 5 grants exemption to a person purchasing for his private use the commercial crop in quantities not exceeding those prescribed by the rules framed under the Act.

Sub-Section 3 prohibits a person within a notified area from setting up, establishing or using, continuing or allowing to be continued, any place for the storage, weighment, pressing or processing of any notified commercial crop except under and in accordance with the conditions of a licence granted to him by the Collector. The proviso to Sub-Sec. 3 excludes the application of the provisions of the Sub-Section to a person in respect of any notified commercial crop grown by him.

16. Section 13 of the Act enumerates the various purposes for which the Market Committee Fund may be utilized. The more important of those purposes are : the acquisition of a site or sites for the market; the maintenance and improvement of the market; construction and the repair of buildings which are necessary for the purposes of such market and for the health, convenience and safely of the persons using it; the provision and maintenance of standard weights and measures; the collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of the commercial crop or crops concerned; schemes for the extension or cultural improvements of the commercial crop or crops concerned within the notified area, including the grant, subject to the approval of the State Government, of financial aid to schemes for such extension or improvement within such area, undertaken by other bodies or individuals, and propaganda in favour of agricultural improvements and thrift.

17. In the case of AIR 1959 SC 300, referred to above, Subba Rao, J. summed up the scheme and intendment of the Madras Act in the following words :

"Shortly stated the Act, Rules and the bye-laws framed thereunder have a long-term target of providing a net-work of markets wherein facilities for correct weighment are ensured, storage accommodation is provided and equal powers of bargaining ensured, so that the growers may bring their commercial crops to the market and sell them at reasonable prices. Till such markets are established, the said provisions, by imposing licensing restrictions, enable the buyers and sellers to meet in licensed premises, ensure correct weighment, make available to them reliable market information and provide for them a simple machinery for settlement of disputes. After the markets are built or opened by the Marketing Committee, within a reasonable radius from the market, as prescribed by the Rules, no licence is issued; thereafter all growers will have to resort to the market for vending their goods. The result of the implementation of the Act would be to eliminate, as far as possible the middlemen and to give reasonable facilities for the growers of commercial crops to secure best prices for their commodities."

18. It will thus be seen that the dominant purpose of the Madras Act is the establishment and maintenance of markets coupled with the regulation of buying and selling of commercial crops within the precincts of such markets.

19. Now turning to the Central Act, that Act was passed by the Federal Legislature on its being empowered to do so by the Governor-General in the exercise of his residual powers of legislation conferred on him by S. 104 of the Government of India Act, 1935. That section reads thus :

"104(1) : The Governor-General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such list and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

(2) In the discharge of his functions under this section, the Governor-General shall act in his discretion."

20. The very fact that the Governor-General invoked his powers under S. 104 for the purpose of getting the General Act passed by the Federal Legislature shows that the matter with which the Central Act was dealing, was not covered by any of the Legislative Lists in the Seventh Schedule to the Government of India Act. As already noticed, the Madras Act dealt primarily with markets and the regulation of buying and selling of commercial crops within certain areas by maintaining among other thing, standard weights and measures; and in the Provincial Legislative list viz., List II in the Seventh Schedule to the Government of India Act, 1935, entry 27 related to "trade and commerce within the Province"; entry 28 to "market and fairs", while entry 30 related to "weights and measures".

Similarly under the Constitution of India in List II i.e., the State List, entry 26 relates to 'trade and commerce within the State"; entry 28 to "markets and fairs" and entry 29 to "weights and measures". It is apparent therefore that the matters dealt with by the Madras Act fell within the Provincial Legislative List under the Government of India Act, 1935, and fall within the State List under the Constitution.

21. Moreover a scrutiny of the provisions of the Central Act reveals that the policy and purpose of the Central Act are not identical with those of

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the Madras Act. The preamble to the Central Act shows that it was an Act intended to provide for the creation of a fund to be expended by a specially constituted Committee for the improvement and development of the cultivation, marketing and utilization of coconuts in India.

Section 3 of the Act provides for the imposition of a cess known as the coconut cess which shall be levied and collected on all copra consumed in any mill in the territories to which the Act extends whether produced in or imported from outside the said territories at such rate not exceeding 4 annas per Cwt. as the Central Government may, after consulting the Indian Coconut Committee, fix.

The duty so collected shall be paid to the Committee and the Committee shall credit the said proceeds and any other moneys received by it to a fund called the Coconut Improvement Fund. Sections 4 to 7 deal with the Constitution of a Committee known as the Indian Central Coconut Committee. Section 9 provides for the application of the fund to the improvement and development of the cultivation and marketing of coconuts and the production, utilization and marketing of copra, coconut oil and coconut 'poonac'. Sub-Sec. 2 of Sec. 9 enables the Committee to utilize the fund to defray expenditure involved in -

(a) undertakings, assisting or encouraging agricultural, industrial, technological and economic research;

(b) the supply of the technical advice to growers;

(c) encouraging the adoption of improved methods in cultivation;

(d) carrying on such propaganda in the interests of the coconut industry as may be necessary;

(e) collecting statistics from growers, dealers, millers and other sources on all relevant matters bearing on the industry;

(f) fixing grade standards of copra and its products;

(g) recommending the maximum and minimum prices to be fixed for copra;

(h) advising on all matters which require attention for the development of the industry;

(i) improving the marketing of coconuts in India and abroad and suggesting suitable measures to prevent unfair competition;

(j) assisting in the control of insects and other pests and diseases of coconut trees;

(k) promoting and encouraging co-operative efforts among the coconut growers and in the coconut industries;

(l) adopting such measures as may be practicable for assuring remunerative returns to growers;

(m) maintaining and assisting in the maintenance of such institutes, farms and stations as it may consider necessary;

(n) adopting any other measures or performing any other duties which it may be required by the Central Government to adopt or perform or which the Committee itself may think necessary or advisable in order to carry out the purposes of this Act.

22. Thus the revenues for carrying out the purposes of the two laws are derived from different sources; the Committees which administer the two laws are constituted differently; and the objects of the two laws are not identical. It will further be observed that although there is a provision for improving the marketing of coconuts in India and abroad and suggesting suitable measures to prevent unfair competition as among traders, one searches the clauses of the Central Act in vain for a provision similar to the one contained in the Madras Act viz. the establishment of markets with a view to regulate the buying and selling of commercial crops for the purpose of ensuring the optimum price to the grower by eliminating the middleman.In truth the Madras Act envisages the simplest form of marketing viz. the sale by the producer directly to the buyer, be he the consumer or trader, and aims at bypassing the middleman whereas the Central Act with its more ambitions policy of finding trade outlets by improving the marketing of coconuts in India and abroad, contemplates modern methods of marketing through wholesalers, retailers, commission agents, brokers and so forth.

23. It is true that some of the subsidiary objectives of the Madras Act overlap the objectives of the Central Act, e.g. the collection of crop statistics and encouragement of the adoption of improved methods of cultivation. Even in these matters it is extremely doubtful if a body like the Indian Central Coconut Committee functioning from its headquarters at Ernakulam in Kerala State would be of any effective service to the coconut grower in the rural areas of Andhra Pradesh.

Its monthly bulletins and periodical pamphlets published in the English, Malayam and Kannada languages are hardly likely to reach the villager in the Andhra area. In the words of Sulaiman, J. in Shyamakant Lal v. Rambhajan Singh, AIR 1939 FC 74 at p. 83, "Further, repugnancy must exist in fact, and not depend merely on a possibility". The Judicial Committee stated the same principle thus :

"Their Lordships can discover no adequate grounds for holding that there exists repugnancy between the two laws in districts of the Province of Ontario where the prohibitions of the Canadian Act are not and may never be in force". Attorney General for Ontario v. Attorney General for Dominion of Canada, (1896) AC 348 at pp. 369-70.

24. Apart from all this, what is decisive of the question at issue is that the essential purpose sought to be achieved by the Madras Act is not covered by the Central Act because the latter does not touch the subject of markets. It does not therefore supersede or displace the Madras Act.

25. It is also worthy of note that although the Indian Central Coconut Committee has been functioning since the year 1945, it has not established markets anywhere in India where the growers and buyers could meet and transact business subject to its control and supervision. Indeed a body functioning under the Central Act would have been wanting and would be wanting in power to set up markets or prescribe weights and measures, for alike under the Government of India Act of 1935 and under the present Constitution those topics were and are within the exclusive legislative domain of the Provinces and the States.

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26. It follows that the Central Act and the Madras Act do not cover the same subject-matter, and the two enactments do not occupy the same field; in fact, to pursue the metaphor, the Madras Act operates in an area left vacant by the Central Act. Both the Acts can therefore co-exist and consistently stand together. As observed by Dixon, J. in Ex parte Mclean, (1930) 43 CLR 472 at p. 483 :

"The inconsistency does not lie in the mere co-existence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount Legislature to express by its enactment, completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed."

27. Here in this case there is no direct conflict between the provisions of the two statutes; nor is the Central Act intended to be a complete exhaustive code in respect of coconuts; nor again do the two laws occupy the same field. There is thus no repugnancy, no conflict and no clash between the Central Act and the Madras Act read along with the impugned G. O. The result is that the Writ Petition fails and is dismissed with costs. Advocate's fee, Rs. 100/-.

Petition dismissed.

AIR 1961 ANDHRA PRADESH 341 (Vol. 48, C. 93) "D. D. Italia v. Supdt., Central Excise"

ANDHRA PRADESH HIGH COURT

Coram : 2 P. CHANDRA REDDY, C.J. AND RAMACHANDRA RAO, J. ( Division Bench )

D.D. Italia, Petitioner v. Superintendent, Central Excise, Khamam Circle, Khammameth and others, Respondents.

Writ Petn. No. 197 of 1958, D/- 19 -12 -1960.

(A) Oil Seeds Committee Act (9 of 1946), S.10(1) - ESSENTIAL COMMODITIES - AGRICULTURAL PRODUCE - Responsibility of owner of mill.

The owner of the mill for the period in which he runs the mill himself and the period during which he runs it in partnership with another is responsible to observe the provision of S. 10(1). The contention that he lived far away from the mill and that he had nothing to do with the actual running of the oil mill or the crushing of oil seeds therein and therefore should not have been called upon to submit a return under S. 10(1) cannot be accepted. (Para 2)

(B) Oil Seeds Committee Act (9 of 1946), S.10(1) - ESSENTIAL COMMODITIES - LEASE - "Owner of every mill" - Lessee of mill is not owner.

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A lessee to whom the oil mill is leased cannot be said to be an owner of the mill within the meaning of S. 10(1). The policy of the Act seems to be to make the owner of the mill primarily responsible for the cess and not the lessees who might change from time to time, thus leaving, it to the owners to collect the cess from the lessees by any arrangement as between themselves. (Para 2)

(C) Oil Seeds Committee Act (9 of 1946), S.10(1) and S.11 - ESSENTIAL COMMODITIES - Assessment of cess to be made by Collector - No period is prescribed.

The Act prescribes no period of limitation for an assessment to be made by the Collector. Where there is a liability and no express provision is made limiting its realisation, it has to be inferred that it can be realised at any time after the liability arises. Hence the contention that the levy of assessment should be limited only to a period of one month, mentioned in S. 10(1) deserves to be rejected. AIR 1933 Mad 748 and AIR 1943 Mad 193 and (1944) 2 Mad LJ 260; W. P. Nos. 534 and 535 of 1958 (AP), Rel. on. (Para 3)

(D) Oil Seeds Committee Act (9 of 1946), S.17 - Oil Seeds Committee Rules (1947), R.33 - ESSENTIAL COMMODITIES - CONSTITUTIONALITY OF AN ACT - Validity.

Taking into consideration the fact that the order of the Collector is subject to revision by the District Judge, it cannot be said that the power conferred on the Collector by Rule 33 to make an assessment is an uncanalised power and therefore liable to be struck off. (Para 4)

Cases Referred : Courtwise Chronological Paras

('58) W.P. Nos. 534 and 535 of 1958 (Andh Pra), Murthy H.R.S. v. Collector of Chittoor 3

('33) AIR 1933 Mad 748 (V 20) : ILR 57 Mad 237, Gopalaswami v. Secy. of State 3

('43) AIR 1943 Mad 193 (V 30) : 1942-2 Mad LJ 732, Hindu Religious Endowments Board, Madras v. Sitarama Charyulu 3

('44) 1944-2 Mad LJ 260, Hindu Religious Endowments Board, Madras v. V. Jagannatha Charyulu 3

M.B. Rama Sarma for S.P. Srivastava, for Petitioner; 3rd Government Pleader, for Respondents (1 and 4); B.C. Jain, for Respondent (No. 2); K.A. Ananthakrishnarao, for Respondent (No. 3).

Judgement

RAMACHANDRA RAO, J. :- The petitioner is the sole proprietor of Bhikajee Dadbhai Rice and Oil Mills situated in Khammam. During the period from 1-4-1951 to 30-9-1952 the said mill was being run by the petitioner. From 1-10-1952 to 30-9-1954 the said mill was being run in partnership with respondent No. 2, who was the managing partner and was actually in charge of the running of the mill and the maintenance of the accounts. From 1-10-1954 to 30-8-1955 the mill was leased out on contract to respondent No. 3.

On 8-10-1956 respondent 1, the Superintendent of the Central Excise, Khammam Circle, Khammameth issued a notice of summary demand on the petitioner calling upon him to pay a sum of Rs. 8,633-10-0 as the oil seeds cess under the Indian Oil Seeds Committee Act (Act IX of 1946) (hereinafter referred to as Act) for the period beginning from 1-4-1950 to 30-9-1955. The petitioner sent letters to the 1st respondent denying his liability to pay the amount of demand.

The petitioner thereafter filed an application C. M. P. No. 46/2/56 under Section 12(1) of the Act for cancellation of the assessment. The learned District Judge rejected the contentions of the petitioner. He however directed the Central Excise Department to modify the demand so as to exclude the assessment referable to a period prior to the application of the Act to the erstwhile Hyderabad State. It is to quash the demand notice issued by the respondent No. 1 and the order of the District Judge in C.M.P. No. 46/2/59 that the present writ for certiorari is filed.

2. The contentions raised by Sri M.B. Rama Sarma, the learned counsel for the petitioner, were that the petitioner lived about 200 miles away from the Mill, that he had nothing to do with the actual running thereof and the crushing of oil seeds and that he should not have been called upon to submit a return. We have no hesitation in rejecting this contention so far as the period during which the petitioner himself ran the Mill and the period during which he ran it in partnership with another.

The petitioner contends however that during the period 1-10-1954 to 30-9-1955 he had leased out the Mill to respondent No. 3 and that he had no part whatever in the actual working of the Mill during that period. In order to appreciate the contention of the learned counsel it is necessary to notice the relevant provisions of the Act. Section 3 is the charging section and in so far as is relevant to this contention it is as follows :

"Section 3(1) : There shall be levied and collected on and after the date of the commencement of this Act as cesses for the purposes of this Act.-

(a) on all oils extracted from oil-seeds crushed in any Mill in the territories to which this Act extends whether the oil-seeds are produced in or imported from outside the said territories a duty of excise at the rate of one anna per maund and"

Section 10 so far as is relevant is as follows :

"Section 10(1) : The owner of every mill shall furnish to the Collector, on or before the 7th day of each month, a return stating the total amount of oil extracted in the mill during the preceding month, together with such further information in regard thereto as may be prescribed."

It is to be noticed that under Section 3 the cess is collected on all oils extracted from oil seeds crushed in any mill and under Section 10(1) it is the owner of the mill that should furnish the return to the Collector of the total amount of the oil extracted. The word 'owner' in Section 10(1) cannot certainly take in a lessee of the mill though a lessee is under law entitled to the possession of the mill and the use thereof.

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The policy of the Act seems to be to make the owner of the mill primarily responsible for the cess and not the lessees who might change from time to time, thus leaving it to the owners to collect the cess from the lessees by any arrangement as between themselves. By no stretch of imagination could a lessee be said to be an owner within the meaning of Section 10(1) of the Act. In our opinion this contention is without substance.

3. The next contention raised by the learned counsel is that the Collector has no right to make an assessment except in respect of the period of one month in respect of which a return is to be made by the owner under Section 10(1). In this connection the relevant section of the Act is Section 11, which may be extracted :

"Section 11(1) : On receiving any return made under Sec. 10, the Collector shall assess the amount of the duty of excise payable under S. 3 in respect of the period to which the return relates, and if the amount has not already been paid, shall cause a notice to be served upon the owner of the mill requiring him to make payment of the amount assessed within thirty days of the service of the notice.

(2) If the owner of any mill fails to furnish in due time the return referred to in Sub-Sec. (1) of Sec. 10 or furnishes a return which, the Collector has reason to believe is incorrect or defective, the Collector shall assess the amount if any, payable by him in such manner as may be prescribed, and the provisions of Sub-Section (1) shall thereupon apply as if such assessment had been made on the basis of a return furnished by the owner :

Provided that, in the case of a return which he bas reason to believe is incorrect or defective, the Collector shall not assess the duty of excise at an amount higher than that at which, it is assessable on the basis of the return without giving to the owner a reasonable opportunity of proving the correctness and completeness of the return''.

The learned Counsel contends that reading secs. 10 and 11 together there is no power to make an assessment for a period exceeding one month. In our opinion the Act prescribes no period of limitation for an assessment to be made by the Collector. A similar contention was raised before the Madras High Court in a case reported in Gopalaswami v. Secretary of State, AIR 1933 Mad 748 decided by a Division Bench consisting of Curgenven and Sundaram Chetty, JJ.

The question there arose whether duty on cotton could be levied under the Cotton Duties Act, II of 1896 or collected in the absence of a return made by the proprietor and secondly, whether in the absence of any provision for the collection of arrears, the same could be made. It was therein held that a person who has become liable to pay duty and who fails to submit the return required by S. 8 of the Act cannot plead lapse of time between the production of his goods and the initiation of steps to assess them, as a defence to claim for arrears of such duty accruing over a period of three years : It was therein observed by Justice Curgenven at page 749 as follows.

"It is true that the Cotton Duties Act does not expressly provide for the consequences of failure to submit a return. But that is not to say that no power remains to collect the duty. S. 9 gives the Collector power to assess the duty payable, and the mere fact that it is described as 'payable in respect of the period to which the return relates' cannot be read as meaning that if no return be made there can be no period in respect of which it is payable. The section is so worded because it has in contemplation the normal case, when the mill-holder complied with the terms of the Act. But the power of the Collector to make the assessment, so given, cannot be limited either by any defect the return or even by the absence of any return". The principle of this decision was applied by the Madras High Court to the levy of contribution, under the Madras Hindu Religious Endowments Act (II of 1927) in a case reported in Hindu Religious Endowments Board, Madras v. Sitarama Charyulu, 1942-2 Mad LJ 732 : (AIR 1943 Mad 193). It was observed by Kuppuswami Ayyar, J., at page 735 of Mad LJ : (at p. 194 of AIR) as follows :

"There is nothing in the scheme of the Hindu Religious Endowments Act to suggest that it was the intention of the Legislature that the levy should be either in the year for which it is levied or in the next year. I am not able to see any hardship to the institution by the delaying of such levies; for it is their default in sending the returns that resulted in the contribution not being levied".

The same view has been taken by Justice Somayya in a case reported in Hindu Religious Endowments Board, Madras v. V. Jaganathacharyulu, 1944-2 Mad LJ 260. The learned Judge observed that there is no time limit provided by the Legislature for the recovery by the Board of the contribution under S. 69(1) or S. 69(2) of the Madras Hindu Religious Endowments Act and as such the Board may levy all the arrears due. These decisions have been followed by a Bench of this Court in Murthy H.R.S. v. Collector of Chitoor W.P Nos. 534 and 535 of 1958 where the question arose whether the collector could levy cesses under the Madras District Boards Act (XIV of 1920) with retrospective effect.

It was argued that the assessment should be made in each of the years for which the cesses were demanded and this argument was repelled on the ground that there was no period of limitation for the recovery of cesses. It is observed by the learned Judges that where there is a liability and no express provision is made limiting its realisation, it has to be inferred that it could be realised at any time after the liability arose. Respectfully following the principle laid down by the Division Bench of this Court we have no hesitation in rejecting the contention that the levy of assessment should be limited only to a period of one month.

4. The learned counsel lastly contended that Rule 33 conferred unregulated power on the Collector to make an assessment in that it did not prescribe any rules for the guidance of the

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Collector in making the assessment. We think that this argument also lacks substance. The order of the Collector is subject to revision by the District Judge. He is empowered to cancel, or modify the assessment and order refund either in whole or in part and there is a specific provision made for the correction of errors, if any, made by the assessing authority. It cannot be said that the power to make an assessment is an uncanalised power and therefore liable to be struck off. For the aforesaid reasons we hold that there are no grounds for the issue of a Writ of Certiorari. The writ petition is accordingly dismissed with costs. Advocate's fee Rs. 100/-.

Petition dismissed.

AIR 2002 BOMBAY 324 "K. S. Agarwal, M/s. v. Tribunal, Co-op.Societies Yeotmal "

BOMBAY HIGH COURT

(NAGPUT BENCH)

Coram : 2 V.G. PALSHIKAR AND V. M. KANADE, JJ. ( Division Bench )

M/s. K. S. Agarwal, Petitioner v. The Tribunal, and Assistant Registrar, Co-operative Societies, Yeotmal and others, Respondents.

Writ Petn. No. 2181 of 1986, D/- 1 -2 -2002.

Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.57 - AGRICULTURAL PRODUCE - Scope - Sum payable to commission agent - Cannot be recovered via Tribunal.

What is recoverable as land revenue under Section 57 is any sum due to an agriculturist for any agricultural produce sold by him in the market area, which is not paid to him. It is, therefore, obvious that the sum must be payable to an agriculturist for it being recovered as land revenue. A sum payable to a Commission Agent cannot, by very plain reading of the provisions of Section 57(2), be recovered via a Tribunal. Therefore, reference of dispute between Commission agent and partnership firm regarding sum payable to such agent to Tribunal would be void and proceedings before Tribunal would be without jurisdiction and void ab initio. Further order of Tribunal being passed without giving an opportunity to the firm against whom due was claimed it was vitiated for violation of principles of natural justice also. (Paras 8, 9, 10, 11)

V.M. Deshpande, for Petitioner; S.R. Deshpande (for Nos. 4 and 5), for Respondents.

Judgement

V. G. PALSHIKAR, J. :- Heard Counsel.

2. This petition is directed against an Award passed by the adjudicating Tribunal appointed under Section 57 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (hereinafter, for the sake of brevity, referred to as 'the Act\_). Few facts, which are undisputed may be noted to understand the controversy involved in this case and the question of law of some importance raised by the learned counsel for the petitioners.

3. The petitioners is a partnership business dealing in cotton. The respondent No. 2 is an Agricultural Produce Market Committee, Darwha. The respondent No. 3 is working as a broker (Aadatya) or Commission Agent, within the jurisdiction of the respondent No. 2 Committee. The respondent Nos. 4 and 5 are agriculturists, who sell their agricultural produce within the Market Committee, using the respondent No. 3, as their Aadatya, or Commission Agent. The respondent No. 1 is the Tribunal, constituted under Section 57 of the Act. It is presided over by the Assistant Registrar of the Co-operative Societies, Yavatmal.

4. The respondent Nos. 4 and 5 through the agency of respondent No. 3, allegedly sold certain cotton, which is an agricultural produce, to the petitioners. It is then alleged that certain payments of the price of cotton was not received by the Commission Agent and he, therefore, filed an application purportedly under Section 57 of the Act, for recovery of this sum. The application is filed by the respondent No. 3 in his capacity as a Commission Agent and not as a constituted agent or attorney of the respondent Nos. 4 and 5. In the applications made for recovery by the respondent No. 3, there is a clear mention that the agricultural produce belonging to respondent Nos. 4 and 5 was sold through the Aadatya of the respondent No. 3. It is, therefore, undisputed factual position that the agricultural produce belonged

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to the respondent Nos. 4 and 5. It was sold in the Market Committee and then it is alleged that certain sums payable to them have not been paid by the petitioner. The application for recovery of sum under Section 57 is not made either by respondent Nos. 4 and 5. The application as made the respondent No. 3 nowhere states that it is made by him for and on behalf of the respondent Nos. 4 and 5.

5. These applications were forwarded by respondent No. 2-Committee to the respondent No. 1-Tribunal, for recovery and the Tribunal, after having issued initial notice, proceeded ex parte against the petitioners and awarded the sum claimed by the respondent No. 3. It is this Award, which is impugned by this petition by the petitioners.

6. Shri V.M. Deshpande, learned counsel appearing on behalf of the petitioners, submitted that the award is unsustainable in law for the following reasons :-

(i) Principles of natural justice have been violated as the petitioner was proceeded ex parte without any cause and no opportunity was given to him to point out the non-maintainability of the proceedings before the Tribunal.

(ii) The application under Section 57 for recovery is not maintainable at the instance of a Commission agent and consequently, all further proceedings are vitiated;

(iii) The Tribunal constituted under Section 57 of the Act, has no jurisdiction to adjudicate upon a claim not made by an agriculturist or by Agricultural Produce Market Committee.

7. In the instant case, the claim having been made by the Commission agent the Tribunal did not have jurisdiction to adjudicate upon the existence of the amount or recovery thereof. The proceedings, therefore, are liable to be quashed for lack of jurisdiction. The contentions raised by Shri Deshpande will have to be considered in the light of the provisions of the Act. Section 57 is, therefore, requires to be considered in extenso to examine the arguments made by the learned counsel. Section 57 reads thus:-

\_57. (1) Every sum due from a Market Committee to the State Government shall be recoverable as an arrear of land revenue.

(2) Any sum due to a Market Committee on account of any charge, costs, expenses, fees, rent, or on any other account under the provisions of this Act or any rule or bye law made thereunder (or any sum due to an agriculturist for any agricultural produce, sold by him in the market area which is not paid to him as provided by or under this Act, shall be recoverable from the person from whom such sum is due, in the same manner as an arrear of land revenue.

(3) If any question arises whether a sum is due to the Market Committee (or any agriculturist within the meaning of sub-section (2)), it shall be referred to a Tribunal constituted for the purpose which shall after making such enquiry as it may deem fit, and after giving to the person from whom it is alleged to be due an opportunity of being heard, decide the question and the decision of the Tribunal shall be final and shall not be called in question in any Court or other authority.

(4) The State Government may constitute one or more Tribunals consisting of the Collector who has jurisdiction over the market area;

Provided that, the State Government may, if in its opinion it is necessary so to do in any case constitute a Tribunal consisting of one person other than the Collector (possessing the prescribed qualifications who is not connected with the Market Committee or with the person from whom the sum is alleged to be due).

(5) Except as otherwise directed by the Tribunal in the circumstances of any case, the expenses of the Tribunal shall ordinarily be borne by the party against whom a decision is given."

8. It will be seen from this section referred to above, that all sums due from a Market Committee to the State Government, can be recovered as land revenue. Similar provision is made in sub-section (2) in relation to any sum due to a Market Committee from any one, as also any sum due to agriculturists for any agricultural produce sold by him in the market area, which is not paid to him may also be recovered as land revenue. Then sub-section (3) provides that if any question arose as to whether a sum is due to the Market Committee or an agricultural within the meaning of sub-section (2) it shall be referred to a Tribunal, constituted for the purpose. Then sub-section (4) provides for the constitution of a Tribunal. It will be seen from the provisions of

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sub-section (2) that what is recoverable as land revenue under Section 57 is any sum due to an agriculturist for any agricultural produce sold by him in the market area, which is not paid to him. It is, therefore, obvious that the sum must be payable to an agriculturist for it being recovered as land revenue. A sum payable to a Commission Agent cannot by very plain reading of the provisions of Section 57(2), be recovered via a Tribunal. There is no statement in the application made by the respondent No. 3 that the sum was payable to him, nor is there any statement that it was payable to respondent Nos. 4 and 5. Obviously, it appears that it was payable to the respondent Nos. 4 and 5, if at all anything was due factually, but in any event the application of respondent No. 3 for recovery of this money under Section 57, itself was not maintainable. No further proceedings, could therefore, be commenced at the instance of a person, who is Commission Agent under the provisions of the Act, for recovery as land revenue of any sum due to such Commission Agent, even if it is assumed that such sum was due to him and consequently, the respondent No.1 erred in referring the matter for recoverable to the Collector or the Tribunal for adjudication. The entire proceedings are vitiated for total lack of an authority under Section 57 to recover the amount as land revenue. On this ground alone, the proceedings are liable to be quashed.

9. It will be seen from the provisions of Section 57 of the Act, as quoted above, that when a dispute arose as to what is the sum due that the matter shall be referred to the Tribunal. Reference in the instant case was without jurisdiction and, therefore, void for the reason that it was a dispute between the Commission agent and the petitioner which is not covered by the provisions of Section 57 (2) of the Act. The Tribunal, therefore, had no jurisdiction, whatsoever, to adjudicate upon the claim made by the respondent No. 3. The proceedings, being void ab initio, are liable to be quashed for this reason also.

10. Sub-section (3) of Section 57 provides that the Tribunal, shall give an adequate opportunity to the person against whom the due is claimed. The Tribunal is, therefore, duty-bound to grant said opportunity which must be reasonable in nature to prove that there is no due. From the impugned award it is obvious that such an opportunity was not granted to the petitioner. The adjudication by the Tribunal, without granting statutory opportunity, as engrafted in sub-section (3) of Section 57, is, therefore, vitiated for violation of principles of natural justice. On this ground also, the impugned Award is liable to be set aside.

11. Viewed from any point, therefore, the impugned award is unsustainable in law. The Tribunal had no jurisdiction to entertain the claim by the Commission Agent/Broker, individually, under the provisions of the Act, and the proceedings, therefore, were entirely without jurisdiction, same are liable to be quashed.

12. In the result, the petition succeeds and is allowed. Rule is made absolute in terms of prayer Clauses (A) and (B). The Award dated 4-10-1985 is quashed. There will be no order as to costs.

Petition allowed.

AIR 2000 BOMBAY 317 "Jaisingh Vithoba Girase v. State of Maharashtra"

BOMBAY HIGH COURT

(BENCH AT AURANGABAD)

Coram : 2 V. K. BARDE AND S. B. MHASE, JJ. ( Division Bench )

Jaisingh Vithoba Girase, Petitioner v. State of Maharashtra and others, Respondents.

Writ Petn. No. 4617 of 1998, D/- 29 -10 -1999.

(A) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.23A - AGRICULTURAL PRODUCE - No confidence motion against Chairman/Vice Chairman - Passing of, by majority - Resolution expressing no confidence passed by two third members - Seat of Chairman or Vice Chairman becomes vacant - Making of requisition again by one half members to Collector on basis of said resolution, not necessary.

A meeting to express no confidence, as contemplated in S. 23A is only one special meeting on the basis of requisition submitted as provided in sub-sec. (2) of the said section. On the contrary the interpretation submitted by the petitioner that first the no confidence motion shall be expressed by two-third members and thereafter the requisition shall be filed by one-half members is on the face of the record untenable in law because the moment two-third members pass the resolution expressing no confidence, seat of Chairman or the Vice-Chairman becomes vacant, and

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therefore, there is no question of again making requisition to the Collector by one half members on the basis of said resolution for convening meeting to discuss no confidence motion. (Paras 7, 8)

(B) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.23A - Bombay General Clauses Act (1 of 1904), S.28 - AGRICULTURAL PRODUCE - No confidence motion - Notice - Service of - S. 23A does not authorise or require notice to be served by post - Thus S. 28 of Bombay General Clauses Act would not be applicable.

Section 23 requires that the Collector shall within 15 days from the date of receipt of the requisition under sub-sec. (2) convene a special meeting of the Committee. This Section does not authorise or require the notice to be served by post, and therefore, S. 28 of Bombay General Clauses Act, 1904 would not be applicable when the Collector is convening a special meeting as provided in sub-sec. (3). Section 28 of Bombay General Clauses Act applies where The Bombay Act or Maharashtra Act authorises or requires any document to be served by post. Therefore the plea that the Collector, should have followed the procedure of S. 28 of Bombay General Clauses Act, while convening the meeting under S. 23 would not be tenable. (Para 9)

(C) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.23A - AGRICULTURAL PRODUCE - No confidence motion - Passing of - S. 23A is Code in itself - It does not require that there shall be any reasons or grounds for expressing no confidence motion.

Maharashtra Co-operative Societies Act (24 of 1961), S.73ID(2).

Section 73-ID(2) of Maharashtra Co-operative Societies Act states that the requisition for no confidence shall be made in such form and in such manner as may be prescribed. Not only that but S. 165(2) XXXV-C of the Maharashtra Co-operative Societies Act gives powers to make rules to the State Government to prescribe the requisition form and the manner in which the motion of no confidence can be brought under S. 73-ID. Similar is the position in respect of the other Acts like Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Therefore, the rules in that respect have been framed. However, that does not mean that unless some mode is followed, S. 23A of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 is not valid. The scheme under the other Acts is slightly different. Not only that but what should be the procedure in respect of no confidence motion under each of the Act is a matter to be considered by the Legislature and the Legislature in its wisdom has framed S. 23A of Agricultural Produce Marketing (Regulation) Act, without giving power to the State Government or any other authority to make Rules. S. 60 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 does not make a provision giving powers to the State Government to make Rules in respect of the meeting, special meeting and no confidence motions to be expressed under S. 23A of the Act, and therefore, no Rules have been framed. Not only that but S. 23A also does not provide that no confidence motion and/or requisition shall be carried out and/or submitted as prescribed. The S. 23A is a Code in itself, it does not require that there shall be any reasons or grounds for expressing no confidence motion. The Chairman and the Vice-Chairman holds the said office at the will of the members of the said Market Committee, and therefore, they can hold the office till the members of the Managing Committee desire. Moment Chairman and Vice-Chairman lose confidence, even though for no reasons, the Chairman and Vice-Chairman has to vacate the said office if the resolution is passed by two-third of the majority. (Para 10)

(D) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.23 - AGRICULTURAL PRODUCE - No confidence motion - Passing of - S. 23 regulating procedure for expressing no confidence against Chairman and Vice-Chairman - Is Code in itself and there is no abdication of powers - Powers vested with Collector is not unguided power - Does not suffer from excessive delegation.

Section 23 is a Code in itself regulating the procedure for expressing no confidence as against the Chairman and the Vice-Chairman of the Market Committees and there is no abdication of powers. It cannot also be said that the power vested with the Collector is an unguided power and/or suffers from

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excessive delegation. Section 23 is not violative of any of the provisions of the Constitution of India. (Para 11)

(E) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964)), S.23A - AGRICULTURAL PRODUCE - No confidence motion - Passing of resolution in special meeting - Procedure provided under S. 23-A - Thus absence of providing of quorum either in Section or Rules - Does not make S. 23A, a inadequate.

In the special meeting under S. 23A, the business to be transacted is to be transacted by a majority of not less than two-thirds and, therefore, even if requisitionists who are not less than one-half of the total number of members are present but not less than two thirds are not available, the resolution cannot be passed. If members present in the meeting are less than two-thirds of the total members then in that eventuality, the resolution fails, and therefore, minimum number of members who are required to conduct the business of expressing no confidence motion against the Chairman and the Vice-Chairman, is not less than two-thirds and that will be a quorum for such meeting. Any number of members less than that, even though allowed to transact the business of expressing no confidence motion, results into non passing of the said resolution of no confidence motion, and therefore, that cannot be said to be a quorum. Therefore, in a case wherein the members present in the special meeting are less than two-thirds of the total number of members of the committee, the said meeting is without any quorum, and therefore, the meeting cannot be held. Therefore, it is not necessary to fix up quorum by framing necessary bye-laws as provided in S. 27 of the said Act. Thus, it cannot be said that in the absence of providing of Quorum either in the section or Rules, S. 23A is inadequate provision. (Para 12)

(F) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.13(1)(f) - AGRICULTURAL PRODUCE - No confidence motion - Passing of, in special meeting - Assistant Registrar of area was present at time of special meeting being authorised representative of District Deputy Registrar - Plea that meeting was attended by unauthorised person and/or persons who are not members of the market committee - Liable to be rejected. (Para 13)

(G) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.23 - AGRICULTURAL PRODUCE - No confidence motion - Passing of - Vice Chairman submitted the application for cancellation of meeting and left the meeting - Record not showing that he participated in meeting - Fact that his presence was not shown in proceedings of meeting - Is of no consequence. (Para 14)

(H) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.23A - AGRICULTURAL PRODUCE - No confidence motion - Requisitioning of meeting - Genuineness of signatures of requisitionist and/or of persons in the said meeting - No objection was raised by members in meeting - It was not necessary for presiding officer to find out whether the members were genuine and/or signatures were genuine. (Para 15)

Cases Referred : Chronological Paras

Ramkrusna v. Kisan, AIR 1971 Bom 305 : 1970 Mah LJ 836 10

B. B. Jadhav, for Petitioner; A. M. Kanade, Govt. Pleader, P. R. Patil, for Respondents.

Judgement

S.B. MHASE, J. :- Both these petitions have been filed by the petitioners challenging the proceedings of the no confidence motion dated 30-9-1998 expressed against them while the petitioners were the Chairman and the Vice-Chairman of Agricultural Produce Market Committee Dondaicha, by invoking the extraordinary jurisdiction of this Court under Art. 226 of the Constitution of India.

2. The petitioner in writ petition No. 4617 of 1998 was Vice-Chairman of the said market committee while the petitioner in writ petition No. 4621 of 1998 was the Chairman of the said Market Committee. On 18-9-1998, twelve members of the said Market Committee submitted a requisition to the Collector, Dhule, to call a special meeting of the said market committee to express no confidence motion against both the petitioners under Section 23A of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963. The separate requisition in respect of each of the petitioner was submitted. On the basis of these requisitions, the Collector by this order dated 24-7-1998 directed that the meeting of the members of the said

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market committee shall be called on 30-9-1998 at about 12.00 noon at the office of the said market committee and the Sub-Divisional Officer, Shirpur was appointed to preside over the said meeting. In consonance with the same on 24-9-1998 itself, a notice was issued to both the petitioners stating that the requisition dated 18-9-1998 under S. 23A of the said Act has been filed with him and the special meeting has been fixed on 30-9-1998 at 12-00 noon at the office of the said market committee which will be presided over by the Sub Divisional Officer, Shirpur. It is mentioned in the said intimation that the separate notice of the meeting is being sent to the petitioners. On 24-9-1998 itself the Collector issued the separate notice to both the petitioners informing them that the special meeting of the market committee has been scheduled on 30-9-1998 at 12.00 noon to express no confidence motion against the Chairman and the Vice-Chairman of the said Market Committee and requested both the petitioners to attend the said meeting. This notice was accompanied with the requisition submitted by the requisitionists. In accordance with the said notice special meeting of the said market committee was held on 30-9-1998 which was presided over by the Sub Divisional Officer, Shirpur and 13 persons were present in the said meeting. However, one Shri M. C. Padavi was the Assistant Registrar Co-operative Societies and even though he is the member of the said committee was not entitled to vote in the said meeting and accordingly has not voted in the said meeting. Therefore the resolution was passed in the said meeting by 12 persons. There was no one in the meeting to oppose the said resolutions passed against each of the petitioners. The said market committee consists of 17 members and out of 17 members, 12 members have expressed no confidence, and therefore, the motion was declared to have been passed against both the petitioners namely the Chairman and the Vice-Chairman of the said market committee which was passed by a majority of not less than two thirds of the total number of members (excluding the members who have no right to vote). The petitioners have challenged this act of expressing the no confidence motion against them.

3. So far as the Vice-Chairman Shri Jaysinha Girase is concerned, he has received the notice of no confidence motion along with the requisition and the intimation as stated earlier. Therefore, the ground of challenge by the Vice-Chairman does not cover the ground of non-service of the notice of the special meeting. As far as Chairman Gulabrao Patil who is the petitioner in writ petition No. 4621 of 1998 is concerned, amongst all other common grounds, he has challenged the meeting on the ground of non-service of notice of no confidence motion to him. Therefore, according to the Chairman, the meeting is vitiated because the notice of the said meeting was not served on him.

4. So far as the notice to be served on the petitioner in writ petition No. 4621 of 1998 is concerned, the documents produced by the respondent Sub-Divisional Officer point out that the intimation of the said meeting which is required to be given as per the proviso of sub-section (3) of S. 23A of the said Act, has been served on Kanchan Gulabrao Patil. It is further revealed that a separate notice of the meeting annexed with the requisition was also served on Kanchan Gulabrao Patil. It is the contention of the petitioner that thus the notice has not been served personally on the petitioner. From the affidavit-in-reply filed by the Sub-Divisional Officer, the Sub-Divisional Officer has stated in para No. 4 that notice of special meeting for considering the vote of no confidence was duly served on the wife of Shri Gulabrao Patil, who is major person as per the provisions of law, which is enclosed to the said reply. Thus the Sub-Divisional Offi-cer made a statement that the notice was served on the wife of Gulabrao Patil, namely the Chairman. However, in the affidavit-in-reply which has been filed by the respondent No. 12 who is the member of the said market committee, he has stated in para No. 7, that the petitioner intentionally refused to accept the service of notice on false pretext that the petitioner was not at home. However, his son "Kanchan Gulab Patil" who is about 23 years old was duly served with the notice of no confidence motion.

5. It is pertinent to be noted that after this affidavit and the affidavit of the Sub-Divisional Officer the petitioner has filed rejoinder wherein he submitted that the petitioner has no son namely Kanchan and as such there is no question of service of notice on said Kanchan as he was not the Chairman of Agricultural Produce Market Committee, Dondaicha nor he is the member of the family of the petitioner. The petitioner further submitted that no notice was served on him or

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his wife and no name of his wife has been shown revealing the details about the place, date etc. He submitted that the petitioner has no wife by name Kanchan. Therefore, controversy has arisen who is "Kanchan Gulab Patil," who has accepted the notice. Therefore, the Sub-Divisional Officer, has ultimately filed affidavit of Talathi, who had been actually to the house of the petitioner for serving the said notice. The said affidavit was filed on 4-8-1999. Shri Khairnar, who is the Talathi of village Dondaicha, has stated in his affidavit that the notices to be served on the petitioner were handed over to him by the Tahsildar Sindkheda and instructed to serve on the petitioners. Accordingly, on 26-9-1998, he took the notice of requisition of the no confidence motion and went to village Dhamane, Taluka Sindkheda where the present petitioner resides and approached his house at about 12.00 noon. He further stated that the door of the house was opened by one lady. He asked her as to whether the petitioner was in the house. The said lady told that the petitioner had gone to Pune. On being asked as to who she is, she told that she is the wife of the petitioner, and therefore, the notice was served to the said lady. He further explained that however the lady took the said notice inside the house, while the affiant was waiting outside the house. The lady came with the second copy of the notice signed as Kanchan Gulabrao Patil. On being asked as to who has signed, she replied that she has signed. He further stated that now in view of the controversy, he carried out the verification and has found that Kanchan Gulabrao Patil is the son of the petitioner, aged 22 years, and his name appears in the voters list at Sr. No. 421 shown as Sonawane Kanchan Gulabrao. He stated that the Kul name or the Surname of the petitioner is Sonawane. He produced on record, the certified copy of the voters list wherein the name of the petitioner appears at Sr. No. 416, in House No. 136 and the voters from Sr. No. 416 to 421 are resident of house No. 136. The name of Kanchan Gulabrao Sonawane appears at Sr. No. 421. In Column of relation, the word "Va" appears which means father, as explained at the bottom of the said voters list. Thus, it shows that Gulab Gorakh Sonawane is the father of Kanchan Gulabrao Sonawana. After the affidavit is filed by the Talathi, as stated above, the petitioner again filed affidavit of Pramilabai Gulabrao Patil, stating that no Talathi had visited the house on 26-9-1998 nor her son namely Rishikesh Gulabrao has signed the alleged notice. It is further denied that there is no son namely Kanchan Gulabrao Patil and there was no talk with the said Talathi. Thus evidence by way of affidavit is on record. What is pertinent to be noted is that the petititioner has not denied that his Kul name and/or surname is Sonawane and that his name and names of his family members appear in the voters list at Sr. No. 416 to 421. Even though affidavit of Pramilabai has been filed at a later stage, she has also not stated that her name is not as shown in the voters list at Sr. No. 417. On production of the said voters list, which shows that Kanchan Gulabrao is member of the family of the petitioner related as son with the petitioner. It was for the petitioner to explain as to who is said Kanchan. It is further interesting to note that the petitioner has not denied the house number shown in the said voters list. Thus, it becomes crystal clear from the voters list and the affidavit of the Talathi that there exists a person Kanchan Gulabrao Sonawane, who is residing in house No. 136 of village Dhamane which is the place of residence of the present petitioner and that said Kanchan has accepted the said notice. In fact, under these circumstances, the petitioners should have produced the affidavit of Kanchan Gulabrao Patil to state that the signature showing that the notice of no confidence motion was served on him as the family member of the petitioner is incorrect and denying the same. The petitioner has thus failed to produce the best possible evidence.

6. Apart from the above facts, the contention of the petitioner has been negatived on the fact that the Vice-Chairman Shri Girase, has filed writ petition No. 4320 of 1998 which came for disposal on 30-9-1998. The said petition was filed on 28-9-1998 by the vice-chairman Girase which was circulated for 30-9-1998. On the said date the Chairman presented a petition across the bar which petition was subsequently numbered as W.P. No. 3754 of 1999. The common order was passed by this Court. From the petition of the Chairman, it appears that the petition was prepared on 29-9-1998 and was sworn on 29-9-1998. Along with the said petition the petitioner Chairman has annexed at Exhibit "A" a copy of the notice issued by the Collector, calling the special meeting of the said Market Committee on 30-9-1998 at 12-00 noon. No doubt that the said copy show that it is addressed to Jaysing Vithoba Girase,

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namely the Vice-Chairman, however that also shows that the Vice-Chairman has received the notice of the meeting of said no confidence motion as a Vice Chairman and also as a member of the market committee to express no confidence against the Chairman. Above all, the notice specifically states that the meeting has been called to express vote of no confidence against the Chairman and the Vice-Chairman. Therefore, the net result of this proceeding and the documents produced on record is that on 29-9-1998 itself the petitioner Chairman of the said Market Committee had a notice of the fact that a special meeting to discuss the no confidence motion has been called. Not only that, but the writ petition No. 4320 of 1998 filed by Vice-Chairman Girase contained all the documents which were annexed to the said notice. Thus these proceeding point out that on 29-9-1998 the petitioner was aware of the fact that the special meeting has been called to discuss the no confidence motion against him. Therefore, he has approached this Court. All these facts clearly establish that the petitioner had notice. The above referred facts in respect of service through Kanchan is concerned that also points out that Kanchan being member of the petitioner Chairman's family, has accepted the notice, and therefore, we find that there was proper service of the notice of special meeting of no confidence motion to be expressed against the petitioners, and therefore, the contention raised by the petitioner that there was no notice to the petitioner of the said meeting is hereby rejected. On the contrary, we find that all sorts of efforts have been made by the petitioner to make out a show that notice was not served when in fact the petitioner had notice of the said special meeting called by the respondent Collector.

7. Thereafter common grounds have been raised by the petitioners challenging the said meeting. Mr. Jadhav, learned counsel appearing for the petitioner has submitted that the following procedure is reflected from S. 23A which has not been followed by the respondent No. 1, and therefore, no confidence motion be quashed. He submitted that -

(i) Firstly the market committee must pass a resolution expressing no confidence against the Chairman and Vice-Chairman by two-thirds of members of the market committee;

(ii) Thereafter half of the members of the market committee shall move the requisition to the Collector.

(iii) On receipt of such requisition, the Collector, shall convene a special meeting of the Market Committee to discuss no confidence motion convening the meeting within 15 days.

Thus the learned counsel for the petitioner submitted that there is failure on the part of the Legislature to state as to what should be a majority to pass the no confidence in the special meeting called by the Collector. Thus, he submitted that it is an incomplete legislation. With a restraint, we observe that the argument advanced by the learned counsel is fallacious. Section 23 of the Act lays down :

(1) A Chairman or a Vice-Chairman shall cease forthwith to be Chairman or Vice-Chairman as the case may be, if the Market Committee by a resolution passed by a majority of not less than two-thirds of the total number of members (excluding the members who have no right to vote) at a special meeting so decides;

(2) The requisition for such special meeting shall be signed by not less than one half of the total number of members (excluding the members who have no right to vote) and shall be sent to the Collector under intimation to the Director;

(3) The Collector shall within fifteen days from the date of receipt of the requisition under sub-section (2), convene a special meeting of the Committee;

Provided that, when the Collector convenes such special meeting of the committee, he shall give intimation thereof to the Chairman, or as the case may be, Vice-Chairman and also to the Director.

4(a) A special meeting to consider a resolution under sub-sec. (1) shall be presided over by the Collector or the officer authorised by him in this behalf, but the Collector or such officer or the Director (if present) shall have no right to vote at such meeting.

(b) The members of the Committee who have no right to vote may take part in the discussion, but shall not vote.

(5) If the motion of no confidence is not carried as aforesaid or if the meeting could not be held for want of quorum, no such fresh requisition for considering motion want of confidence in the same Chairman or Vice-Chairman shall be made, until after the

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expiry of six months from the date of such meeting.

8. On bare perusal of the aforesaid section, it will reveal that the arguments as suggested and submitted by the learned counsel is not possible to be read in that section. We find that the learned counsel has lost sight of the fact that sub-section (1) states that the resolution has to be passed in a special meeting and on such resolution being passed by not less two-thirds of the majority, the Chairman or the Vice-Chairman shall cease to hold the office. Sub-section (2) states that the requisition for such a meeting shall be signed by.......". Therefore, the words such a special meeting appearing in sub-section (2) refer to the special meeting as stated in sub-sec. (1). Sub-section (3) lays down that the Collector shall convene a special meeting within a period of fifteen days after receipt of requisition as stated in sub-section (2), and therefore, ultimately the special meeting which is contemplated to be convened under sub-section (3) is the said special meeting which, is stated in sub-section (1). Sub-section (4) specifically makes a reference to the special meeting as stated in sub-section (1) and sub-section (5) also makes a reference to the meeting in sub-section (1) by stating "such meeting" i.e. the special meeting which is called to express no confidence. Therefore, a meeting to express no confidence, as contemplated in S. 23A is only one special meeting on the basis of requisition submitted as provided in sub-section (2) of the said section. On the contrary the interpretation submitted by the learned counsel that first the no confidence motion shall be expressed by two third members and thereafter the requisition shall be filed by one-half members is on the face of the record untenable in law because the moment two-third members pass the resolution expressing no confidence, seat of Chairman or the Vice-Chairman becomes vacant, and therefore, there is no question of again making requisition by one half members on the basis of said resolution. The learned counsel gave an unwarranted emphasis on the word resolution and tried to develop a submission and interpret the said section giving absolutely different scheme which is not warranted by S. 23A. Not only that but what we find is that if the interpretation as made by the learned counsel which we have stated earlier, if accepted, leads to the illogical, unwarranted interpretation of the said section. The said interpretation absolutely violates the language and the scheme provided by the Legislature in the said section, and therefore, we reject the said interpretation put forth by the learned counsel for the petitioner.

9. The learned counsel for the petitioners thereafter submitted that Section 23A even though provides that notice should be issued within a period of 15 days by the Collector as provided in sub-section (3) convening a special meeting, still there is no mode provided for issuing the said notice and serving it. He submitted that under these circumstances, the procedure as laid down in Section 28 of the Bombay General Clauses Act, 1904 should have been followed by the Collector. Section 28 of the Bombay General Clauses Act states :

"Where any Bombay Act or Maharashtra Act) made after the commencement of this Act authorizes or requires any documents to be served by post whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Thus, in short, the learned counsel relying on this Section submitted that notice should have been sent and/or should have been given by registered post. What we find that Sec. 23 requires that the Collector shall within 15 days from the date of receipt of the requisition under sub-section (2) convene a special meeting of the Committee. This Section does not authorise or require the notice to be served by post, and therefore, we find that S. 28 of the Bombay General Clauses Act, 1904 is not applicable when the Collector is convening a special meeting as provided in sub-section (3). Section 28 applies where the Bombay Act or Maharashtra Act authorises or requires any document to be served by post. Such is not the case in the present matter, and therefore, submission made by the learned counsel that the Collector, should have followed the procedure of Section 28 of the Bombay General Clauses Act, while convening the meeting under sub-section (3) of the said Act is not tenable in law

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and we therefore, reject the said submission.

10. The learned counsel for the petitioners thereafter submitted that S. 23A suffers from the several lacunae. According to the learned counsel, no procedure for convening a special meeting has been stated in the said section. The learned counsel further submitted that the intimation under sub-sec. (2) and under sub-section (3) is to be given to the Director and the same has not been given by the respondent Collector. It is further submitted that sub-section (5) makes a reference to the quorum. However, no quorum has been provided in respect of the said special meeting, and therefore, learned counsel ultimately submitted that there is excessive delegation in favour of the Collector. He submitted that there is abdication of powers by the Legislature in favour of the Collector which violates Art. 162 of the Constitution of India, and therefore, the said section shall be struck down. He further submitted that the power vested with the Collector is unguided power. He tried to invite our attention to the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, the Maharashtra Co-operative Societies Act, 1960 and the Maharashtra Zilla Parishads and Panchayat Samitis Act and more specifically the provisions and the Rules in respect of no confidence motions to be carried out against the officers of the said institutions. What we find is that those provisions are not pari materia with S. 23 of the Agricultural Produce Marketing (Regulation) Act, 1963. Sub-section (2) of S. 73-ID of the Maharashtra Co-operative Societies Act states that the requisition shall be made in such form and in such manner as may be prescribed. Not only that but S. 165(2) XXXV-C of the Maharashtra Co-operative Societies Act, gives powers to make rules to the State Government to prescribe the requisition form and the manner in which the motion of no confidence can be brought under S. 73-ID. Similar is the position in repsect of the other Acts which have been referred to by the learned counsel for the petitioner. Therefore, the rules in that respect have been framed. However, that does not mean that unless some mode is followed, Section 23A of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 is not valid. What we find that the scheme under the other Acts is slightly different. Not only that but what should be the procedure in respect of no confidence motion under each of the Act is a matter to be considered by the Legislature and the Legislature in its wisdom has framed S. 23A of Agricultural Produce Marketing (Regulation) Act, without giving power to the State Government or any other authority to make Rules. Section 60 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 does not make a provision giving powers to the State Government to make Rules in respect of the meeting, special meeting and no confidence motion to be expressed under S. 23A of the Act, and therefore, no Rules have been framed. Not only that but S. 23A also does not provide that no confidence motion and/or requisition shall be carried out and/or submitted as prescribed. What we find is that the S. 23A is a Code in itself. It does not require that there shall be any reasons or grounds for expressing no confidence motion. The Chairman and the Vice-Chairman holds the said office at the will of the members of the said Market Committee, and therefore, they can hold the office till the members of the Managing Committee desire. Moment Chairman and Vice-Chairman lose confidence, even though for no reasons, the Chairman and Vice-Chairman has to vacate the said office if the resolution is passed by two-third of the majority. A reference can be made to the case reported in 1970 Mh. LJ 836 : (AIR 1971 Bom 305) in the case of Ramkrusna v. Kisan. This is a case under the Maharashtra Municipalities Act. Section 55 which is similar to S. 23A of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 as quoted in the said judgment is to the following effect (at page 306 of AIR) :

"S. 55. (1) A President or a Vice-President shall cease to be President or Vice-President as the case may be, if the council by a resolution passed by a majority of the total number of Councillors (excluding the co-opted councillors) at a special meeting so decides,

(2) The requisition for such a special meeting shall be signed by not less than one-fourth of the total number of councillors (excluding the co-opted councillors) and shall, if such meeting is to be convened for considering the resolution for removal from office -

xx xx xx xx xx

(4) xx xx xx xx

The co-opted councillors present at the meeting shall have no right to vote on any resolution relating to the removal of the President

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or the Vice-President".

Thus it will be evident that S. 23A(1) sub-section (2) and sub-clause (b) of sub-section (4) are practically ad-verbatim same except the number of persons required to express no confidence motion and/or for submission of the requisition. It has been observed by this Court in the above referred case that (at page 313-314 of AIR) :

"18. It will thus appear that the tenure of the office of the President is wholly at the pleasure and the will of the majority of the councillors and he can stick to that office only so long as he enjoys the confidence of the majority. As soon as he loses the confidence of the majority, he is not entitled to continue in his office. It may be that the President is not guilty of any misconduct in the discharge of his duties, or is not guilty of any disgraceful conduct. He may be an honest man or a man of integrity and may be very able, competent and efficient in his work, but still there could be honest policy differences between the President and the majority of the Councillors; there might be honest ideological differences between them, in which case the administration would not be smooth and the majority might not be able to carry on their policy or programme if the President were to hold different or opposite views, though honestly. In such cases, it would not be desirable that a person who does not enjoy the confidence of the majority of the Councillors should head the Council and it is for this reason that the Legislature seems to have deliberately framed S. 55 of the Act in the manner it has done by which only the 'will' of the majority has to prevail for passing a resolution that the President shall cease to be the President though no grounds or reasons are required to be given in the requisition to move such a resolution. In our view, this has been advisedly done by the Legislature and we cannot attribute a different meaning to it as is pressed upon us by the learned counsel for the petitioner."

We adopt the same view, in view of the fact that the provision is pari materia same.

11. We further find that this Section 23 has taken precaution viz. in respect of the members of the market committee who are Government employees or employees of market committee. They are allowed to discuss but are not allowed to vote. They are not involved in political decision. Therefore, precaution has been taken that such members of the committee, even though may take part in the discussion, but shall not vote. We further find that the provision has been made that if the motion could not be carried out as aforesaid or if the meeting could not be held for want of quorum, no such requisition for considering fresh motion shall be carried out for a period of six months and thus the Legislature has protected the Chairman and the Vice-Chairman from facing repeated no confidence motions. Further the said section has also provided taking care that it is not possible for the Collector every time to attend the said meeting, to give authorisation by him to that effect and that they shall not participate by way of voting in the said meeting. Thus we find that section provides for submission of a requisition by a particular number of members of the market committee, on receipt of such requisition the Collector shall convene a special meeting within fifteen days, that the intimation of requisition and of the meeting shall be given to the Director and that intimation of the said meeting shall be given to the Chairman and Vice-Chairman. Thereafter the provision for presiding over the said meeting and laying down the provisions in respect of roll of the Collector, Director and/or Officer authorised by the Collector to preside over the meeting. It also lays down as stated earlier the roll of the members, who can participate, but who cannot vote in the meeting etc. It further lays down the consequences of the motion being not carried out as provided in earlier parts of said section and/or the meeting could not be completed for want of quorum. Thus we find that Section 23 is a Code in itself regulating the procedure for expressing no confidence as against the Chairman and the Vice-Chairman of the Market Committees and there is no abdication of powers as has been submitted by the learned Counsel for the petitioners. We also do not find any substance in the submission that the power vested with the Collector is an unguided power and/or suffers from excessive delegation. We reject the said submission made by the learned counsel for the petitioner. On the contrary, we find that said section is not violative of any of the provisions of the Constitution of India, and therefore, the arguments developed by the learned Counsel for the petitioners based on Article 162 of the Constitution of India and unguided powers, excessive powers, abdication of powers etc. are hereby rejected.

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12. The learned counsel for the petitioners tried to point out to us that sub-section (5) contemplates quorum because it states that if the meeting could not be held for want of quorum, no such requisition shall be brought for consideration of the no confidence motion until after expiry of six months. The learned counsel pointed out that no quorum has been provided in Section 23A. Shackleton on the Law and Practise of Meetings (Sixth Edition) has given a definition of Quorum as follows :

The word Quorum denotes the number of members of any body of persons whose presence at a meeting is requisite in order that business may be validly transacted and that its acts may be legal."

It has been further stated :

Where the Articles of Association of a Company do not prescribe the number of Directors required to constitute a Quorum, number of member who usually act in conducting the business of a company will constitute quorum. 'Quorum' is minimum number of members of the committee who are required to transact the business of the said committee.

However, in the special meeting under Section 23A of Agricultural Produce Marketing (Regulation) Act, the business to be transacted is to be transacted by a majority of not less than two-thirds and, therefore, even if requisitionists who are not less than one-half of the total number of members are present but not less than two-thirds are not available, the resolution cannot be passed. If members present in the meeting are less than two-thirds of the total members then in that eventuality, the resolution fails, and therefore, minimum number of members who are required to conduct the business of expressing no confidence motion against the Chairman and the Vice-Chairman is not less than two thirds and that will be a quorum for such meeting. Any number of members less than that, even though allowed to transact the business of expressing no confidence motion, results into non passing of the said resolution of no confidence motion, and therefore, that cannot be said to be a quorum. Therefore, in a case wherein the members present in the special meeting are less than two-thirds of the total number of members of the committee, the said meeting is without any quorum, and therefore, the meeting cannot be held. Therefore, it is not necessary to fix up quorum by framing necessary bye-laws as provided in Section 27 of the said Act. Thus, we do not find any substance in the contentions raised by the learned Counsel that in the absence of providing of Quorum either in the section or Rules, Section 23A is inadequate provision and therefore, we reject the said contention also. We make it clear that these observations about quorum are only applicable to special meeting called under Section 23A of the Agricultural Produce Marketing (Regulation) Act, and not to other Acts unless the provisions are pari materia same.

13. The last contention raised by the learned Counsel is that one Mr. M. C. Padavi, was present in the said meeting who was not the member of the Market Committee, and therefore, the meeting was attended by the person who is not a member of the Market Committee. He further submitted that he was not representative of the Director. However, Section 13(1)(f) states that the Deputy Registrar of Co-operative Societies of the district or his representative, who shall have no right to vote, is a member of the Market Committee. This is a Market Committee located at Dondaicha in Taluka Sindkheda and therefore, the Assistant Registrar has been appointed as a representative of Deputy Registrar who was not entitled to participate in the voting. Therefore, his presence was permissible as per the said section. However, it was not permissible for him to vote. The proceeding shows that even though he was present, he did not vote in the said meeting. In the affidavit, which has been filed by the Sub-Divisional Officer who has presided over the meeting, it has been stated that the Assistant Registrar Sindkheda was present at the time of special meeting being authorised representative of the District Deputy Registrar Dhule, and therefore, the grievance made by the learned Counsel that unauthorised person and/or persons who are not members of the market Committee were present in the said meeting, is hereby rejected.

14. The learned Counsel for the petitioners further submitted that the minutes of the meeting which has been produced on record show that within 25 minutes, both the resolutions were passed. He submitted that the Vice-Chairman Girase has submitted an application to the Sub-Divisional Officer who presided over the said meeting, informing and requesting that the notice of the meeting

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has not been served on all the members of the committee, and therefore, the meeting should be cancelled. The learned Counsel submitted that even though Vice-Chairman was present in the meeting and has submitted an application at 12.00 noon, it is not reflected in the proceeding book. In the affidavit-in-reply the Sub-Divisional Officer has clarified that notices were duly served on all the members and also the Chairman and Vice-Chairman of the Agricultural Produce Market Committee, and he was satisfied about that. Not only that but he has further stated that the Vice-Chairman submitted the application and left the meeting hall, and therefore, as he did not participate in the meeting, his presence has not been shown. It is not the case of the Vice-Chairman also that he participated in the meeting. Thus, it only appears that he submitted the application requesting to cancel the meeting and having found that the meeting is not being cancelled, he left the meeting hall and therefore, his presence has not been shown rightly, in the minutes of the said meeting. Therefore, we do not find any force in the said submission of the learned Counsel, and therefore, we reject the same.

15. The learned Counsel for the petitioners further submitted that the petitioner has raised an objection that as there is a provision in the Maharashtra Co-operative Societies Act that whenever requisition is submitted to the Collector, he shall get it ascertained as to whether the requisitionists are the genuine persons and thereafter proceed to call a special meeting. In the similar way in the present matter also the Collector and the Sub-Divisional Officer should have ascertained as to whether the persons who have submitted the requisition and/or attending the meeting are the members of the market committee. The Presiding Officer has clarified that the members who are present at the time of meeting did not raise any objection in this respect, and therefore, it was not necessary for him to find out whether the members were genuine and/or signatues were genuine. What we find is that the members are known to each other. Not only that but the Vice-Chairman who claims that he had been to the said meeting could have also pointed out the bogus persons who are not the members of the Market Committee who are attending the meeting, but he has not done so and therefore in the absence of such objection being raised it was not necessary for the respondent Officer to verify the genuineness of the signatures and/or of the persons in the said meeting. We do not find any substance in the said contention and it is hereby rejected.

16. Apart from the above, we would like to mention here that it is revealed while arguing the matter that after the no confidence motion was expressed against the present petitioners, there was election of the Chairman and the Vice-Chairman on 26-10-1998 and the new Chairman and the Vice-Chairman were elected. The notice of the election programme has been placed on record at Exhibit B dated 15-10-1998 and it is further revealed that the present petitioner Gulabrao Patil, who challenged the resolution as Chairman has also seconded the candidature of the Chairmanship in the meeting dated 26-10-1998. In fact, when the petitioner has challenged the said no confidence motion, it was inappropriate on his part to second the candidature of any person to elect the Chairman in his place. It is further revealed that thereafter the no confidence motion has also been carried out against the Chairman and the Vice-Chairman who were elected in the meeting dated 26-10-1998 and thereafter again the new Chairman and Vice-Chairman have been elected who are presently looking after the duties of the said posts. This Chain of events itself show that the present writ petitions have become infructuous. However, as the petitions were admitted, we have considered submissions made by the learned Counsel and dealt with them as stated in the foregoing paragraph.

17. In the result, we find that there is no substance in both the writ petitions. Therefore, both the writ petitions are hereby rejected with costs.

Petitions dismissed.

AIR 1986 BOMBAY 302 "Vyapari Association, Shirpur v. State "

BOMBAY HIGH COURT

Coram : 2 DHARMADHIKARI AND KANTHARIA, JJ. ( Division Bench )

Vyapari Association, Shirpur, Petitioners v. State of Maharashtra and others, Respondents.

Writ Petn. No. 2623 of 1983, D/- 11 -7 -1985.

Maharashtra Co-operative Societies Act (24 of 1961), S.48A - CO-OPERATIVE SOCIETIES - FREEDOM OF TRADE - AGRICULTURAL PRODUCE - Validity - Does not offend Art.19(1 )(g) of Constitution.

Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.30A - Constitutional validity.

Constitution of India, Art.19(1)(g) and Art.19(6).

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Since the provisions of S. 48A of the Maharashtra Co-operative Societies Act and S.30A of the Maharashtra Agricultural Produce Marketing (Regulation) Act (for short Marketing Act) are enacted for linking of credit with marketing and to facilitate payment of dues of the agricultural credit primary co-operative societies qua the loans advanced to the agriculturists for growing agricultural produce, they can safely be termed to be in the interest of co-operative societies and the agriculturists. Therefore, even if it is assumed that the said sections impose some restriction upon the commission agents, the restriction is reasonable and has been imposed in the interest of general public and hence is wholly saved by Art 19(6) of the Constitution. (Para 6)

The impugned sub-rule framed by the Marketing Committee under Bye-law 46 requiring commission agents to deduct from the sale price amount of arrears due to the co-operative society is also not invalid. If the definition of 'Commission agent' in S.2(e) of the Marketing Act is read with the Explanation to S.30A of that Act then in terms a commission agent will become a purchaser for the purposes of Ss. 30A, 31 and 34A of the Marketing Act. Admittedly, a duty is cast upon the commission agent to deduct the amount by framing a sub-rule in exercise of the powers conferred on the Market Committee under Bye-law 46. The Marketing Act has been enacted to regulate the marketing of the agricultural and certain other produce in the market area. This became necessary to see that the agriculturists, when they are required to sell their produce, are not duped by unscrupulous traders by resorting to underhand dealings. It is open to the Market Committee to prescribe the terms and conditions of licences; and while laying down such terms and conditions the Market Committee can lay down that the commission agent, who is a purchaser for the purposes of S. 30A, shall collect or deduct the dues of a co-operative credit society. All these are parts of a correlated scheme meant for the benefit of the agricultural producers. Even the petitioners in para 15 of their petition initially thought that this was their social duty, which is imposed under the terms of the licence. If it is a social and a statutory duty, then only because no separate remuneration is paid for it, it cannot be termed to be an unreasonable restriction upon the fundamental right of the petitioners to carry on their business. To say the least, it is one of the terms and conditions of the licence. Such a term in the licence is authorised by S.30A of the Marketing Act itself. The restriction, if any, is not only reasonable but is also in the public interest. Nobody is compelled to become an agent of a co-operative society, but the commission agent is only expected to carry out a duty imposed, upon him by the terms and conditions of the licence which is supported by the statutory provisions. To say the least, it is the statutory duty of a commission agent and, therefore, it will not be correct to say that he is being asked to do something which is foreign to the scheme of the Act or the terms and conditions of the licence. (Paras 7, 9, 10)

Atul Setalvad with G.R. Rege, for Petitioners; N. D. Bhatkar, Addl. Govt. Pleader (for Nos. 1 and 2) and R. M. Agrawal, (for No. 3), for Respondents.

Judgement

DHARMADHIKAR1, J. :- This Writ Petition is filed by the petitioners, which is an Association of Merchants at Shirpur in Dhule District. The Writ Petition is on behalf of the members of the Association, who are Licence-holders of the Shirpur Agricultural Produce Market Committee, Shirpur, respondent 3, and are carrying on business as commission agents. The main challenge in this petition is to the provisions of Sec.48A of the Maharashtra Co-operative Societies Act, Sec. 30A of the Maharashtra Agricultural Produce Marketing (Regulation) Act and the sub-rule framed under-bye law 46 by the Market Committee.

2. Shri Setalvad and Shri Rege, the learned counsel appearing for the petitioners, contended before us that the commission agents operating within the Market Area of the respondent 3 Market Committee cannot be compelled to deduct the amount due to the Co-operative Societies. The provisions of Sec.48A of the Maharashtra Co-operative Societies Act and the sub-rule framed under Bye-law 46 are wholly violative of the petitioners' fundamental right under Art.19(1)(g) of the Constitution of India since they impose an unreasonable restriction. Similar is the position with Sec. 30A of the Marketing Act. It is not open to any authority, to compel a person to act as its collecting agent; more so when there is no payment or remuneration paid for the said services. The

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said restriction is not only unreasonable, but it has no nexus with the object sought to be achieved. No amount is paid to the commission agent for this service, but the amount is recovered by the Market Committee by charging a commission. It was then contended that in any case the sub-rule framed under the said Bye-law is beyond the scope of the Art and the rules or even the said Bye-law since no collecting centres have been opened in that behalf. The provisions also do not contemplate any discharge qua the commission agent after the recovery of the amount. Thus, though the commission agent is obliged to deduct the amount payable to a Co-operative Society, no discharge is granted to him, nor any remuneration is being paid for the said services. Thus, in substance, it amounts to casting an onerous burden upon the commission agent which is wholly unreasonable and has no nexus with the object sought to be achieved by the Marketing Act or the Co-operative Societies Act.

3. On the other hand, it is contended by the respondents that the sub-rule framed under Bye law 46 is in tune, with the scheme of the Act as well as the provisions of Sec. 48A of the Maharashtra Co-operative Societies Act and Sec. 30- A of the Maharashtra Agricultural Produce Marketing (Regulation) Act Sections 48A and 30A are enacted in the interest of the general public so as to provide a machinery for the recovery of the dues of the Co-operative Societies, namely the loans advanced to agriculturists for carrying out agricultural operations. If such a provision is not made in the Act then the recovery of the loan amount becomes impossible and, therefore, this salutary provision has been made in the Act. The sub-rule framed under Bye-law No. 16 is in tune with these provisions. The duty cast upon the commission agent is part and parcel of the conditions of his licence. Even if it is assumed that there is a restriction on his right to carry on business, the said restriction is reasonable and has been imposed in the public interest. It is also contended by the respondents that the said sub-rule has been framed in consultation with the representatives of the traders and commission agents and, therefore, the petitioners are also parties to the said decision and hence it is not open for them to challenge the same in this Writ Petition. Even otherwise since the duty is cast in consultation, with the representatives of the traders and commission agents, it is quite clear that the restriction imposed is reasonable and has been imposed in the public interest.

4. Section 30A of the Marketing Act deals with the power of the Market Committee to open collection centres for marketing of notified produce. It also makes provision for receipt and payment by the purchaser. Section 48A of the Maharashtra Co-operative Societies Act also deals with the deductions from sale price of certain agricultural produce to meet the society's dues. Therefore, both these sections are supplementary in nature. These sections were inserted on the statute book by amending Act No. II of 1972.

5. The Maharashtra Co-operative Societies Act, 1960 came to be amended by Act No. II of 1972 by which S. 48A was inserted in the statute book. The Statement of Objects and Reasons to the said section reads as under:-

"Clauses 4, 5 and 12 : The dues of agricultural credit primary co-operative societies which advance loans to agriculturists for growing agricultural produce are increasing year by year. On analysis of the problem it is noticed that one of the main causes for the mounting overdues is that there is no linking of credit with marketing. Again, the traders who purchase the agricultural produce from agriculturists do not make prompt payment for the same. In order to secure both these objectives, provision has been made for empowering the State Government to notify from time to time agricultural produce where all trade in the produce is to be carried on exclusively by the State Government or where for the growing of such produce a loan has been advanced by a co-operative society under the Maharashtra Co-operative Societies Act, 1960. It is then provided that all such notified produce shall be marketed through collection centres established for the purpose. Where any notified produce is tendered at a collection centre, provision is made for weighing it and for requiring the Market Committee to issue a receipt therefor and for the payment to the person tendering such produce after making deductions as provided in new S. 30A proposed to be inserted in the principal Act.

Provision has been made in the Maharashtra Co-operative Societies Act, 1960 authorizing Market Committees to make deductions from the sale price of notified agricultural produce and payment of the same to societies which have advanced loans to agriculturists selling such produce."

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Section 30A of the Marketing Act was also inserted by the said enactment Therefore, so as to solve the problem of mounting overdues qua the credit co-operative societies which advanced loan to the agriculturists for growing agricultural produce and to link the credit with marketing, the said provisions were enacted one in the Co-operative Societies Act and another in the Marketing Act. Therefore, it is quite obvious to us that the provisions were inserted in these, enactments in the interest of agricultural credit primary co-operative societies as well as the agriculturists themselves. It is common knowledge that if the credit facility is extended to agriculturists for growing agricultural produce, then repayment of the loan could be from the sale of the agricultural produce itself. If linking of credit with marketing is not achieved, then recovery of the dues of agricultural credit primary co-operative societies, which advance loans to agriculturists for growing agricultural produce, will become an uphill task. To solve this problem, these two sections were inserted in the respective enactments.

6. With an intention to achieve the said object, by subsequent amendment S. 30-A and S. 48-A came to be amended. The Statement of Objects and Reasons qua the subsequent amendment reads as under :-

"2. Under S. 30-A of the Agricultural Produce Marketing Act and S.48-A of the Co-operative Societies Act, the responsibility of making deductions towards the dues of the societies is that of the purchaser. It is noticed that in the case of private traders most of the purchasing transaction on the market-yards are effected through their commission agents. It is necessary to make a specific provision, to cast the responsibility of making deductions for co-operative dues on the commission agents and other persons also, who make payment of the price on behalf of other persons. It is, therefore, proposed to extend the scope of the expression "purchase" used in S. 30-A and in Ss. 31 and 34-A of the Marketing Act and S. 48-A of the Co-operative Societies Act, to a commission agent or other person, who pays the purchase price to the seller on behalf of the purchaser, so that he should while purchasing any agricultural produce make deductions for co-operative dues at specified rates and pay the amount deducted to the market committee, along with the dues of the market committee.

3. Under S. 48-A of the Co-operative Societies Act, the amount of the deduction on account of loans advanced by the societies shall not exceed 60 per cent of the total amount to be paid by the purchaser, if the produce tendered for sale is 'kapas' and certain other percentages in the case of other articles. However, the dual percentage rate of recovery under the monopoly scheme has been lower. It is proposed to amend S. 48-A to take power to Government to notify within the existing maximum limits a specific rate at which purchasers should make deductions on account of co-operative dues. Since it is necessary to make such recovery from the price of cotton, whether ginned or unginned, the word 'kapas' in S. 48-A is being replaced by the word "cotton"."

In our view, since both these amendments are made for linking of credit with marketing and to facilitate payment of dues of the agricultural credit primary co-operative societies qua the loans advanced to the agriculturists for growing agricultural produce, they can safely be termed to be in the interest of co-operative societies and the agriculturists. Therefore, in our view, even if it is assumed that the said sections impose some restrictions upon the commission agents, the said restriction is reasonable and has been imposed in the interest of general public and hence is wholly saved by Art. 19(6) of the Constitution. It is not disputed, nor it could be disputed, that the legislature was competent to enact the said provisions. Once it is held that the legislature was competent to enact the said provisions and they are also reasonable and have been enacted in the interest of the general public, then the challenge to the said provisions must fail.

7. What is then challenged before us is the sub-rule framed by the Market Committee under Bye-law 46 of the Bye-laws. The English translation of the said bye-law read as under

"Seal Agricultural Marketing Committee Shirpur,Dist. Dhule Agricultural Produce Marketing Committee Shirpur, Dist. Dhule,Maharashtra

(Duty of the agriculturist)

Sub-rule Bye-law 46

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The person who brings for sale any agricultural produce, the marketing of which is exclusively done by the State Government or cotton of the notified agricultural produce u/s. 29(g1)(i) and (ii) shall bring with him the Green Card as directed by the Government and present the said card to the concerned commission agent, purchaser or market committee in relation to the recovery of arrears of co-operative society from the purchase amount of the cotton sale.

The person who brings or the person on whose behalf notified agricultural produce other than the cotton is brought for sale, must bring along with him the loan recovery card issued by the concerned co-operative society, showing, required information regarding the dues to be paid to the co-operative society by the agriculturist. The said card must be presented to the commission agent, purchaser or Market Committee and the required amount of the dues payable shall be deducted from the total amount of sale price.

Duties of the Commission Agent and Purchaser:

The Commission Agent or the Purchaser shall demand the green card as directed by the Government from the person who brings any agricultural produce the marketing of which is exclusively done by the Government or cotton out of the notified agricultural produced as required under S.29(g1)(i) and (ii) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 and shall recover the amount of arrears due to the co-operative society as directed by the market committee.

The concerned Commission agent or purchaser shall demand the loan Recovery Card from the person who tenders or on whose behalf the notified produce is tendered for sale, to check whether the said tenderer is liable to pay any arrears of loan taken from the co-operative society. As also he shall make inquiry from the Marketing Committee regarding the same and as per the instructions of the Marketing Committee shall be deducted such amount from the amount of sale price of the agricultural produce.

5. For the amounts for deductions made hereinabove and for amounts mentioned in S. 30-A(6) shall be paid by drawing two cheques, one in favour of the Market Committee and another in favour of the agriculturist immediately after the weighing and measuring of the agricultural produce is completed".

It will not be correct to say that the commission agent being a purchaser, could not be fastened with the duty of deducting the dues qua a co-operative society. By Explanation to S. 30-A the legislature has made it clear that for the purposes of S. 30-A, S. 31 and S. 34-A of the Marketing Act, 'purchaser' shall include any person who pays the purchase price of any notified produce or agricultural produce, as the case may be, tendered for sale, or by whom payment of such price is made, whether on his own account, or as an agent or on behalf of another person. The expression "commission agent" is also defined by S. 2(e) of the Act, which reads as under:-

"(e) 'Commission agent' means a person who by himself or through his servants buys and sells agricultural produce for another person, keeps it in his custody and controls it during the process of its sale or purchase, and collects payment therefor from the buyer and pays it to the seller, and receives by way of remuneration a commission or percentage upon the amount involved in each transaction."

Therefore, if the said definition is read with Explanation then in terms a commission agent will become a purchaser for the purposes of Ss. 30-A, 31 and 34-A of the Marketing Act. Admittedly, a duty is cast upon the commission agent to deduct the amount by framing a sub-rule in exercise of the powers conferred on the Market Committee under Bye-law 46. S. 6 of the Marketing Act deals with the regulation of marketing of agricultural produce. S. 7 empowers the Market Committee to grant licences. S. 29 deals with the powers and duties of the Market Committee. Sub-cls. (g) and (g1), which are relevant to the controversy raised before us, read as follows :-

"29(2) Without prejudice to the generality of the foregoing provision, a Market Committee may -

.. .. .. .. .. .. .. .. .. ..

(g) regulate marketing of agricultural produce in the market area of the market, and the payment to be made in respect thereof, weighment or delivery of the agricultural produce :

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(g1) arrange for the collection -

(i) of such agricultural produce in the market area in which all trade therein is to be carried on exclusively by the State Government by or under any law in force for that purpose, or

(ii) of such other agricultural produce in the market area.

as the State Government may, from time to time, notify in the Official Gazette (hereinafter referred to as the 'notified produce')."

Section 61 confers power upon the Market Committee to frame bye-laws, including laying down the conditions of trading in the market area. R. 6 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 deals with the licensed trader, broker and commission agent. S. 13 of the Marketing Act, which deals with the constitution of the Market Committee, provides that there shall be three elected representatives of the traders and commission agents holding licences to operate as such in the market area on the Market Committee. The said section contemplates representation to various interests, including that of agriculturists and the trader and commission agents. Buy-laws and sub-rules under the bye-laws are framed by the Market Committee. Therefore, in substance, the representatives of the commission agents have a say in the framing of the bye-laws and the sub-rules.

8. However, the main contention raised before us is that unless the State Government by an order in writing opens collecting centres, no obligation could be cast upon the commission agents to deduct the dues payable to the co-opertive societies since the office of the commission agent cannot be equated with that of a collecting centre. If S. 30A is read as a whole and harmoniously, it is quite clear that there is no compulsion on the State Government to open collecting centres. The word is "may". Therefore, an inference cannot be drawn that, only because the collecting centres are not opened, the obligation qua the commission agents cannot be enforced. The proviso to sub-sec. (2) of S. 30A makes this position very clear. It provides that agricultural produce notified under sub-cl. (ii) of Cl. (g1) of sub-sec. (2) of S. 29 may be tendered through a commission agent. Under the Explanation to S. 30A, for the purposes of Ss. 30A, 31 and 34 A of the Act, the term 'purchaser' will take in its import a person who pays the price of any notified produce or agricultural produce, as the case may be, tendered for sale or by whom payment of such price is made, whether on his own account, or as an agent or on behalf of another person. If the definition of the term 'commission agent' is read with this Explanation, then in our view, the term 'purchaser' must take in its import a commission agent. Therefore, for all practical purposes, a commission agent becomes a purchaser. If this is so, then he is obliged to deduct the amount payable to the co-operative society in view of the provisions of S. 30A of the Marketing Act read with S. 48A of the Co-operative Societies Act. Such a conclusion is inevitable. If the construction put forward by the Counsel for the petitioners is accepted, then the very intention of the legislature in enacting S. 30A of the Marketing Act and S. 48A of the Co-operative Societies Act will be defeated. It is no doubt true that no remuneration is paid to the commission agent for recovery of these dues. But the Act itself provides as to how the transaction within the market area is to take place. Section 30A(3) of the Marketing Act provides about weighment etc. Section 30A(4)(ix) in terms makes a reference to the amount of dues to be paid by the tenderer to a co-operative society under S. 48A of the Maharashtra Co-operative Societies Act, 1960. Under sub-cl. (xi) the amount is to be paid to the tenderer after deducting the amounts, if any, falling under entries (vii), (viii), (ix) and (x). The amount is to be paid by drawing two cheques - one in favour of the Market Committee and another in favour of the tenderer. Therefore, S. 30A is practically a complete Code in itself. If a commission agent wants to carry on his business in a market area which is controlled by the Market Committee and seeks a licence in that behalf, then as a term of the licence he is obliged to carry out the duties imposed upon him under the terms and conditions of the licence. For carrying out the business of commission agent, he gets a commission. Therefore, he is not carrying on his business as charity. As a part and parcel of the duties under the licence he is obliged to deduct this amount. Therefore, it is not necessary that he should get separate and independent remuneration for the said services, which is a

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term of his licence and is a statutory duty under the provisions of S. 30A of the Marketing Act and S.48A of the Maharashtra Co-operative Societies Act

9. The Marketing Act has been enacted to regulate the marketing of the agricultural and certain other produce in the market area. This became necessary to see that the agriculturists, when they are required to sell their produce, are not duped by unscrupulous traders by resorting to underhand dealings. It is open to the Market Committee to prescribe the terms and conditions of licences; and while laying down such terms and conditions the Market Committee can lay down that the commission agent, who is a purchaser for the purposes of S.30 A, shall collect or deduct the dues of a co-operative credit society. All these are parts of a correlated scheme meant for the benefit of the agricultural producers. A commission agent who wants to carry on business within the market area under a licence issued by the Market Committee, cannot be heard to say that he is not bound by the terms and conditions of the licence.

10. In this context it is worthwhile to note that even the petitioners in para 15 of their petition initially thought that this was their social duty, which is imposed under the terms of the licence. If it is a social and a statutory duty, then in our view, only because no separate remuneration is paid for it, it cannot be termed to be an unreasonable restriction upon the fundamental right of the petitioners to carry on their business. To say the least, it is one of the terms and conditions of the licence. Such a term in the licence is authorised by S.30A of the Act itself. The restriction, if any, is not only reasonable but is also in the public interest and therefore, we do not find any substance in this contention also. Nobody is compelled to become an agent of a co-operative society but the commission agent is only expected to carry out a duty imposed upon him by the terms and conditions of the licence which is supported by the statutory provisions. To say the least it is the statutory duty of a commission agent and, therefore, it will not be correct to say that he is being asked to do something which is foreign to the scheme of the Act or the terms and conditions of the licence. Therefore, we do not find any substance in this writ petition.

11. In the result, the Rule is discharged with costs.

Rule discharged.

AIR 1985 BOMBAY 94 "Vinayakrao v. State"

BOMBAY HIGH COURT

(AT NAGPUR)

Coram : 2 GINWALA AND PATEL, JJ. ( Division Bench )

Vinayakrao Mahadeorao Kaore and others etc., Petitioners v. State of Maharashtra and another, Respondents.

Writ Petns. Nos. 1290, 1215, 1216 and 1290 of 1984, D/- 10 -8 -1984.

Maharashtra Agricultural Produce Marketing Regulation Rules (1967), R.41(1)(k) (as added by Amendment Rules, 1984, on 8- 3-1984) - AGRICULTURAL PRODUCE - ELECTION - STATE LEGISLATURE - Non-payment of dues of co-operative society made disqualification for being elected as member of Market Committee - Clause (k) being beyond rule making power of State Government is illegal.

(i) Maharashtra Agricultural Produce Marketing Regulation Act (20 of 1964), S.14, S.60

(ii) Constitution of India, Art.245.

Clause (k) of sub-rule (1) of R.41 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967, (as added by Amendment Rules, (1984) on 8-3-1984) which makes mere non-payment of dues of a co-operative society a disqualification for being elected as a member of Market Committee, is illegal, void and inoperative. (Para 6)

The impugned clause on the face of it and in the light of the provisions of the Act appears to travel beyond the limits of rule making power of the State Government as it cannot be said to have been made for carrying into effect the purposes of the Act which are to regulate the marketing of agricultural produce and markets to be established therefor. (Para 5)

The object of prescribing disqualifications for being chosen or for being a member of an elected body is to ensure that only those persons who are competent to hold the office and whose personal interest will not conflict with their duty as a member are elected. In other words, there must be nexus between the disqualification and the function which such person would be called upon to discharge on his being elected. Any disqualification which has no such nexus is bound to be held as arbitrary. (Para 4)

One can understand a person who owes anything to the Market Committee being disqualified because in that case his interest would conflict with his duty and he may try to postpone the payment of the dues by utilising his office as a member, but it is difficult to see why failure, to pay the dues of a Co-operative Society by any person should make him disqualified for being member of the Market Committee, particularly when any such failure has no relation whatsoever with the Market Committee. AIR 1976 SC 1031 and AIR 1974 SC 1692, Followed. (Para 5)

Cases Referred : Chronological Paras

AIR 1976 SC 1031 3

AIR 1974 SC 1692 : 1974 Lab IC 583 3

D.K. Deshmukh, V.A. Naik and V.G. Palshikar, for Petitioners; M.M. Gadkari, Deshbhratar, A.G.P. and W.W. Sambre, Govt. Pleader, for Respondents; R.N. Deshpande, for Intervenor.

Judgement

GINWALA, J. :- The petitioners in these three petitions, who are members of various Agricultural Produce Market Committees constituted under the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (hereinafter referred to as 'the Act'), challenge the validity of cl.(k) of sub-rule(1) of R.41 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 (hereinafter referred to as 'the Rules') as they stand disqualified under that clause. These three petitions, therefore, can be disposed of by a common judgment.

2. In order to appreciate the controversy involved in these petitions, it would be

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convenient at this stage to refer to relevant provisions of the Act and the Rules. The preamble of the-Act states that it has been enacted "to regulate the marketing of agriculture and certain other produce in market areas, and markets to be established therefor in the State and to confer powers upon Market Committees to be constituted in connection with or acting for purposes connected with such markets and to establish Market Fund for purposes of the Market Committees and to provide for purposes connected with the matters aforesaid". Under section 11, the State Government has to establish a Market Committee for each market area for regulating the marketing of different kinds of agricultural produce. Section 29 defines the powers and duties of such committees. Sub-section (1) of Section 13 lays down the constitution of Market Committees. Clauses (a), (b) and (c) of that sub-section specify categories of elected members and the mode of their election. They show that elected members of the Market Committee consist, amongst others, of ten agriculturists residing in the market area, seven of whom shall be elected by members of the managing committees of the agricultural credit societies and multipurpose co-operative societies within the meaning of the Maharashtra Co-operative Societies Act, 1960, and the rules made thereunder, functioning in the market area and three shall be elected by members of village panchayats functioning therein". Besides this, three members are elected by traders and commission agents holding licences to operate as such in the market area. The Chairman of the Co-operative Society doing business of processing or marketing of agricultural produce in the market area is one of the members. In his absence its representative has to be elected by its managing committee. In case there are more than one such co-operative societies functioning in the market area, the Chairman of anyone of them or in his absence a representative elected by the managing committees of such societies, becomes a member. Rest of the members of the Market Committee are ex-officio members. Sub-section(1) of S.14 provides that the members shall be elected in the manner prescribed by rules. It further states that such rules may provide also for the determination of constituencies, the preparation and maintenance of the list of voters, persons qualified to be elected, disqualifications for being chosen as, and for being a member, the right to vote, the payment of deposit and its forfeiture, the determination of election disputes and all matters ancillary thereto including provisions regarding election expenses. Section 60 confers powers on the State Government to make rules for carrying into effect the purposes of the Act. Clause (d) of sub-section(2) of Section 60, in particular, empowers the State Government to make rules under section 14 for prescribing the manner in which members may be elected including all matters referred to in that section. In exercise of the powers conferred by Sub-sections(1) and (2) of Section 60 of the Act, the State Government framed the rules called Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967. Rule 41 thereof, which appears to have been added on 5th August 1971, was in the following terms before clause (k) was added to it:

"41. Disqualification of membership. - (1) A person shall be disqualified for being chosen as, or for being, a member of a Market Committee-

(a) If he has been convicted by a Court in India of any offence and sentenced to imprisonment for a term exceeding six months unless such disqualification has been removed by an order of the State Government,

(b) if he has not attained the age of 21; or

(c) if he is of unsound mind and stands to be declared by a competent court; or

(d) if he is an undischarged insolvent; or

(e) if he is a deaf-mute; or

(f) if he has failed to pay any fees or charges due to the Market Committee; or

(g) if he is a servant of the Market Committee or holds a licence from such committee other than that of a trader or commission agent; or

(h) if he has directly or indirectly or by his partner any share or interest in any contract or employment with or on behalf of or under the Market Committee; or

(i) if he has committed breach of the Act or the rules or bye-laws made thereunder more than once; or

(j) if he has failed to make payment to any seller or his commission agent within 24 hours from the date on which a written demand was made in that behalf by such seller or his commission agent."

Clause (k), which has been added by the

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Maharashtra Agricultural Produce Marketing (Regulation) (Amendment) Rules, 1984 made on 8th March, 1984, in exercise of the powers conferred by sub-section (1) and clauses (d) and (u) of sub-section (2) of S.60 read with sub-section (1) of S.14 of the Act, is in the following terms:

"(k) if he is in default to any society within the meaning of cl.(27) of S.2 of the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961), in respect of any loan, advances or dues from him, either as a borrower or as a surety, for such period as is specified in this behalf in the bye-laws of the concerned society, or for a period exceeding three months, whichever is less."

It is this clause which is under challenge in these petitions.

3. Apart from contending that cl.(k) cannot disqualify the existing members since they had no opportunity to pay dues of the co-operative societies concerned to save themselves from being disqualified the petitioners contend that the addition of the clause itself is illegal and beyond the rule making power of the State Government. It is submitted that the rule making power conferred on the State Government by the Act must be exercised in consonance with and in conformity with the provisions thereof and in keeping with the very object and scheme of the Act. It is contended that the Act has been, as seen above, put on the Statute Book with the avowed object of regulating the marketing of agriculture and certain other produce in market areas and for other ancillary purposes and any rule which is made under the power conferred by the Act must subserve this object and purpose and cannot travel beyond it. It is urged that the fact that a member of the Market Committee is in default to any co-operative society in respect of any loan, advances or dues from him can have no bearing whatsoever on his discharging his duties as a member of the Market Committee and cannot conflict with his function as such. It is argued that if non-payment of dues of local authorities or Government is not taken as disqualification for being member of the Market Committee, there is absolutely no reason why mere non-payment of dues of a co-operative society should be made disqualification for being such member. It is submitted that the provision incorporated in the clause under challenge is not only arbitrary but unreasonable and travels beyond the rule making power conferred on the State Government by the abovesaid provisions of the Act. Sub-section (1) of S.14 confers powers on the State Government to make rules, amongst others, for providing disqualifications for being chosen as, and for being a member of the Market Committee. Sub-section (1) of S.60 lays down that the State Government may, by notification in the Official Gazette, make rules for carrying into effect the purposes of the Act. Sub-section (2) specifies the matters in particular in respect of which the State Government may make rules without prejudice to the generality of the provision contained in sub-section (1). As seen above, the purpose of the Act, as indicated by the preamble and the various provisions and scheme of the Act, is to regulate the marketing of agricultural and certain other produce in market areas and markets to be established in the State. It would, therefore, appear that any rule which may be made by the State Government has to conform to the purpose and scheme of the Act. The legislature has delegated the power to the State Government to make rules. The power is not so wide as to include making any rule which do not subserve the purpose of the Act. Sub-section (1) of S.60 specifically confers the power to make the rules "for carrying into effect the purposes of" the Act. Hence any rule effect the purposes of the Act. Hence any rule made by the State Government in the purported exercise of the rule making power will have to be adjudged for its validity, keeping in view the object and purpose of the Act. As held by the Supreme Court in Board of Directors of Andhra Pradesh Co-operative Central Land Mortgage Bank Ltd. v. Chittor Primary Co-operative Land Mortgage Bank Ltd., AIR 1974 SC 1692, the rule making power conferred on the Government for carrying out all or any of the purposes of the Act must be confined to such of the purposes as are enumerated or indicated in the preamble or in any of the provisions of the Act. In Kerala State Electricity Board v. Indian Aluminium Co. Ltd., AIR 1976 SC 1031, the Supreme Court has gone on record to say that notwithstanding the subordinate legislation being held on the table of the House of Parliament or the State Legislature and being subject to such modification, annulment or amendment as they may make, the subordinate legislation cannot be said to be valid unless it

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is within the scope of the rule-making power provided in the statute. Hence before a rule is held valid, it must answer the test as to whether it is made for carrying out the purposes of the Act.

4. A close scrutiny of the various statutes dealing with election matters would reveal that the object of prescribing disqualifications for being chosen or for being a member of an elected body is to ensure that only those persons who are competent to hold the office and whose personal interest will not conflict with their duty as a member are elected. It is with this end in view that disqualifications on account of age, previous convictions, unsoundness of mind, insolvency and the like are prescribed in so far as the capacity and competency of such persons are concerned. Similarly disqualification like being in service of the elected body, owing dues to it or being a party to a subsisting contract with it are prescribed to ensure that duty does not conflict with interest. In a democratic set up every citizen has a right to represent the people on elected bodies. Curtailment of this right has to be kept to the minimum and has to be confined to the object of seeing that person capable of discharging duties as members are elected. In other words, there must be nexus between the disqualification and the function which such person would be called upon to discharge on his being elected. Any disqualificaton which has no such nexus is bound to be held as arbitrary.

5. Disqualification specified in clauses (a) to (j) in sub-rule (1) of R.41 have been prescribed with this object in view. Clauses (a) to (d) would indicate that the disqualifications specified therein are related to the incapacity or incapability of the person concerned to work as a member. Clauses (f) to (j) are inserted as any person answering the descriptions in these clauses would be unable to discharge his functions disinterestedly as his duty as a member would conflict with his interest as an individual. Now prima facie this cannot be said in so far as cl. (k) is concerned. One can understand a person who owes anything to the Market Committee being disqualified because in that case his interest would conflict with his duty and he may try to postpone the payment of the dues by utilising his office as a member, but it is difficult to see why failure to pay the dues of a Co-operative Society by any person should make him disqualified for being member of the Market Committee, particularly when any such failure has no relation whatsoever with the Market Committee. The only ground which has been advanced in support of the rule by the learned counsel for the respondent is that some of the members have to be elected by members of the managing committees of agricultural credit societies and multipurpose co-operative societies and one has to be Chairman of co-operative society doing business of processing or marketing of agricultural produce in the market area. It is submitted that if these members are connected with the co-operative movement, it is but necessary that they must have clean record of advancing the movement and they themselves should not be guilty of being defaulters in payment of their dues. It is difficult to uphold this contention firstly because the impugned provision does not confine itself to the seven members who are to be elected by members of the managing committee of the agricultural credit societies and multipurpose co-operative societies or to the Chairman of the co-operative society doing business in the market area. The clause embraces even the three members who are to be elected by the members of the Village Panchayats and three who are to be elected by traders and commission agents. The clause is all pervasive. Now it does not stand to reason as to why three agriculturists who are to be elected by the members of the village panchayats and three persons who are to be elected by traders and commission agents should be disqualified simply because they have failed to pay their dues to the co-operative societies concerned within the specified time particularly when the payment of dues even of any local authority or the Government is not made a disqualification. The impugned clause on the face of it and in the light of the provisions of the Act appears to travel beyond the limits of rule-making power of the State Government as it cannot be said to have been made for carrying into effect the purposes of the Act which as seen above are to regulate the marketing of agricultural produce and markets to be established therefor. We, therefore, conclude that cl.(k) has to be struck down on this ground.

6. In the result, the petitions are allowed and it is hereby declared that Cl.(k) of sub-rule (1) of R.41 of the Maharashtra Agricultural Produce Marketing (Regulation)

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Rules, 1967 is illegal, void and inoperative. Rule is made absolute in Writ Petition No. 1215 of 1984 in terms of prayer clauses (A), (B) and (B1), in Writ Petition No. 1216 of 1984 in terms of prayer clauses (A) and (B) and in Writ Petition No. 1290 of 1984 in terms of prayer clauses (a) and (b). In the circumstances of the case, there shall be no order as to costs.

Petitions allowed.

AIR 1985 BOMBAY 160 "Chaware Oil Industries, Karanja v. State"

BOMBAY HIGH COURT

(AT NAGPUR)

Coram : 2 MOHTA AND DHABE, JJ. ( Division Bench )

Chaware Oil Industries, Karanja, and others etc., Petitioners v. State of Maharashtra and others; Respondents.

Writ Petns. Nos. 913 of 1983, 2496 of 1981, 2544 of 1982 and etc. etc., D/- 23 -2 -1984.

(A) Maharashtra Agricultural Produce Marketing Regulation Act (20 of 1964), S.2(1)(a) and Sch., Item IV(7) - AGRICULTURAL PRODUCE - Cotton seed is an "agricultural produce".

The term 'agricultural produce' is defined under S.2(1)(a) of the Agricultural Produce Marketing Act and cotton seed is specifically included in the Schedule (item No. 7 under the head Oilseeds) referred to in the said definition. Even otherwise cottonseed is a part of Kapas which is a produce of agriculture and only because the simple mechanical process has to be applied for its removal from Kapas, it does not cease to be an agriculture produce. Kapas, Lint and cotton-seed are all things produced from agriculture. (Para 7)

(B) Maharashtra Agricultural Produce Marketing Regulation Act (20 of 1964), S.6(2) - AGRICULTURAL PRODUCE - WORDS AND PHRASES - Oil mill owner or Crusher is not entitled to exception drawn in favour of retailer etc. - Word "consumption" - Meaning.

An oil mill owner or crusher even if he consumes the cotton-seed in the oil mill for production of oil which is his sole business, is not included in the category of persons in whose favour an exception is drawn under S.6(2) of the Act. (Para 8)

In the context of the scheme of the APM Act in general and S.6 in particular, it does not appear that the word "consumption" can be interpreted in isolation without reference to the context in which it appears. The preceding word "personal" and succeeding words "of any member of his family" are significant. They clearly signify that consumption contemplated under this provision is not consumption in the commercial sense of converting one article into the other but in the sense of final consumption for personal and domestic use in the familiar sense. After all S.6(2) is in the nature of exception drawn in favour of small person like retailer, agriculturist selling his own produce and the seller who sells directly to the consumer for personal use. It is unthinkable that in this category of persons a crusher of cotton-seed for business purposes is intended to be included. Such an interpretation is bound to defeat the very object of the APM Act. (Para 8)

(C) Maharashtra Agricultural Produce Marketing Regulation Act (20 of 1964), S.31 - AGRICULTURAL PRODUCE - Sale of cotton-seed can be subjected to levy of market fees - Term "marketed' has to be given wide meaning.

The cotton seed is marketed in the market area and its sale can be subjected to the levy of market fees and supervision charges. (Para 11)

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The term "marketing" as used in S.31 cannot be equated with merely sale or purchase. It is true that the words "marketed" or "marketing" have not been defined either in the APM Act or in the Rules and, therefore, normally resort will have to be made to the dictionary meaning. Even if one goes only by dictionary meaning, the term includes the entire process, commencing from storage till delivery and that actual sale constitutes only one of the process of marketing. Having a concourse between buyer and seller, display of article for sale, activity of sale and purchase are all some of the parts of the process of marketing. (Para 9)

In the market area cotton seeds are processed, put in heaps in the lots from which they are taken from the lots of the unginned cotton, displayed for sale; weighed and delivered. Even if actual auction taken place outside, that does not alter the position that substantial part of process of marketing takes place in the market area itself. (Para 11)

(D) Maharashtra Agricultural Produce Marketing Regulation Act (20 of 1964), S.31, Second Proviso - Maharashtra Agricultural Produce Marketing Regulation Rules (1967), R.32 - AGRICULTURAL PRODUCE - Levy of market fee and supervision charges on sale of cotton seed - Transaction cannot be subjected to levy or charges if Kapas from which cotton seed is ginned is already subjected to such levy or charges. The transaction of sale of cotton seed cannot be subjected to the market fee and supervision charges by the Market Committees in case the Kapas from which it is ginned is already subjected to the said levy and charges. (Para 16)

Once the transaction of sale of agriculture produce is subjected to the levy, even the products of that produce cannot be subjected to the levy over again. The term "in relation to" used in the second proviso to S.31 is significant. When the sale of Kapas was subjected to the levy of market fees and supervision charges there has been levy "in relation to" cotton seed though when it was a part of Kapas and only because it is physically separated from Kapas transaction relating to it cannot be subjected to second levy specially when it has not undergone any change. In the process of separation of cotton seed from Kapas by ginning, the identity of the cotton seed or its essential character is not changed in any manner whatsoever and under the circumstances subjecting the cotton seed again to the levy of market fees amounts to double levy "in relation to" the same agricultural produce which is prohibited by the second proviso to S.31. AIR 1980 SC 1124 and AIR 1983 SC 1246 Foll. (Paras 12, 13, 14)

Cases Referred : Chronological Paras

AIR 1983 SC 1246 12

AIR 1980 SC 1124 : 1980 All LJ 490 12

(1979) Criminal Appeal No. 494 of 1978 D/-24-7-1979 (Bom) Agricultural Produce Market Samiti, Sirpur v. Manisingka Industries Pvt. Ltd. 10

1974 Tax LR 2091 : 1974 Mah LJ 463 9

AIR 1961 SC 213 8

C.G. Madhkholkar, V.R. Manohar, S.V. Manohar, S.R. Deshpande, A.B. Oka, A.K. Trivedi, S.C. Mehadia, G.B. Lohiya, R.S. Agrawal, S.A. Anthony and J.A. Anthony, for Petitioners; W.M. Sambre, Govt. Pleader, Shri Darda, D.B. Mirza, V.D. Chahande, D.K. Deshmukh, V.S. Shirpurkar, Smt. K.V. Shirpurkar, D.N. Belekar, V.A. Masodkar, M.G. Gawande, P.W. Bhuyar, S.Z. Patil, Miss S.P. Patey, P.K. Dhande, R.S. Lambat, S.R. Bhole, S.B. Deshmukh, S.P. Dharmadhikari, V.Y. Milawar, K.H. Deshpande, V.S. Sohani, M.P. Badar, S.Z. Deshbhratar, A.A. Desai, V.V. Naik, D.D. Sinha, B.T. Patil, B.P. Jaiswal and A.M. Tayade, A.G.P. for Respondents.

Judgement

MOHTA J.:- Since in this batch of 15 petitions, common questions are involved, they are heard together and are being disposed of by a common judgment.

2. The petitioners are cotton-seed dealers and/or crushers who purchase cotton-seed for their business. Various Market Committees constituted under S.11 of the Maharashtra Agricultural Produce Marketing (Regulation) Act 1963 ('the APM Act' for short) issued notices to the petitioners demanding on the transactions of purchase of cotton-seed, market-fee and supervision charges respectively in terms of S.31 and Chap IV-A of the APM Act read with R.32 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules 1967 ('the APM Rules' for short). The validity of these demands is questioned in these petitions.

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3. The necessary factual as well as legal back ground may be noticed first. In the State of Maharashtra exists the Maharashtra Raw Cotton (Procurement, Process and Marketing) Act, 1971 ('the RC Act' for short). It provides for carrying of all monopoly trade in raw cotton for certain time. S.2(g) defines 'cotton' as meaning raw cotton, whether ginned or unginned and S.2(m) defines 'Kapas' as meaning unginned cotton. For the sake of convenience we will use the word 'lint' for ginned cotton. This Act also defines 'Market area' and 'marketing committee' giving to them the same meaning as is assigned under the APM Act. S.17 totally prohibits carrying on business in cotton other than baled cotton by any person other than State or its agent except with previous permission. S.18 prohibits (without the previous permission of the State) owners of cotton ginning factories from ginning in the factory any Kapas other than Kapas to be ginned on Government account. The similar restrictions apply also against pressing lint into bales to the pressing factories. S.19 contains the prohibition on transport outside the State of cotton other than baled cotton. Under S.20 every grower of cotton who intends to sell his cotton is obliged to sell his produce only to the Government by tendering it at collection centre. S.21A obliges every market committee to designate and maintain one or more convenient places as may be found necessary, for tendering cotton, by the growers and other sellers. S.22 provides for grading and pooling of the cotton at collection centres. S.23 mandates weighment of all cotton in accordance with the provisions of the APM Act. S.39 contained in Chap. IX dealing with the subject of disposal of cotton seeds mandates its disposal only in a particular manner and mode. It provides that the graded Kapas pooled under S.22 has to be ginned separately, in the same lots into which the kapas has been graded and that after setting aside the cotton seed required for issue to the cotton growers for cultivation in the controlled areas, the registered seed growers, the Taluka Seed Multiplication Farms and such other persons as may be prescribed, the remaining cotton seed shall be sold after taking into consideration the advice tendered by the Advisory Board in this behalf, preference being given to the local growers. In these petitions we are essentially concerned with cotton seed so graded and pooled out of kapas brought at collection centres under the RC Act.

4. The APM Act as its Preamble itself indicates is "An act to regulate the marketing of agricultural and certain other produce in market areas and markets to be established therefor in the State". S.2(a) defines the term 'agricultural produce' thus :-

"means all produce (whether processed or not) of agriculture, horticulture, animal husbandry, apiculture, pisciculture and forest specified in the Schedule".

S.2(h) defines 'market' as meaning any principal market established for the purposes of the Act and also a subsidiary market. S.2(a) defines 'market area' as meaning an area specified in a declaration made under S.4. On such declaration being made no local authority can establish, or authorise or continue or allow to be established, authorised or continued any place in the market area for the marketing of that agricultural produce. S.5 permits establishment of a principal market and subsidiary markets. Chap. II deals with 'marketing of Agricultural Produce'. S.6(1) regulates the marketing of agricultural produce within market area. It makes it mandatory to obtain from a Director a licence for (i) using any place in the market area for the marketing of the agricultural produce (ii) operating as a trader, a commission agent, broker, processor, weighman, measurer, surveyor, warehouseman etc. These activities or use have to be in conformity with the terms and conditions of a licence. S.6(2) which makes exception with relation to certain class of persons reads thus :-

"Nothing in sub-sec.(1) shall apply to sales by retail; sales by an agriculturist who sells his own produce; not to sales by a person where he himself, sells to another who buys for his personal consumption or the consumption of any member of his family."

S.10 provides for settlement of certain disputes. Chap. III deals with the constitution of market committees and Chap. IV deals with their powers and duties. Under S.30A the Market Committee is authorized by the State Government to open collection centres for marketing of notified produce mentioned in the authorization order. S.31 deals with levy of fees. It reads thus : -

"It shall be competent to a Market Committee to levy and collect fees in the prescribed manner at such rates as may be decided by it (but subject to the minimum and

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maximum rates which may be fixed by the State Government by notification in the Official Gazette in that behalf) from every purchaser of agricultural produce marketed in the market area :

Provided that, when any agricultural produce brought in any market area for the purposes of processing only or for export is not processed or exported therefrom within thirty days from the date of its arrival therein, it shall, until the contrary is proved, be presumed to have been marketed in the market area, and shall be liable for the levy of fees under this sections, as if it had been so marketed :

Provided further that, no such fees shall be levied and collected in the same market area in relation to agricultural produce in respect of which fees under this section have already been levied and collected therein or in relation to declared agricultural produce purchased by persons engaged in industries carried on without the aid of any machinery or labour in any market area."

S.34(1) provides for machinery for settlement of disputes regarding construction of rules, weights and measurements and several other ancillary matters. This is notwithstanding the provisions contained in Bombay Weights and Measures (Enforcement) Act, 1958. Sub-sec.(2) provides for an appeal to the State Government against the decision recorded under S.34(1), Chap. IV-A deals with cost of supervision and Chap. VI deals with the Market Fund, the amount to the credit of which is to be invested in the prescribed manner. This fund consists of the monies received by the Market Committee from various sources. S.37 enumerates the purposes for which market fund may be expended. These include inter alia acquisition of site or sites for the market, maintenance, development and improvement of the market, construction of and repairs to buildings necessary for the purposes of such market and for the health, convenience and safety of persons using it, the provision and maintenance of standard weights and measures. S.60 is a rule making power. S.62 gives power to the State Government to amend or cancel any of the items of agricultural produce specified in the Schedule referred to in S.2(i)(a). Some of the relevant entries in the Schedule read as under:-

"1. Fibres-

I. Cotton (ginned and unginned).

II. Cereals-

2. Paddy (husked and unhusked).

IV. Oil-seeds

7. Cotton-seed.

VI. Gur and sugarcane.

X. Condiments, spices and others.

6. Cardamon and pepper.

5. R.12 of the APM Rules provides that ordinarily, every declared agricultural produce shall be sold by public auction. R.13 deals with manner of sale by auction; R.14 with fixation of price; R.19 with the maintenance of register of sales; R.22 with the grading and standardisation of agricultural produce; R.23 with weighment on weigh bridge, R.27 with publishing the prices and other information, R.29 with the equipment for weighman, measurer and surveyor, R.32 with the market fees. R.32 reads thus :-

"32. Market fees.- (1) A Market Committee may levy and collect fees on declared agricultural produce marketed in the market area on an ad valorem basis from the purchaser at such rates as may be specified in the bye-laws of the committee, so, however, that such rates shall not be less than the minimum and more than the maximum rates notified by the State Government under S.31.

(2) The market fees shall be paid by the purchaser immediately after weighment or measurement of the declared agricultural produce is done.

(3) A trader, commission agent, processor shall immediately on bringing any declared agricultural produce in any market area for the purpose of processing or for export, as the case may be, make a declaration in Form 8.

(4) The fees on declared agricultural produce in respect of which a declaration has been made under sub-rule(3) and which becomes liable for the levy of fees under S.31 shall be calculated at the average market rate of the produce on the day on which the fees become due."

R.34-A provides for the manner of payment of the cost of supervision under S.34-B(2).

6. Kapas consists of cotton-seed and lint and its price naturally includes prices of both. Market fees are on ad valoram basis and thus

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cotton seed as well as lint in that non-separated form are subjected to the levy of market fees when Kapas is subjected to sale. In the ginning factory all that is done is to separate by applying mechanical pressure cottonseed from the ball of Kapas. Cotton seed in its original form is separated from Kapas and this process does not either chemically or physically change the essential character of cottonseed. When lint is sold it is not subjected to the levy of market fees. Whenever Cotton Monopoly Scheme is in force, graded Kapas is ginned separately in the lots and the cottonseed so separated is sold as per advice tendered by the Advisory Board. The cotton seed is heaped in respective ginning factories within the market area. The samples of these heaps are taken out and they are sold by sample in public auctions which take place in the Zonal Offices of the Maharashtra State Co-operative Marketing Federation Limited which is the authorized Agent of the State under the RC Act. These Zonal Offices are not necessarily situated in the area of the market committee where cottonseed is stored. Only those who register themselves with the Federation as buyers can bid in the auction which takes place on certain terms and conditions. These include payment of price at certain stages and entitlement to delivery at the spot only after making full payment of the price. Cottonseed contract forms have to be signed by the purchaser whose bid is accepted by the Federation. The actual weighment and delivery takes place at the spot where heaps lie in accordance with the APM Act.

7. The petitioners have raised four contentions, the first being that cottonseed is not an agricultural produce. We see no merit whatsoever in this contention. The term 'agriculture produce' is defined under S.2(1)(a) of the APM Act and cottonseed is specifically included in the Schedule (item No. 7 under the head Oilseeds) referred to in the said definition. Even otherwise cottonseed is a part of Kapas which is a produce of agriculture and only because the simple mechanical process has to be applied for its removal from Kapas it does not cease to be an agriculture produce. Kapas, lint and cottonseed are all things produced from agriculture.

8. The second point centres round the interpretation of the terminology "buys for his personal consumption or the consumption of any member of his family" as found in S.6(2) of the APM Act. The submission is that some of the petitioners do not trade in cotton seed at all and consume the cotton seed in the oil mill for production of the oil which is their sole business and therefore such purchase is only for its "consumption" in the sense of its conversion into a different commercial commodity by subjecting it to a process by which its previous identity is completely lost. We find this contention also to be equally meritless. In the first place, it is difficult to believe that in no circumstance an oil mill owner or crusher will not carry on the trade of cottonseed as such. Secondly, in the context of the scheme of the APM Act in general and S.6 in particular, it does not appear to us that the word "consumption" can be interpreted in isolation without reference to the context in which it appears. The preceding word 'personal' and succeeding words "of any member of his family" are significant. They clearly signify that consumption contemplated under this provisions is not consumption in the commercial sense of converting one article into the other but in the sense of final consumption for personal and domestic use in the familiar sense. After all S.6(2) is in the nature of exception drawn in favour of small person like retailer, agriculturist selling his own produce and the seller who sells directly to the consumer for personal use. It is unthinkable that in this category of persons a crusher of cottonseed for business purposes is intended to be included such an interpretation is bound to defeat the very object of the APM Act. Our attention was invited to Anwarkhan Mahboob Co. v. State of Bombay AIR 1961 SC 213 in support of the proposition, but we find that ratio does not help such a construction. That case related to the word "consumption" as it appeared in Explanation to Art.286 of the Constitution before its omission by Sixth Amendment in 1956. It is observed :-

"The act of consumption with which people are most familiar occurs when they set, or drink or smoke. Thus, we speak of people consuming bread, or fish or meat or vegetables, when they eat these articles of food; we speak of people consuming tea or coffee or water or wine, when they drink these articles; we speak of people consuming cigars or cigarettes or bidis, when they smoke these.........

In the absence of any words to limit, the connotation of the word "consumption" to the final act of consumption, it will be proper

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to think that the Constitution-makers used the word to connote any kind of user which is ordinarily spoken of as consumption of the particular commodity."

We have already referred to the words which limit the connotation of the word to the final act of consumption in the sense familiarly understood.

9. This takes us to the point No. 3 which relates to the term "marketed" as used in S.31 of the APM Act. The contention is that this term is used only in the sense of "purchase and sale" and as sale has taken place at the Zonal Office which is not necessarily in the market area in which commodity is heaped in lots, the levy is not attracted. Our attention was invited to the case of Devendra Trading Company v. State of Maharashtra 1974 Mah LJ 463 : (1974 Tax LR 2091), in support of a proposition that 'marketed' means act of sale and purchase and nothing else. That was a case in which first proviso to S.31 was attracted. The tobacco was brought in the market area only for the purposes of processing and ultimately it was to be exported from the area within a period of 30 days of its arrival. It is in this context that the following observations were made :-

"The fees are leviable only on the sale transaction of agricultural produce as defined in the Act read with Schedule marketed in the market area and the liability for the payment of such fees is on the purchaser and not on the seller. In these cases though the goods in respect of which the fees are claimed are agricultural produce, they cannot be said to be marketed in the market area. The term "marketed" is not defined in the Act, but word "marketing" connotes the buying and selling of an article. The commodity must be displayed for sale and by a seller and that commodity is purchased by purchaser. These acts constitute marketing of a commodity.

......The word "market" as a verb is defined in the dictionary as "buy or sell in the market; sell (goods) in market". Unless, therefore, the goods are offered for sale and are purchased by others, there is no marketing of those goods. In none of these cases the goods which are brought in by the petitioners from outside the market area are put in the market for sale or purchase by others, nor are those goods purchased by these petitioners in the market area. Even if these goods which are brought in were put in for sale by these petitioners in the market area, it would be the purchasers thereof who would be liable for the payment of fees to the market committee. It is not in dispute in these cases that the petitioners do not sell the bidi leaves or tobacco brought in by them from outside in the market area. They only bring in these goods for the purposes of using them in manufacture of bidis. Under the substantive part of S.31, therefore, the petitioners would not be liable to the payment of any fees nor would the market committee be empowered to levy and collect fees on these commodities."

Reading in the context, we do not find that ratio of this decision is that "marketing" can be equated only with the activity of buying and selling and no other. It is true that the words "marketed" or "marketing" have not been defined either in the APM Act or in the Rules and, therefore, normally resort will have to be made to the dictionary meaning. It seems to us that only a part of the meaning is quoted in the aforesaid decision. Webster's New Dictionary of the English Language - Deluxe Encyclopedic Edition - at Page 583 gives the meaning of the word "marketing" as under :-

Trading in a market; buying or selling; the entire process of storing, shipping, advertising, and selling which promotes and actualizes a sales transaction."

Thus Even if one goes only by dictionary meaning, the term includes the entire process, commencing from storage till delivery and that actual sale constitutes only one of the process of marketing. Having a concourse between buyer and seller, display of article for sale, activity of sale and purchase are all some of the parts of the process of marketing.

10. Our attention was also invited to unreported decision of this Court in Criminal Appeal No. 494 of 1978 in the matter of Agricultural Produce Market Samiti, Shirpur, District Dhule v. M/s. Mansingka Industries, Private Limited, decided on 24th July 1979. The point in that case was whether there was ample evidence to convict M/s. Mansingka Industries for marketing the goods in the area without obtaining the requisite licence. No proper evidence was adduced in the case about the place of actual sale and different stages of activites connected with the sale. The order of acquittal was confirmed by the High Court

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by making certain observations. Close reading of the said decision reveals that no law as such has been laid down.

11. Unquestionable position is that in the market area cotton seeds were (1) processed (ii) put in heaps in the lots from which they were taken from the lots of the unginned cotton, (iii) displayed for sale; (iv) weighed and (v) delivered. No doubt actual auction has taken place outside, but that does not alter the position that substantial part of process of marketing has taken place in the market area itself. Indeed pertinent question can be, what has not taken place in the market area? It is submitted that the goods are not even displayed in the market area and only sample is shown 15 minutes before the auction. We have already noticed the procedure adopted by the Federation in the sale. It is a sale by sample which is governed by S.17 of the Sale of Goods Act. Essential feature of such a sale is that buyer has ample opportunity of comparing the bulk with the sample. It is thus apparent that goods are displayed for comparison in the market area. That apart, the very scheme of the APM Act indicates in no uncertain terms that the term "marketing" has not been used in this enactment in the limited sense of sale or purchase. Indeed, the activity of the market committee starts even before the stage of bringing the goods in the market area and does not end even with delivery of goods. We have already noticed the scheme of the APM Act. Indeed the very preamble refers to the term "marketing". Services contemplated include preparation of market yard, providing facilities there and settlement of disputes even after delivery is over. Thus activities of the market committee are all pervading and therefore also the term "marketing" cannot be equated with merely sale or purchase. The result is thus unavoidable that the cottonseed is marketed in the market area and its sale can be subjected to the levy of market fees and supervision charges.

12. Now, we turn to the last point relating to the second proviso to S.31 which mandates against multi point imposition of levy in the same market area "in relation to agricultural produce in respect of which fees under this section have already been levied and collected therein." We must confess at the outset that this point has presented some difficulty in arriving at a conclusion. The argument is somewhat on the following lines : Levy of market fees and supervision charges is on ad valorem basis. The sale of Kapas was subjected to this levy. The price of Kapas included price of cottonseed. In the process of separation of cottonseed from Kapas by ginning, the identity of the cotton seed or its essential character is not changed in any manner whatsoever and under the circumstances subjecting the cottonseed again to the levy of market fees amounts to double levy "in relation to" the same agricultural produce which is prohibited by this proviso. The matter is concluded by two Supreme Court decisions Ramchandra Kailash Kumar v. State of U.P., AIR 1980 SC 1124 and Sreeniwas General Traders v. State of A.P., AIR 1983 SC 1246 which have binding effect on us. We are inclined to take a view that these submissions are weightly. In the first case dealing with Uttar Pradesh Krishi Utpadan Mandi Adhiniyam it is observed :-

"It is clear and it was expressly conceded to on behalf of the Market Committees and the State that there cannot be any multi point levy of market fee in the same market area. The reason is obvious. S.17(iii)(b), as amended by U.P. Act of 1978 reads as follows :-

"Market fee, which shall be payable on transactions of sale of specified agricultural produce in the market area at such rates, being not less than one percentum and not more than one and half percentum of the price of the agricultural produce so sold, as the State Government may specify by notification, and such fee shall be realised in the following manner : -

(1) If the produce is sold through a commission agent, the commssion agent may realise the market fee from the purchaser and shall be liable to pay the same to the Committee;

(2) if the produce is purchased directly by a trader from a producer the trader shall be liable to pay the market fee to the Committee;

(3) if the produce is purchased by a trader from another trader, the trader selling the produce may realise it from the purchaser and shall be liable to pay the market fee to the Committee; and

(4) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee to the Committee"...............

If the produce is purchased from a producer directly the trader shall be liable to pay the market fee to the Committee in accordance

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with sub-cl.(2). But if the trader sells the same produce or any product of the same produce to another trader neither the seller-trader nor the purchaser-trader can be made to pay the market fee under sub-cl.(3). So far the position was not disputed by the Market Committee, rather it was conceded, and in our opinion rightly. But some difficulty arises in regard to the produce of the agricultural produce which has been subjected to the levy of market fee. This will be relevant when we come to consider the various agricultural produce in respect of which challenge was made on the ground that it amounts to multipoint levy. At this stage we may explain our viewpoint by taking a few examples from the Schedule appended to the Act. Wheat, an agricultural produce is mentioned under the heading 'cereals'. Suppose the transaction of wheat, namely, wheat purchased from a producer by a trader has been subjected to levy of market fee under S.17(iii)(b)(2) no further levy of market fee in the same market area could be made, not even on wheat flour if flour were to be included in the Schedule. The better example can be found in the items under the heading 'Animal Husbandry Products' wherein in the Schedule milk and Ghee both are mentioned. Milk, of course, is not mentioned in the notification D/-11-4-1978. But if it would have been mentioned then only the transaction of milk in a particular market area could be subjected to levy of fee and Ghee manufactured from milk could not be so subjected. But since milk is not mentioned in the notification the transaction of Ghee can be subjected to the levy of fee in accordance with the principle to be discussed hereinafter. The greater difficulty arises with respect to paddy and rice as both of them are mentioned in the Schedule as well as in the notification. We shall show hereinafter that in a particular market area market fee cannot be levied both in relation to the transaction of purchase and sale of paddy and the rice produced from the same paddy. Fee can be charged only on one transaction.......... If paddy is purchased in a particular market area by a rice miller and the same paddy is converted into rice and sold then the rice miller will be liable to pay market fee on his purchase of paddy from the agriculturist-producer under sub-cl.(2) of S.17(iii)(b). He cannot be asked to pay market fee over again under sub-cl.(3) in relation to the transaction of rice. Nor will it be open to the Market Committee to choose between either of the two in the example just given. Market fee has to be levied and collected in relation to the transaction of paddy alone".

Thus, it has been held that under the U.P. Act material portion of which is reproduced above, as multi-point levy was prohibited, once the transaction of sale of paddy was subjected to the levy, the transaction of rice taken out of that paddy cannot be subjected to the levy over again.

13. The second decision relates to the Andhra Pradesh (Agricultual Produce and Livestock) Markets Act, 1966, relevant provision of which reads thus :-

12. Levy of fees by the market committees :-

(1) The market committee shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area at such rate, not exceeding one rupee, as may be specified in the bye-laws for every hundred rupees of the aggregate amount for which the notified agricultural produce, livestock or products of livestock is purchased or sold, whether for cash or deferred payment or other valuable consideration.

Explanation I : For the purposes of this section, all notified agricultural produce, livestock or products of livestock taken out of a notified market area shall, unless the contrary is proved, be presumed to have been purchased or sold within such area.

(2) The fees referred to in sub-sec. (1) shall be paid by the purchaser of the notified agricultural produce, livestock or products of livestock :

Provided that where the purchaser cannot be identified, the fees shall be paid by the seller."

R.74 of the Andhra Pradesh (Agricultural Produce and Livestock) Market Rules. 1969, reads thus:-

"74. Market Fees : (1) The fees leviable under sub-sec.(1) of S.12 on notified agricultural produce, livestock and products of livestock, if paid to a Market Committee within the State shall not be collected by another Market Committee when such notified agricultural produce, livestock or products of livestock are brought into the notified market area of another Market Committee for the purpose of processing, pressing, packing, storage, export and on sales effected in the course of commercial transactions between

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the licensed traders, and the licensed traders and consumers subject to production of such evidence as may be prescribed in the bye-laws about the payment of market fees from where it was brought:

Provided that the fees shall be levied on notified agricultural produce, livestock or products of livestock when such agricultural produce, livestock or products of livestock are sold in auction or in any other manner prescribed in the bye-laws in the market either directly or through Commission Agents even though purchased already in the same market or some other market or place within the State."

After considering the aforesaid provisions and the earlier decision under the U.P. Act it is observed : -

"If paddy is subjected to levy of a market fee on purchase or sale by the producer to a miller in a notified market area by a market committee within the State is taken to the notified market area of another market committee for being processed i.e. de-husked into rice and sold by a rice miller to a trader or by a trader to a trader in the course of commercial transactions, there cannot be any levy of market fee on such purchase or sale of rice in another notified market area. If that be so, it must logically follow that the subsequent sale of rice in the notified market area of the same market committee cannot be subjected to the levy of market fee on purchase or sale of rice by a miller to a trader or by a trader to a trader if sale or purchase of paddy within such notified market area has suffered the levy of market fee. This is of course subject to the qualification that such sale or purchase has taken place in the notified market area, but outside the market in that area, as enjoined by the proviso to R.74(1).............R.74(1) is not very happily worded but one part of its meaning is clear. It was obviously introduced to grant exemption from payment of market fee on sale or purchase of agricultural produce, livestock or products of livestock on which such fee has already been levied under sub-sec.(1) of S.12 by a market committee within the State.................According to the terms of R.74(1) read with the proviso thereto, the fee leviable under sub-sec.(1) of S.12 on any notified agricultural produce, livestock or products of livestock, if paid to a market committee within the State, shall not be collected by another market committee when such notified agricultural produce, livestock or products of livestock are brought into the notified market area of such other market committee for the purpose of processing, pressing, packing, storage, export and on sales effected in the course of commercial transactions between licensed traders, and the licensed traders and consumers. This is of course subject to production of such evidence as may be prescribed in the byelaws about the payment of market fees from where it was brought. Upon the construction placed by us, the exemption under R.74(1) is also claimable if such transactions take place within the notified market area of the same market committee."

The ratio of this decision also seems to be that once the transaction of sale of agriculture produce is subjected to the levy, even the products of that produce cannot be subjected to the levy over again.

14. It is true that provisions of each Act have to be interpreted on the basis of its scheme. We have already quoted the relevant provisions of all the three enactments. Though the wordings are not exactly similar, we see no material difference in the scheme so far as prohibition against multi-point levy is concerned. Under the circumstances, we are unable to see as to how the ratio of these two Supreme Court decisions will not apply to the APM Act. Even the definition of agriculture produce given in various enactments are not materially different. In any case none of these definitions specifically refers to the "products of produce". It is contended on behalf of the various market committees that husk and rice taken out of husk stand on different footing than Kapas and cottonseed for the reason that cottonseed is independently mentioned in the schedule and is not grouped with cotton. Now it is conceded that transaction of lint is not subjected to levy over again. We fail to see how then cottonseed can be differently treated only because it is mentioned under different head. It is true that while cotton-ginned and unginned are grouped under one item, under the head fibre, cotton seed is put under the head-oilseeds. This was unavoidable. Cottonseed cannot fall under the head fibre and can be marketed independetly in the market area specially when Cotton Monopoly Scheme is not in force. It is always possible to merely market cottonseed without marketing in the market area the Kapas from which it is removed. If the only test to be applied as is

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contended is whether the produce is commercially different commodity or not, lint and cottonseed must stand on the same footing for it cannot be reasonably disputed that even lint and Kapas are commercially different goods and they cannot be treated as one and the same only because they are put in one entry. We are unable to read any legislative intention that two commodities put in one entry in the Schedule were treated by fiction as only one commodity. In our view such an interpretation would lead to absurd results. One illustration would be enough to demonstrate this. Cardamom and pepper are mentioned in entry No. 6 under head-condiments, spices and others. These two commodities are entirely different. Can it be reasonably suggested that only because of their placement, if transaction of one is subjected to levy the transaction with relation to the other will not be? Thus the reason suggested for making a distinction between lint and cottonseed appears to be altruistic. Hence in our judgment the ratio of Supreme Court decisions clearly apply to the present case. Indeed Supreme Court has gone to the extent of observing that if transaction of any commodity subjected to levy, even the transaction of its product will not be subject to levy over again. The term "in relation to" used in the second proviso to S.31 is significant. There has been levy "in relation to" cottonseed though when it was a part of Kapas and only because it is physically separated from Kapas transaction relating to it cannot be subjected to second levy specially when it has not undergone any change. After all we are interpreting an impost legislation which always has to be construed in favour of a subject in case of doubt. Our attention was invited to certain decisions under the Sales Tax Act in which it has been held that unginned cotton and ginned cotton are two different commodities. There can be no doubt about this proposition. But nothing has turned on this consideration in the two Supreme Court decisions referred to above. Under the circumstances it seems to us that petitions must succeed on this last point.

15. It is not disputed before us that all the petitions relate to the cottonseed ginned out of Kapas purchased by the Federation under the RC Act.

16. To conclude, the petitions are allowed with no order as to costs and the rules are made absolute in the following terms :-

It is held that the transaction of sale of cottonseed cannot be subjected to the market fee and supervision charges by the Market Committees in case the Kapas from which it is ginned is already subjected to the said levy and charges. The impugned notices of demand are quashed. The respondent market committees are restrained from recovering the market fees and/or supervision charges in the above circumstances. They are directed to refund the levy and charges (if collected) within a period of 6 months from today.

17. We consider it expedient to mention that case of cottonseed other than cottonseed ginned out of Kapas purchased by the Federation will stand on somewhat different footing. In those cases burden of establishing necessary material to attract exemption will have to be discharged by the claimants of the said exemption.

Petitions allowed.

AIR 1985 BOMBAY 169 "Shankarlal Satyanarayan Oil Mills, M/s. Akola v. State"

BOMBAY HIGH COURT

(AT NAGPUR)

Coram : 2 GINWALA AND PATEL, JJ. ( Division Bench )

M/s. Shankarlal Satyanarayan Oil Mills, Akola and etc, Petitioners v. State of Maharashtra and others, Respondents.

Writ Petn. Nos. 448, 458, 650, 651, 994 and etc. etc. of 1983, D/- 14 -9 -1984.

(A) Maharashtra Agricultural Produce Marketing Regulation Act (20 of 1964), S.31, Second proviso - AGRICULTURAL PRODUCE - Market fee - Levy of market fee by market committee in respect of cotton seed purchased from Marketing Federation - Invalid, if fee is already levied and collected in respect of raw cotton of which such cotton seed is outcome within same market area.

AIR 1985 Bom 160, Followed. (Paras 3, 4 and 10)

(B) Maharashtra Agricultural Produce Marketing Regulation Act (20 of 1964), S.34A, S.34B and S.31 - AGRICULTURAL PRODUCE - Purchase of cotton seed from Marketing Federation - Levy of cost of supervision by Market Committee - Permissible, though cost of supervision is levied by market committee in respect of raw cotton. AIR 1985 Bom 160, held given per incuriam.

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There is nothing to suggest in Ss.34-A and 34-B that cost of supervision cannot be collected in respect of repeated transaction of the same agricultural produce unlike levy and collection of fees. AIR 1985 Bom 160, Held given per incuriam. (Para 7)

Bare perusal of Ss.34-A, 34-B and 31 makes it abundantly clear that while fees are levied and collected under S.31, cost of supervision is recovered under Ss.34-A and 34-B. It is, therefore, obvious that cost of supervision recoverable from a purchaser under sub-sec.(1) of S.34-A is altogether different from fees to be levied and collected from him under S.31. The purpose of levying and collecting fees on the one hand and recovering cost of supervision on the other hand from the same purchaser in respect of the same transaction of agricultural produce is different. While fee which is levied forms part of the market fund, under sub-sec.(1) of S.36 of the Act which can be expended for all or any purposes specified in S.37, cost of supervision is payable to the State Govenrment to meet the expenses of supervision by the staff appointed by it. It would, therefore, be seen that there is no interconnection between fees and cost of supervision. Market Committee is only agent of the State Government to collect the cost of supervision, while it collects fees to meet its own expenses. It would not, therefore be possible to treat fees and cost of supervision on the same level in so far as their collection in respect of subsequent transactions of the same agricultural produce are concerned. While second proviso of S.31 prohibits levy and collection of fees in the same market area in relation to agricultural produce in respect of which fees have already been levied and collected therein, there is no similar prohibition contained in S.34-A or 34-B or for that matter in any provision in the Act. It is not, therefore, possible to say that cost of supervision cannot be collected in the same market area in relation to agricultural produce in respect of which the same has been already collected.

(C) Maharashtra Agricultural Produce Marketing Regulation Act (20 of 1964), S.34A - AGRICULTURAL PRODUCE - Liability to pay cost of supervision - Supervision of particular purchase by staff appointed by State Govt. is not condition precedent.

Reading sub-sec.(1) of S.34-A in its proper perspective it does not appear that a purchaser is liable to pay the cost of supervision only if a particular purchase is supervised by the staff appointed by the State Government. The scheme of S.34-A seems to be that the State Government by a general or special order has to direct that purchase of certain agricultural produce in any market or market area should be under the supervision of the staff appointed by it and on such direction being given, cost of such supervision incurred by the State Government has to be recovered generally from purchasers of such agricultural produce irrespective of whether his particular transaction is or is not supervised by such staff. The supervision intended under sub-sec.(1) of S.34-A is a general supervision over purchase of specified agricultural produce and not supervision of each and every purchase. (Para 8)

A purchaser of agricultural produce would be liable to pay cost of supervision if there is a directive from the Government in respect of that agricultural produce as contemplated by sub-sec.(1) of S.34-A irrespective of the fact whether his purchase had been or had not been supervised by the staff appointed by the State Government. Market Committees would be entitled to recover cost of supervision from the purchaser of cotton seeds only if a direction has been given by general or special order by the State Government in respect of purchase of cotton seed in the markets or market areas under their control. (Para 8)

Cases Referred : Chronological Paras

AIR 1985 Bom 160 2

G.B. Lohiya, S.C. Mehadia and R.S. Agrawal, L. Mohta. C.G. Agrawal and B.N. Mohta, for Petitioners; M.A. Garud, V.S. Sohani, S.Z. Deshbhratar, D.B. Mirza, M.P. Badar, Prakash Bhaiya, Ram Lambat, S.J. Jichakar, V.V. Naik, A.A. Desai, Mr. Ahmad, M.M. Gadkari, B.T. Patil, A.M. Tayade, Miss S.P. Patey Asstt. Govt. Pleader and W.M. Sambare, Govt. Pleader, for Respondents.

Judgement

GINWALA J.:- Since common questions of fact and law are involved in these petitions, they can conveniently be disposed of by a common judgment.

2. The petitioners in all these petitions are either traders dealing in cotton seed or manufacturers who produce oil out of cotton seed. The respondents are the State of Maharashtra, the Maharashtra State

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Co-operative Marketing Federation Ltd. (Marketing Federation for short) and various Agricultural Produce Market Committees constituted under the provisions of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 ('the Act' for short). The Marketing Federation has been appointed by the State Government as its agent in exercise of its power under the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971 (Raw Cotton Act for short) for carrying on trade of purchasing or processing of raw cotton and selling ginned cotton and cotton seed on its behalf. The petitioners purchase their requirement of cotton seed from the Marketing Federation since the Raw Cotton Act creates monopoly of trading in cotton in the State Government. The various Market Committees levy and collect market fees and supervision charges from the petitioners in respect of the cotton seed they purchase from the Marketing Federation. Recovery of these fees and charges by the various Market Committees is under challenge in these writ petitions. Identical challenges were made against such recoveries in bunch of writ petitions being W.P. Nos. 913 of 1983, etc. Four grounds were urged in support of these challenges. Firstly it was contended that cotton seed is not an agricultural produce within the meaning of the Act. The second contention was that the provisions of the Act by virtue of sub-sec.(2) of S.6 thereof do not apply to those who purchase cotton seed for the purpose of manufacturing oil therefrom as is being done by some of the petitioners. Third contention was that under S.31 of the Act, market fee can be levied and collected only in respect of agricultural produce marketed in the market area and since cotton seed is sold by the Marketing Federation in its zonal offices, it cannot be said to be marketed in the market area. The last contention was that the levy and collection of market fees and supervision charges on cotton seed, when such fees and charges are already recovered at the time when raw cotton is purchased by the Marketing Federation, is in contravention of the second proviso of S.31 of the Act which prohibits recovery of such fees and charges on the same agricultural produce. A Division Bench of this Court by its judgment delivered on 22/23rd Feb. 1984 (reported in AIR 1985 Bom 160), rejected the first three contentions but has upheld the fourth contention. It has held that the transaction of sale of cotton seed cannot be subjected to the market fee and supervision charges by the Market Committees in case the Kapas from which it is ginned is already subjected to the said levy and charges. It quashed the notice of demand which has been issued by the Market Committees in those petitions and restrained them from recovering the market fees and/or supervision charges in the circumstances stated by it and they were directed to refund the levy and charges if collected within a period of six months from the date of judgment.

3. Since in the present petitions recovery of market fees and supervision charges are assailed on identical grounds, these petitions would have to be allowed following the decision of the Division Bench in the abovesaid writ petition. However, the respondents in the present petitions have submitted before us that the view taken by the Division Bench requires reconsideration.

4. It is submitted by the respondents that the question as to whether raw cotton and cotton seed could be taken to be the same agricultural produce within the meaning of second proviso of S.31, is not correct since it is based on two decisions of the Supreme Court which do not deal with raw cotton and cotton seed but with other agricultural commodities like paddy and rice. Effort was made before us to distinguish the said decisions of the Supreme Court on facts and to show that the ratio of those decisions was not applicable to the facts obtaining in the present petitions. However, we are not impressed by the submissions and in our view the Division Bench has rightly held that the market committees were not entitled to levy and collect market fees on purchase of cotton seed from the Marketing Federation, when market fee was already paid when raw cotton out of which the cotton-seed has come out, was purchased by it.

5. It was, however, submitted before us by the respondents that the decision of the Division Bench in the abovesaid writ petitions with regard to the collection of supervision charges is on the face of it not correct. It is urged that the Division Bench had failed to notice that collection of supervision charges stands on altogether different footing from levy and collection of market fees. It is submitted that the decision of the Division

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Bench proceeds on the assumption that the market fees and supervision charges are levied and collected under S.31 of the Act and the second proviso to S.31 of the Act would also apply to supervision charges. It is pointed out that this assumption is not correct since while S.31 empowers the Market Committee to levy and collect fees known as market fees, supervision charges are chargeable and collected under Ss.34-A and 34-B of the Act. It is contended that the Division Bench had failed to notice this distinction and if it had been brought to its notice, it would not have restrained the Market Committees from recovering and collecting supervision charges for the same reason for which it has prohibited levy and collection of market fees in respect of cotton-seed. It is, therefore, urged that the decision of the Division Bench in the said writ petition, at least in so far as it relates to supervision charges, is prima facie not correct and cannot be binding on us. We are, therefore, called upon to consider the challenge with regard to the supervision charges dehors the decision of the Division Bench.

6. We find considerable force in these submissions made on behalf of the respondents. We have carefully gone through the judgment of the Division Bench and we notice that it has not dealt with the question of imposition and collection of supervision charges differently from levy and collection of market fees. It seems that the Division Bench, with respect, carried the impression that market fee and supervision charges stand on the same footing and are imposed and recovered under the same provision, namely S.31 of the Act and hence supervision charges would also be governed by the second proviso to that section. With great respect we find that this is not so as we would presently point out. We, therefore, find that the judgment of the Division Bench has been rendered per incuriam in so far as it relates to supervision charges since the relevant statutory provisions have not been noticed.

7. Sections 34-A and 34-B which deal with imposition and collection of supervision charges or cost of supervision and which had been inserted in the Act by the Amending Act of 1972 are in the following terms :

"34-A.(l) The State Government may, by general or special order, direct that the purchase of agricultural produce, the marketing of which is regulated in any market or market area under this Act, shall be under the supervision of such staff appointed by the State Government as it may deem to be necessary; and subject to the provisions of this Chapter, the cost of such supervision shall be paid to the State Government by the person purchasing such produce in such market or market area.

(2) The cost to be paid by a purchaser shall be determined from time to time by the State Government and notified in the market or market area (in such manner as the State Government may deem fit), so however that the amount of the cost does not exceed five paise per hundred rupees, of the purchase price of the agricultural produce which is purchased by such purchaser.

34-B. (1) The cost of supervision shall be collected by the Market Committee in the same manner in which the fee levied by it under S.31 is collected.

(2) The cost of supervision collected by a Market Committee shall be paid to the State Government in the prescribed manner within a period of fifteen days from the close of the month in which such cost is collected."

At the same time we may also reproduce S.31 under which a Market Committee is empowered to levy and collect fees from every purchaser of agricultural produce marketed in the market area. It is as follows :

"31. It shall be competent to a Market Committee to levy and collect fees in the prescribed manner at such rates as may be decided by it (but subject to the minimum and maximum rates which may be fixed by the State Government by notification in the Official Gazette in that behalf), from every purchaser of agricultural produce marketed in the market aea :

Provided that, when any agricultural produce brought in any market area for the purposes of processing only or for export is not processed or exported therefrom within thirty days from the date of its arrival therein, it shall until the contrary is proved, be presumed to have marketed in the market area, and shall be leviable for the levy of fees under this section, as if it had been so marketed :

Provided further that, no such fees shall be levied and collected in the same market area in relation to agricultural produce in respect of which fees under this section have already

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been levied and collected therein (or in relation to declare agricultural produce purchased by persons engaged in industries carried on without the aid of any machinery or labour in any market area.)"

Bare perusal of these sections would make it abundantly clear that while fees are levied and collected under S.31, cost of supervision is recovered under Ss.34-A and 34-B. It is, therefore, obvious that cost of supervision recoverable from a purchaser under sub-sec. (1) of S.34-A is altogether different from fees to be levied and collected from him under S.31. The purpose of levying and collecting fees on the one hand and recovering cost of supervision on the other hand from the same purchaser in respect of the same transaction of agricultural produce is different. While fee which is levied forms part of the market fund, under sub-sec.(1) of S.36 of the Act which can be expended for all or any purposes specified in S.37, cost of supervision is payable to the State Government to meet the expenses of supervision by the staff appointed by it. It would, therefore, be seen that there is no interconnection between fees and cost of supervision. Market Committee is only agent of the State Government to collect the cost of supervision, while it collects fees to meet its own expenses. It would not, therefore be possible to treat fees and cost of supervision on the same level in so far as their collection in respect of subsequent transaction of the same agricultural produce are concerned. While second proviso of S.31 prohibits levy and collection of fees in the same market are in relation to agricultural produce in respect of which fees have already been levied and collected therein, there is no similar prohibition contained in S.34-A or 34-B or for that matter in any provision in the Act. It is not, therefore, possible to say that cost of supervision cannot be collected in the same market area in relation to agricultural produce in respect of which the same has been already collected. There is nothing to suggest in Ss.34-A and 34-B that cost of supervision cannot be collected in respect of repeated transactions of the same agricultural produce unlike levy and collection of fees.

8. On behalf of the petitioners it has been urged that Market Committee can collect cost of supervision only if the purchase of a particular agricultural produce is actually supervised by the staff appointed by the State Government as required by sub-sec.(1) of S.34-A and that no such supervision is made by any such staff in respect of cotton seed from the Market Federation. Reading sub-sec.(1) of S.34-A in its proper perspective it does not appear that a purchaser is liable to pay the cost of supervision only if a particular purchase is supervised by the staff appointed by the State Government. The scheme of S.34-A seems to be that the State Government by a general or special order has to direct that purchase of certain agricultural produce in any market or market area should be under the supervision of the staff appointed by it and on such direction being given, cost of such supervision incurred by the State Government has to be recovered generally from purchasers of such agricultural produce irrespective of whether his particular transaction is or is not supervised by such staff. The supervision intended under sub-sec.(1) of S.34-A is a general supervision over purchase of specified agricultural produce and not supervision of each and every purchase. As seen above, Ss.34-A and 34-B which fall in Chap. IV-A have been inserted by Maharashtra Act No. 26 of 1972 the objects and reasons of which are stated in the following terms :

"Objects and Reasons:

There are 198 Market Committees in the State. In order to exercise proper control and supervision over purchases and sales of various kinds of agricultural produce in numerous market yards and sub-market yards, Government had decided to establish a Directorate of Marketing with a view to enabling Government to ensure fair market practices and to eliminate mal-practices in market areas by engaging the services of graders and other necessary staff. A provision for appointing the staff necessary for such supervision, and to recover the cost of such supervision from purchasers was found necessary. Hence the Act."

It would, therefore, appear that supervision of each and every purchase is not intended under the scheme of Chap. IV-A. A purchaser of agricultural produce would be liable to pay cost of supervision if there is a directive from the Government in respect of that agricultural produce as contemplated by sub-sec.(1) of S.34-A irrespective of the fact whether his purchase had been or had not been supervised by the staff appointed by the State Government. No material has been placed

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before us by the Market Committees or the State Government to show that cotton-seed is an agricultural produce in respect of which the State Government has issued directions for the market or market areas under the control of the respondent market committees. We may only say at this stage that the respondent Market Committees would be entitled to recover cost of supervision from the petitioners only if a direction has been given by general or special order by the State Government in respect of purchase of cotton seed in the markets or market areas under their control.

9. Relying on sub-sec.(1) of S.34-D it was pointed out by the petitioners that fee and cost of supervision stand on the same level. We do not find any force in this contention. Sub-sec.(1) of S.34-B merely says that cost of supervision would be collected in the same manner in which fee levied under S.31 is collected. This is a provision for procedure for collecting cost of supervision and its meaning is that cost of supervision has to be collected in the same manner as fee is collected. This sub-section does not say that cost of supervision should be imposed or levied in the same manner as fee. We, therefore, find that sub-sec.(1) of S.34-B cannot come to the rescue of the petitioners.

10. In the result the petitions are partly allowed and the respondent Market Committees are restrained from levying and collecting fees under S.31 of the Act in respect of cotton-seed if such fee is already levied and collected in respect of raw cotton of which such cotton seed is the outcome. The respondent Market Committees are directed to refund any fees which are levied and collected from the petitioners in respect of purchase of cotton-seed as above within six months from today. The respondent Market Committees would be entitled to collect cost of supervision from the petitioners in respect of their purchase of cotton seed if the State Government has issued direction in that behalf as provided in S.34-A(l) of the Act. In the circumstances of the case there shall be no order as to costs.

Petitions allowed in part.

AIR 1985 BOMBAY 390 "Parshuram v. Dinkar"

BOMBAY HIGH COURT

Coram : 2 KURDUKAR AND JAMDAR, JJ. ( Division Bench )

Parshuram Nivrutti Magar and another, Petitioners v. Dinkar Keshav Shinde and others, Respondents.

Writ Petn. No. 661 of 1982, D/- 15 -2 -1984.

(A) Maharashtra Agricultural Produce Marketing Regulation Rules (1967), R.41(2)(ii) - AGRICULTURAL PRODUCE - ESSENTIAL COMMODITIES - Licence issued by Collector in favour of trader under Essential Commodities Act - Does not debar trader from representing Agriculturists Constituency of Market Committee.

Maharashtra Agricultural Produce Marketing Regulation Act (20 of 1964), S.6 and S.7.

A licence issued by the Collector in favour of a trader under the Essential Commodities Act does not debar a trader from representing agriculturists' constituency of the market committee. Ss.6 and 7 of the Act lay down the purposes for which the Market Committee can issue licences. The licences issued for

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regulation of marketing of agricultural produce are for use of any place in the market area for the marketing of the declared agricultural produce or for operating in the market area or in any market therein as a trader, commission agent, broker, processor, etc. The licence contemplated by R.41(2) is therefore such a licence which only the Market Committee is competent to issue. (Para 7)

(B) Maharashtra Agricultural Produce Marketing Regulation Rules (1967), R.41(2)(ii) - LICENSE - Possession of licence - Rule contemplates possession of valid licence and not licence which has expired and which has not been renewed.

R.41(2)(ii) contemplates possession of a valid licence and not a licence, the term of which has expired and which has not been renewed. The licence, the term of which has expired and of which renewal is not sought, is not worth the paper on which it was issued and such a licence would not bar a trader from representing the agriculturists' constituency if his name is validly included in the voters list of that constituency. (Para 9)

V.D. Hon, for Petitioners; R.S. Bhosale with Mrs. V.R. Bhosale and Mrs. Sujata Mogre and M. B. Mehera, Asst. Govt. Pleader, for Respondents.

Judgement

JAMDAR, J.:- This petition raises a short point about the interpretation of rules relating to disqualifications of membership of a Market Committee constituted under S.13 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963.

2. This petition arises out of a common order passed by the Divisional Joint Registrar, Co-operative Societies, Poona Division, Poona in 2 separate appeals preferred by respondents 1 and 2 against the orders dt. 7th Dec. 1981 passed by the Collector on the applications preferred by them under R.89 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 challenging the validity of the election of the petitioners as members of the Agricultural Produce Market Committee, Man district, Satara. Petitioner 1 contested the election from the constituency of members of the managing committees of the agricultural credit societies and multipurpose co-operative societies within the meaning of Maharashtra Co-operative Societies Act, 1960 and the rules framed thereunder functioning within the market area of the aforesaid Market Committee while petitioner 2 contested the election from the constituency of members of village panchayats functioning in the said area. Their nomination papers which were scrutinized on 16-9-1981 were duly accepted and no appeal was preferred under R.51 against the acceptance of the nomination papers either by respondent 1 or by respondent 2 and accordingly the petitioners contested the election which was held on 20th Oct. 1981 and were declared elected from the aforesaid constituencies. But after the results were declared respondents 1 and 2 challenged the election of the petitioners by an application under R.89 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967.

3. The main ground on which the election of the petitioner was challenged was that both were subject to the disqualification mentioned in R.41(2)(ii) at the date of their nomination as well as election, because their names were included in the voters list of the traders' constituency and that they were in possession of traders' licences issued in their favour by the Market Committee under the Act.

4. The Collector, Satara rejected the applications on the short ground that respondents did not prefer appeals under R.51 challenging the nomination of the petitioners. In the appeal, the Division Joint Registrar held that the licences issued in favour of the petitioners continued to be valid; that in fact the petitioners carried on their trading activities and were also running fair price shop within the area of the Market Committee. He therefore held that the disqualification mentioned in sub-cl. (ii) of Cl.2 of R.41 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 was attracted and hence the election of the petitioners was liable to be declared invalid under R.89(1)(a).

5. Section 6(i) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 which empowers the Market Committee to regulate marketing of agricultural produce lays down that no person shall, on and after the date on which the declaration is made under sub-sec.(1) of S.4, without, or otherwise than in conformity with the terms and conditions of, a licence (granted

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by the Director when a Market Committee has not yet started functioning; and in any other case, by the Market Committee) in this behalf,- (a) use any place in the market area for the marketing of the declared agricultural produce, or (b) operate in the market area or in any market therein as a trader, commission agent, broker, processor, weighman, measurer, surveyor, warehouseman or in any other capacity in relation to the marketing of the declared agricultural produce.

Section 7 empowers the Market Committee, subject to the rules made in that behalf, to grant or renew a licence for the use of any place in the market area for the aforesaid purposes and S.8 empowers the Market Committee to suspend or cancel a licence issued under S.7 under the circumstances mentioned in Cls.(a) to (e) of sub-sec.(1) of S.8.

6. It is an admitted position that both the petitioners were issued licences under S.7(1) of the Act. It is also a matter of record that licence issued in favour of petitioner 1 had expired on 30th Sept. 1981 as contemplated by sub-rule (7) of R.6 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 and that he had not applied for renewal of that licence. So far as petitioner 2 is concerned, he did not seek any renewal after his original licence expired and that the Market Committee was required to recover the licence fees with penalty for the period from 1965 to 1981. Admittedly, he did not pay any licence fees for the year 1981-82 and obviously did not seek any renewal of his licence the period of which had expired, in view of the aforesaid Rule, on 30th Sept. 1981. Both the petitioners therefore had trader's licence when their nominations were accepted but the licences had expired on the date on which the election was held. As mentioned above, the acceptance of the nomination papers of the petitioners was not challenged by filing appeals contemplated by R.51 and hence the acceptance of the nomination papers became final as contemplated by sub-rule (2) of R.51. The question therefore that survives for consideration is whether on the date of the election the petitioner had incurred any disqualification mentioned in R.41.

7. Rule 89(1)(a) empowers the Collector to declare invalid the election or nomination of a member, if he was subject to any of the disqualifications mentioned in R.41 at the date of election or nomination. Sub-rule (2) of R.41 on which reliance is placed by the appellate authority reads as follows :

"(2) A person shall not be chosen as a member-

(i) representing the traders' constituency, if he does not ordinarily reside in the area or if the licence issued to him is cancelled, or suspended or not renewed;

(ii) representing agriculturists' constituency, if his main income is not from agriculture or possesses a trader's, commission agent's or broker's licence or has interest in a joint family or a firm which has a trader's or commission agent's or broker's licence."

It is not the case of respondents 1 and 2 that the main income of the petitioners is not from agriculture though a passing reference is made to this aspect of the matter by the appellate authority. The appellate authority has however held that the licences issued in favour of the petitioners by the Collector under the Essential Commodities Act for running fair price shops within the limits of the Market Committee are licences contemplated by Cl. (ii) of sub-rule (2) of R.41. It is not disputed that both the petitioners were holding these licences and were conducting fair price shops within the area of the market area. But it is difficult to sustain the finding of the appellate authority that a licence issued by the Collector in favour of a trader under the Essential Commodities Act, will also debar a trader from representing agriculturists' constituency of the market committee. We have already referred to the provisions contained in Ss.6 and 7 of the Act which lay down the purposes for which the Market Committee can issue licences. The licences issued for regulation of marketing of agricultural produce are for use of any place in the market area for the marketing of the declared agricultural produce or for operating in the market area or in any market therein as a trader, commission agent, broker, processor, etc. The licence contemplated by R.41(2) is therefore such a licence which only the Market Committee is competent to issue. Moreover the word "licence" is defined by R.2(ix) as meaning "licensed to operate as a market functionary in any market or market area under the Act." Hence a licence, possession of which, debars a trader from representing

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agriculturists' constituency must be a licence issued under Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 and the rules framed thereunder. Holding a licence issued under the Essential Commodities Act would not debar a trader, if he is otherwise competent to do so, from representing the agriculturists' constituency.

8. Shri Bhosale, appearing for respondent No. 1 advanced an interesting argument while interpreting the word "possesses" appearing in sub-cl. (ii) of sub-rule (2) of R.41. According to him, the possession of a licence, the period of which, has expired also amounts to possession within the meaning of the said clause. According to him this phrase has to be interpreted in contradistinction with the phraseology used in sub-cl. (i) of cl.(2) of R.41 which lays down that a person shall not be chosen as a member representing the traders' constituency, if he does not ordinarily reside in the market area or if the licence issued to him is cancelled, or suspended or not renewed'. According to Shri Bhosale, if the licence is not cancelled or suspended, then the licence which was valid when it was issued, continues to be valid and in existence till its renewal is refused. It is difficult to accept this submission because there is no provision either in the Act or in the Rules which lays down that renewal of a licence automatically operates retrospectively from the date of its expiry. Not only that, but sub-rule (7) of R.6 specifically lays down that "every licence shall be granted or renewed for a period ending on the 30th September next following the date on which it is granted, or as the case may be, renewed'. Hence a licence which is not renewed prior to 30th September expires on that date and in case of renewal, it stands renewed from the date on which it is renewed, unless the order of renewal directs otherwise. This, however, has only academic significance in this case, because admittedly both the petitioners did not apply for renewal of their licences which expired on 30th Sept. 1981 and on the date of the election their licences were not renewed. Shri Bhosale contended that every renewal must operate retrospectively, otherwise a person whose licence as a trader has expired, may seek election through the agriculturists' constituency and then get his licence as a trader renewed after he is declared elected. There is, however, no scope for such a mischief which is taken care of by R.89 which empowers the Collector to declare invalid the election of a member who has subsequently incurred any disqualification, under R.41 after his election. Hence, if a person who is elected when his trader's licence has expired and before it is renewed, can be disqualified subsequently in case his licence as a trader issued under the Act is renewed. It is, therefore, clear that R.41(2)(ii) contemplates possession of a valid licence and not a licence, the term of which has expired and which has not been renewed. The licence, the term of which has expired and of which renewal is not sought, is not worth the paper on which it was issued and such a licence would not bar a trader from representing the agriculturists' constituency if his name is validly included in the voters list of that constituency. In the present case, the licences issued in favour of the petitioners had expired on 30th Sept. 1981 and neither they had sought renewal thereof nor their licences were renewed on the date on which the election was held.

9. Another circumstance which was pressed into service by respondent 1, and on which undue emphasis is given by the appellate authority, is that both the petitioners are carrying on trading activities in the market area even after their licences stood expired on 30th Sept. 1981. Even assuming it to be so, on that account, they would not be deemed to be in possession of valid traders' licences within the meaning of R.41(2)(ii). At the most, they may expose themselves to prosecution under the relevant provisions of the Act or the Rules for trading without a licence. Merely trading would not debar a trader from representing the agriculturists' constituency. He would be incompetent only if he is in possession of a valid trader's licence issued in his favour by the Market Committee. As both the petitioners were not in possession of such licences on the date of the election, their election cannot be declared invalid. The impugned order therefore deserves to be quashed.

ORDER

10. The petition is allowed with costs. The impugned order is quashed. It is declared that the petitioners were validly elected as members of the 3rd respondent Market Committee and the rule is made absolute in terms of prayer cls. (b) and (c).

Petition allowed.

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AIR 1984 BOMBAY 269 "Agrl. P. M. C. v. Divnl. Jt. Registrar, Co-op. Societies"

BOMBAY HIGH COURT

(AT NAGPUR)

Coram : 2 GINWALA AND DHABE, JJ. ( Division Bench )

Agricultural Produce Market Commitee, Yavatmal, and others, Petitioners v. Divisional Joint Registrar, Co-operative Societies, Amravati and others, Respondents.

Writ Petns. Nos. 1438 and 1821 of 1982, D/- 10 -1 -1984.

(A) Constitution of India, Art.226 - WRITS - AGRICULTURAL PRODUCE - Right of corporate body to apply - Market Committee and Board constituted under Ss.13 and 10 of Maharashtra agricultural Produce Marketing (Regulation) Act - Writ petition by, challenging order under Section 43 of Act - Maintainable.

Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.13, S.10, S.43.

Market Committee and Board constituted under Sections 13 and 10 of Maharashtra Agricultural Produce Marketing Regulation) Act can maintain writ petition challenging order under Section 43 by an authority under the Act. The Act has been made to regulate the marketing of the agricultural and certain other produce in the market areas and the markets to be established therefor in the State. This obviously was required to be done with a view to see that the agriculturists, when they are required to sell their produce, are not duped or cheated by underhand dealings by traders and brokers while purchasing such produce from them in secrecy and not openly under the gaze of some controlling and supervising authority. It is for this reason that out of eighteen members which constitute the Market Committee, ten are agriculturists and only three are from the trading community. With the traditional theory of locus standi for maintaining writ petition being recently expanded to take in its fold public interest litigation, it would be too technical to say that in the abovesaid background the Market Committee cannot come forward to set right an injustice which may be caused to the agriculturists class by the unauthorised action on the part of any authority. It might not be possible for the individual agriculturist to move High Court either because he is too poor to afford the expenses or because in his case the stake is not so great as to merit these expenses. In such a case it becomes duty of the Market Committee to protect the agriculturists from onslought of an unauthorised action. (Paras 14, 15)

(B) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.43, S.10, S.13, S.30 - AGRICULTURAL PRODUCE - STATE - Board is independent of Market Committee - Decision of Board - Interference by State Government under Section 43 - Not permissible.

Prima facie the State Government under Section 43 cannot call for and examine the proceedings of any body other than the Market Committee (except of course that of the Director). The Board constituted under Section 10 is not intended to be part of the Market Committee unlike its sub-committees. The Board is a body entirely independent of the Market Committee in performing its functions and discharging its duties and its decision cannot be termed as decisions of the Market Committee within the meaning of Section 43 of the Act. If that is so, obviously the State Government cannot interfere with a decision of a Board in exercise of its power under that section. (Paras 17, 19, 21)

(C) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.58, S.43 - AGRICULTURAL PRODUCE - INTERPRETATION OF STATUTES - WORDS AND PHRASES - Use of word "or" -Meaning - Notification under Sec.58 - Power under Section 43 delegated to Director and Joint Divisional Registrar - Notification, not invalid.

Interpretation of Statutes - Use of word "or".

The word "or" has been used to indicate that power could be delegated severally

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to these persons. There is nothing in the language of Section 58 to indicate that the legislature intended that Sate Government should delegate its power to one only. Therefore, the notification dated 15/17-9-1981 in so far as it relates to the delegation of power under Section 43 to the Director and Joint Divisional Registrar of Co-operative Societies is not invalid on this count. Under S.58 State Government is competent to confer any of its powers on more than one person severally. Concurrent exercise of power is not unknown to law. (Para 21)

(D) Constitution of India, Art.226 - AGRICULTURAL PRODUCE - WRITS - DOCTRINES - NATURAL JUSTICE - REVISION - Natural Justice - Board constituted under S.10 of Maharashtra Agricultural Produce Marketing (Regulation) Act - Board, while settling dispute between buyer and seller, discharges quasi-judicial functions - Revision of Board's decision under S.43 - Revisional authority must give opportunity to the party to dispute - Doctrine of audi alteram partem, attracted.

Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.43, S.10. (Para 23)

(E) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.10 - Maharashtra Agricultural Produce Marketing (Regulation) Rules (1967), R.97(6) - AGRICULTURAL PRODUCE - Dispute between buyer and seller - Decision of Board - Omission to record reasons - It would at the most amount to irregularity - Decision of Board, not vitiated. (Para 27)

Cases Referred : Chronological Paras

AIR 1980 Raj 1 (FB) 29

AIR 1977 Pat 166 29

AIR 1966 SC 828 29

D.K. Deshmukh (in W. P. Nos. 1438 and 1821 of 1982) for Petitioners; V.V. Naik, Asst. Govt. Pleader (for Nos. 1 and 2) in W. P. No. 1438 of 1982, A.B. oka, for No. 3) in W. P. Nos. 1438 and 1821 of 1982, W.M. Sambre, Govt. Pleader (for No. 2) in W. P. Nos. 1821 of 1982 for Respondents.

Judgement

ORDER:- The principal question which falls for consideration in these two petitions is whether the power conferred under Section 43 of the Maharashtra Agricultural Produce Marketing Regulation) Act, 1963 ('the Act' for short) can be exercised to revise the decision of the Board constituted under Section 10 of the Act. Then can, therefore, be conveniently disposed of by common judgment.

2. In order to appreciate the rival contentions of the parties we may at the outset note a few provisions of the Act and the Rules made thereunder, namely, the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 ('the Rules' for short). The Act has been put on the Statute Book, as can be seen from its long title, to regulate marketing of agricultural and certain other produce in market areas and markets to be established therefore in the State. For this purpose the State Government has to notify the area called the market area where marketing of the agricultural produce specified by it would be regulated under the provisions of the Act A. principal market has to be established for every market area with one or more subsidiary markets, if necessary. After the area is so notified, subject to certain exceptions no person can use any place in the market area for marketing of the declared agricultural produce or operate in the market area or in any market thereunder as a Trader, Commission Agent, Broker. etc., in relation to the marketing of the declared agricultural produce without or otherwise than in conformity with the terms and condition of a licence to be granted under Section 7 of the Act. For regulating the marketing of different kinds of agricultural produce in the same market area or any part thereof, the State Government has to establish a Market Committee which is a body corporate, consisting of a Chairman, Vice-Chairman and other members. The Market Committee other than the Bombay Agricultural Produce Market Committee, consists of 18 members, 10 of whom are agriculturists residing in the market area. Seven of them have to be elected by members of the Managing Committee of the Agricultural Credit Societies and Multipurpose Co-operative Societies functioning in the market area and 3 are to be elected by the members of Village Panchayats functioning therein. Out of the 18 members, 3 are to be elected by traders and commission agents holding licence to operate as such in the market area. Section 29 of the Act spells out the powers and duties of the Market Committee. Sub-section (1) thereof inter alia provides that it shall be duty or a Market Committee to implement the provisions of the Act, the Rules and bye-laws made thereunder in the market area and to do such other

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acts as may be required in relation to superintendence, direction and control of the markets or for regulating marketing of agricultural produce in any place in the market area. Sub-section (2) thereof specifies certain powers and duties of the Market Committee. Clause (d) thereof requires the Market Committee to "Provide for settling dispute arising out of any kind of transactions connected with the marketing of agricultural produce and all matters ancillary thereto."

3. If the marketing of agricultural produce is so regulated in a given area, some machinery has to be provided for settlement of disputes between buyers and sellers regarding quality, weight, payment of any agricultural produce or any matter in relation to the regulation of marketing of agricultural produce in that area. This object is achieved by enacting Sec.10 in the Act. We may reproduce it in extenso :

"10 (1) For the purpose of settling dispute between buyers and sellers, or their agents, including any disputes regarding the quality or weight or payment of any agricultural produce, or any matter in relation to the regulation of marketing of agricultural produce in the market area, the Market Committee of that area shall constitute a Board.

(2) The Board shall consist of such number of members, and such number of other persons possessing such qualifications and shall be constituted in such manner and conduct its business in such manner, as may be prescribed. The rules may provide for appointment of arbitrators, payment of fees by parties for the settlement of disputes, and appeal to the Board from their decision. The rules may also provide for consulting persons with technical qualifications or for laboratory analysis for ascertaining the quality of any agricultural produce, the price which may be paid therefor or any other matter relevant to the dispute, and for the payment of fees or charges for such consultation or analysis."

This is how the section stands after its amendment by Maharashtra Act No. 359 of 1973. Prior to that, sub-section (1) required the Market Committee to constitute the Board "from amongst its members". The last sentence in sub-section (2) has been added by the said Amendment Act. It would, therefore, appear that even though prior to the amendment of this section by the said Amendment Act and Board could be composed only of some of the members of the Market Committee, after the amendment of the section it is possible to constitute a Board consisting not only of some of the members of the Market Committee but also of such other persons possessing such qualifications as may be prescribed, subject to the rules to be made by the State Government under sub-section (2) of Section 10 and clause (c) of subsection (2) of Section 60 of the Act. The relevant rule in this connection is Rule 97, which is in the following terms :

"97. Constitution of Board for settlement of disputes under Section 10. - (1) For the purposes of Section 10. every Market Committee shall from amongst its members constitute a Board consisting of:-

(a) the Vice-Chairman;

(b) two members elected from the Cooperative Societies' Constituency and one member elected from the 'Village Panchayat's Constituency.

(c) two members elected from the Traders Constituency, if the Vice-Chairman is not elected from that constituency, and one member if the Vice-Chairman is elected from that constituency.

(2) No business shall be transacted by the Board, unless three members are present.

(3) Every meeting of the Board shall be presided over by the Vice-Chairman and if he be absent, by such one of the members present as may be chosen by the meeting to be the presiding authority for the occasion.

(4) All questions shall be decided by a majority of votes of the members present and voting, the presiding authority having a second or casting vote in all cases of equality of vote.

(5) The decision of the Board on all questions shall be binding on the parties to the dispute.

(6) Every Market Committee shall maintain a complete record of all disputes in such form as may be laid down in its bye-laws. The decision shall be communicated to the parties in writing with reasons therefor."

This rule was made in 1967 i.e. prior to amendment of Section 10 in 1973. It seems that this rule has not been correspondingly amended after the amendment of Section 10 so as to include persons other than members of the Market Committee

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as member of the Board, with the result that at present the Board can be constituted only from amongst members of the Market Committee and none else. Rule 98 deals with settlement of disputes and prescribes the procedure to be followed therefor. It may better be reproduced verbatim :

"98. Settlement of disputes, (1) Where any dispute referred to in Section 10 arises between any parties operating in a market area, the Secretary of the Market Committee or any person authorised by the Market. Committee in that behalf may, if the parties agree to settle such dispute by arbitration refer the dispute to arbitration and in the absence of any such agreement, to the Board constituted under Rule 97.

(2) Where parties agree to settle the dispute by recourse to arbitration, each party to the dispute and the Secretary of the Market Committee or any person authorised by the Market Committee in that behalf shall select one arbitrator from the panel of arbitrators appointed under sub-rule (6).

(3) The arbitrators shall, as far as possible, try to reach a unanimous decision; but in case of disagreement, the decision of the majority shall prevail. The decision shall be communicated to the parties in writing with the reasons therefor.

(4) Every dispute shall be decided, as far as possible, on the spot and on the same day.

(5) any party to the dispute aggrieved by the decision of the arbitrators may within seven days of such decision, appeal to the Board. The decision of the arbitrator shall, subject to the decision of the Board in appeal, be binding on the parties.

(6) The Director or any officer authorised by him may require a Market Committee to prepare every year a panel of arbitrators consisting of not less than 12 and not more than 15 persons from agriculturists and traders (not being the members of the Market Committee) who are living in or near the market area or doing business in such area. The panel of arbitrators shall be pasted on the notice board of the office of every Market Committee, and at some conspicuous place in the market."

It would appear that the Board not only settles a dispute between the parties as an original authority but also but functions as an appellate authority against the decision of the arbitrators.

4. Cotton (ginned and unginned) is an agricultural produce within the meaning of Section 2 (1) (a) of the Act. Unginned cotton is also known as raw cotton. Since the enactment of the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971, agriculturist cannot sell his raw cotton as an agricultural produce to any one other than the State Government. In order to implement the scheme of procurement and processing of raw cotton, the State Government, under the, provisions of the Raw Cotton Act, has appointed the Maharashtra State Marketing Federation Limited which is impleaded as the third respondent in both these petitions, as its chief agent. Section 21-A of the Raw Cotton Act makes it obligatory on the Market Committee to designate and maintain centres for procurement of raw cotton under the said Act, known as Collection Centres. Under Rule 7 of the Maharashtra Raw Cotton (Grading and Marketing) Rules, 1972, the Market Committee has to supervise the grading operation in the same manner as it supervises the grading of agricultural produce under any rules made by the State Government under the Act or bye-laws. The markets under the Act are designated as collection centres for the purpose of procuring raw cotton under the cotton procurement scheme. Besides these, collection centres are also opened by Market Committees within their respective market areas, at convenient places. Trade of selling and purchasing such raw cotton is carried out in such markets and collection centres and there is no dispute that such trade is regulated by the provisions of the Act and has to be carried out under the superintendence, direction and control of the relevant Market Committee.

5. The third respondent has established zonal and sub-zonal offices at various collection centres and a Grader is attached to each collection centre who is supposed to be an expert in determining the grade of raw cotton. Raw cotton is divided into five grades according to its quality, namely, (1) super, (2) FAQ (3) Fair (4) X, and (5) Kawadi in that descending order and the cotton fetches its price according to one of these grades as fixed by the State Government. The

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grading of raw cotton, therefore, plays an important role in the procurement scheme. The tenderer of cotton and the State Government would stand to gain or lose according to the way the cotton is graded. The Grader appointed by the third respondent at the collection centre examines the raw cotton tendered by the agriculturist and determines its grade and if the tenderer agrees with the decision of the Grader, he is paid the price accordingly. However, if the tenderer does not agree with the decision of the Grader, the dispute with regard to the quality of the cotton tendered has to be resolved under the provisions of the Act the and Rules set out above.

6. By its resolution dated 8-1-1979 the State Government had appointed an Arbitration Committee for each of the collection centres, consisting of 6 persons and this was done in order to dissolve the dispute quickly on the very day. It seems that there was no provision for preferring an appeal against the decision given by such Arbitration Committee. By its resolution dated 5-12-1981 the State Government slightly modified the composition of Arbitration Committee and constituted a dispute settlement committee at the level of sub-zonal offices of the third respondent, as an appellate authority against decision of the Arbitration Committee. It would, therefore, appear that the resolution dated 5-12-1981 provided a machinery different from the one under the provisions of the Act and the Rules for deciding the disputes with regard to grading of raw cotton. This solution came to be challenged in this Court in Writ Petition No. 2841 of 1981 by some of the members of the petitioners in the present writ petition No. 1438 of 1982. This Court on 31-12-1981 granted interim stay with regard to the implementation and operation of the said resolution. That writ petition was admitted on 25-6-1582 and the interim stay was confirmed, with the result that with effect from 31-12-1981 the Arbitration Committees and Dispute Settlement Committees constituted under the said resolution stopped functioning and the disputes were to be settled under the provisions of the Act and the Rules, at least in so far as the market area under the sphere of operation of the first petitioner in Writ Petition No.1438 of 1982, viz. the Agricultural Produce Market Committee, Yavatmal is concerned.

7. Writ Petition No. 1438 of 1982 has been presented by the Agricultural Produce Market Committee, Yavatmal and the Board constituted under Section 10 of the Act for that Market Committee as petitioner Nos. 1 and 2 respectively. The Divisional Joint Registrar, Co-operative Societies, Amravati, the State Government and the Maharashtra State Marketing Federation Limited have been respectively impleaded as respondents Nos. 1, 2 and 3. The petitioner Market Committee has opened cotton collection centres at Yavatmal. Babhulgaon and Kalam besides other places. It seems that on or about 20-3-1982 the sub-zonal manager of the third respondent at Kalam made a complaint regarding alleged mal-practices being indulged in by some of the members of the Arbitration Committee and the Dispute Settlement Committee regarding gradation of raw cotton. The District Deputy Registrar, Co-operative Societies, Yavatmal, to whom this complaint seems to have been sent, forwarded it to the first respondent with his confidential letter dated 22-3-1982 with his recommendation for taking action in respect of upgradation of raw cotton by the Dispute Settlement Committee at Yavatmal. Pursuant to this report from the District Deputy Registrar, the first respondent directed the Chairman and Secretary of the petitioner Market Committee to produce all relevant record along with proceeding book of the Board in respect of decisions taken by it in the matter of gradation of raw cotton collected at the collection centres at Yavatmal, Babulgaon and Kalam. The Secretary of the petitioner Market Committee accordingly produced the relevant record before the first respondent on 20-4-1982. The first respondent requested the Managing Director of the third respondent and the State Government "to arrange for examining the grades of raw cotton through technical experts". Accordingly a Committee of experts consisting of representative of the Director of Marketing and a representative of the agricultural department and representative of the third respondent along with the first respondent visited the cotton collection centres at Yavatmal and Babulgaon on 17th and 18th May, 1982 and examined raw cotton on the spot. The first respondent purported to examine the proceeding

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books in respect of the decisions taken by the board and also applications made by the respective tenderers of cotton for referring their cases to the Arbitration Committee and the Dispute Settlement Committee. The first respondent found that the applications were not properly made and filled in and that they were not properly signed and that some of the applications had been signed by persons other than the applicants. On examining the record the first respondent was of the view that the members of the Arbitration Committee and the Dispute Settlement Committee had formed a "click and in collaboration with certain group of persons manipulated and managed to sell sub-standard raw cotton of the grade of Kawadi or Zoda to the higher grade of Fair or FAQ quality". The first respondent suspected that these persons might be collecting raw cotton of Kawadi or Zoda quality through their agents at village level at the price guaranteed by the third respondent and sold the same at higher grade by resorting their disputes to the Arbitration Committee against the grade given by the Grader and again before the Dispute Settlement Committee against the grade given by the Arbitration Committee, Respondent No. 1 also purported to examine some cases as test cases to support this view. He further found that the Dispute Settlement Committee which is the same as petitioner No. 2, had recorded its opinion regarding grade of cotton under dispute without assigning any reasons therefor as required under sub-rule (6) of Rule 97. He further found that though members of the said Committee or Board were not experts, in grading raw cotton, it had not consulted any expert before determining the grade of the disputed cotton. Hence because the Board had not obtained expert opinion and had not recorded its reasons for its decisions and because of the suspicion which the first respondent entertained with regard to the mal-practices indulged into by members of the Board and the tenderers of cotton collusively, the first respondent by his order passed on 25-6-1982 (Annexure B), in exercise of the powers under Section 43 of the Act, "set aside all the decisions taken by the Dispute Settlement Committee of the Agricultural Produce Market Committee, Yavatmal in upgrading grades of raw cotton in respect of cotton collection centres at Yavatmal, Kalam and Babulgaon". In particular he set aside the proceedings of the Dispute Settlement Committee held on 11-12-1981, 25-2-1982, 8-3-1982, 25-3-1582, 1-4-1982 and 14-4-1982 in respect of the cotton collection centre at Yavatmal, the proceedings of the said committee held on 3-2-1982, 23-2-1982, 4-3-1982, 12-3-1982, 3-4-1982 and 16-4-1982 in respect of collection centre at Kalam and the proceedings of the said Committee held on 2-2-1982, 27-2-1982, 11-3-1982, 31-3-1982 and 13-4-1982 in respect of collection centre at Babulgaon. He further ordered that the grade of raw cotton given by the Arbitration Committee against the decisions of the Grader of the third respondent at these centres should be maintained as valid and operative for making payments to the concerned tenderers of cotton. It is this order which is challenged in Writ Petition No. 1438 of 1982.

8. Writ Petition No, 1821 of 1982 has been presented jointly by six individuals who claim to be agriculturists and tenderers of cotton and the Agricultural Produce Market Committee, Yavatmal and its Dispute Settlement Board. The three respondents in this petition are the same as those in the earlier petition. This petition is directed against the order passed by the first respondent calling upon the Chairman and the Secretary of the Market Committee to produce all the record and proceedings connected with upgradation of sub-standard raw cotton by the Arbitration Committee and the Dispute Settlement Committee (Board?) in respect of collection centre at Yavatmal for the period from 15-4-1982 to 30-6-1982. The first respondent has purported to issue this order in exercise of his power under Section 43 of the Act. The petitioners also challenged the letter dated 10-8-1982 which has been addressed by the third respondent to the Sale Purchase Co-operative Society at Yavatmal, directing it to pay to the tenderers the price on the basis of the grade determined by its Grader and not according to the grade given by the Arbitration Committee of the Dispute Settlement Board.

8. The principal and the common contention in both these petitions on behalf of the petitioners is with regard to the power and authority of the first respondent, namely the Divisional Joint Registrar,

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Co-operative Societies, Amravati, to interfere with the decisions of the Board constituted under Section 10 of the Act. This challenge is twofold. Firstly it is submitted that Section 43 of the Act, under which the first respondent has purported to exercise his power, does not operate on the decision of the said Board since under it the State Government can call for and examine the proceedings of the Market Committee for the purposes of satisfying itself as to the legality or propriety of any decision or order passed by it under the Act. In this connection it is urged that the Board constituted under Section 10 of the Act is not the same as a Market Committee and is not even a part and parcel of it but is altogether a different entity, though it is composed of some of the members of the Market Committee. It is pointed out that the Board is constituted under Sec.10 of the Act while the Market Committee is constituted under Section 13 of the Act and simply because the Market Committee has to constitute the Board from amongst its members, it does not follow that it is appendage of the Market Committee. as it is required to discharge statutory functions under the provisions of the Act and the Rules independent of the Market Committee, As a second limb of this contention it is urged by the petitioners that assuming that the decisions of the Board are subject to the revision under Section 43 of the Act, the first respondent at any rate could not exercise this power as delegation of its powers under Section 43 of the Act by the State Government to the first respondent under its notification dated 15-9-1981 in exercise of its power under Section 58 of the Act is not legal and valid inasmuch under Section 58 of the Act, the State Government could delegate its powers either to the Director of Agricultural Marketing or to the first respondent but not to both of them concurrently as is purported to be done under the said notification. In this behalf it is submitted that Section 58 does not permit simultaneous delegation of its power by the State Government on the Director and any other officer and person but permits the delegation to only one of them at a time.

10. In so far as Writ Petition No. 1438 of 1982 is concerned, it is further contended by the petitioners therein that at any rate the first respondent could not have exercised the revisional power under Section 43 of the Act and reversed all the decisions of the Board without giving an opportunity to the tenderers of cotton or the agriculturists who were affected by exercise of this power, since in exercising it respondent No. 1 was not acting administratively but was exercising quasi-judicial power. It is urged that the omnibus order passed by the first respondent without so much as hearing the parties concerned, violated the principles of natural justice and, therefore, was void.

11. The petitions have been contested by the three respondents, Respondent Nos. 1 and 2 have filed joint returns while respondent No. 3 has filed separate returns in both these petitions. In so far as writ petition No. 1438 of 1982 is concerned, which, as stated above, has been presented only by Market Committee and the Board, the third respondent has raised preliminary objection as regards its maintainability. It is submitted that both these petitioners have no locus standi to maintain the petition inasmuch as they are in no manner aggrieved by the impugned order passed by the third respondent and the interest of these two bodies cannot be said to be prejudiced by that order. In short it is contended that these petitioners not being "persons aggrieved", have no locus standi to impugn the order dated 25-6-1982. Secondly it is contended that this petition not being filed in discharge of official function of the Market Committee or the Board, cannot be instituted either by the Chairman or the Vice-Chairman without a proper resolution from the Market Committee authorising them to do so. It is said that the petitioners lack in bona fides in filing the petition as in discharge of their official duties either of them cannot be concerned as to what happens further to the decisions given by them. It is urged that only because some of the members of the petitioners are interested in seeing that the decisions given by the Board should be maintained, that the present petition has come to be filed. It is submitted that an authority which has power to decide a dispute cannot have any grievance about its decision being upset either by the revisional or the appellate authority and that from the very fact that the petitioners have challenged such a decision shows that they were having vested interest in their decisions.

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12. In so far as merits of the petitions are concerned, all the respondents are one in urging that the power under S.43 of the Act extends to revise decision of the Board also as according to them, the Board is nothing but an appendage of the Market Committee since it is not only constituted by the latter but is composed of some of its members, with the Vice-Chairman of the Market Committee presiding over the deliberations of the Board. It is also contended that Section 58 of the Act is misread by the petitioners and under it the State Government could delegate its powers under Section 43 of the Act to the Director as well as to the Divisional Joint Registrar of Co-operative Societies simultaneously,

13. Before we examine merits of the petitions, we may dispose of the preliminary objection raised by the third respondent. While refuting this preliminary objection the learned counsel for the petitioners submitted that the Agricultural Produce Market Committees constituted under the Act have to safeguard the interests of the agriculturists for whose benefit the Act has been made. It is submitted that the Act is meant to protect the agriculturists while selling their agricultural produce, from exploitation by traders and middle-men and this object is apparent from the composition of the Market Committee where a dominant representation is given to agriculturists. It is argued that if the interest of a large section of agriculturists is affected by any illegal act, in relation to the provision of the Act, the Market Committee, as a representative of the agriculturists, has to take up cudgels on their behalf to set the situation right. It is further urged that if any authority illegally and unauthorisedly encroaches upon the powers and functions of the Board, it has to see that such acts are stopped by taking resort to appropriate remedies. For these reasons it is submitted that the Market Committee and the Board have ample interest in seeing that the impugned order is set aside and the parameters of the power under Section 43 of the Act are well defined for guidance in future. It is also contended that the petition, has been validly presented as the Vice-Chairman of the Market Committee has been duly authorised to do so by a resolution.

14. We do not find much substance in the preliminary objection. As seen above, the Act has been made to regulate the marketing of the agricultural and certain other produce in the market areas and the markets to be established therefor in the State. This obviously was required to be done with a view to see that the agriculturists, when they are required to sell their produce, are not duped or cheated by underhand dealings by traders and brokers while purchasing such produce from them in secrecy and not openly under the gaze of some controlling and supervising authority. It is for this reason that out of eighteen members which constitute the Market Committee, ten are agriculturists and only three are from the trading community. The other members of the Market Committee cannot be said to represent the interest of the traders but that of agriculturists, since they are representatives of Co-operative Societies, Panchayat Samitis, Village Panchayats, Zilla Parishads and Government Offices. If this be the purpose of establishing Market Committees for each of the market areas, one fails to see why it cannot be said that the Market Committee generally represents the interest of the agriculturists and why it should not take up the cause of the agriculturists where it finds that their interests are affected in so far as sale of their agricultural produce is concerned. With the traditional theory of locus standi for maintaining writ petition being recently expanded to take in its fold public interest litigation, it would be too technical to say that in the abovesaid background the Market Committee cannot come forward to set right an injustice which may be caused to the agriculturist class by the unauthorised action on the part of any authority. In the circumstances stated above, it would be taking very narrow view if it is held that the Market Committee has no locus standi to maintain the present petition, if we find that the first respondent has acted without power and jurisdiction in setting aside all the decisions of the Board thus financially causing great loss to the agriculturists who had tendered their cotton and would stand to gain better price if the decisions of the Board had not been so illegally set aside. It might not be possible for the individual agriculturist to move this Court either because he is too poor to afford the expenses or because in his case the stake is not so great as to merit these expenses.

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15. The matter can be looked at from another angle also. As we have said above, under sub-section (1) of Section 29 of the Act the Market Committee is charged with duty of doing such, acts as may be required in relation to superintendence, direction and control of market areas for regulating marketing of agricultural produce in any place in the market area and it is also charged with the duty to implement the provisions of the Act, the Rules and the bye-laws made thereunder. Now in discharging these duties the Market Committee has to see not only that the marketing of the agricultural produce is done according to the provisions of the Act but it has also to implement the provisions thereof. Now of in discharging all these duties if the Market Committee finds that some authority is departing from the said provisions, it has to set the matter right by taking appropriate steps including legal action. If the Market Committee were to turn blind eye and deaf ear to illegalities being committed by any authority in the guise of performing its power under the provisions of the Act, it would be failing in its duty to implement these provisions and in controlling and supervising the regulation of marketing and agricultural produce. We, therefore, find that in a case like the present it becomes duty of the Market Committee to protect the agriculturists from onslaught of an unauthorised action.

16. Coming to the principal question involved in these petitions, the third respondent has purported to pass the impugned orders in exercise of the powers conferred on the State Government under Section 43 of the Act which have been delegated to him by the latter under its notification dated 15-9-1981 acting under Section 58 of the Act. For the present we may assume that this delegation is legal and valid, because if we hold that the power under Section 43 cannot be resorted to even by the State Government to upset the decision of the Board, the question of the delegation of that power would not arise. Let us then see if the power conferred under Section 43 of the Act can be used to revise the decision of the Board constituted under Section 10 of the Act.

17. Section 43 reads as follows:

"43. The State Government may at any time call for and examine the proceedings of any Market Committee or the Director for the purpose of satisfying itself as to the legality or propriety of any decision or order passed by the Market Committee or the Director under this Act. If in any case, it appears to the State Government that any decision or order or proceedings so called for should be modified, annulled or reversed, the State Government may pass such order thereon as it thinks fit."

Reading this section as it is in so far as it is relevant for our purpose, it would appear that it empowers the State Government to call for and examine "the proceedings of any Market Committee". Prima facie, therefore, the State Government cannot call for and examine the proceedings of any body other than the Market Committee (except of course that of the Director). Hence unless it is held that the proceedings of the Board are the same as the proceedings of the Market Committee, the State Government would not be in a position to exercise its power in regard to such proceedings. It is for this reason that we have to see if the decision or order passed by the Board is tantamount to the "decision or order passed by the Market Committee" within the meaning of Section 43.

18. The Market Committee like the petitioner Market Committee is constituted under Section 13 (1) of the Act by the process of election and consists of representatives of agriculturists, traders and commission agents, co-operative societies doing business of processing or marketing in the market area, Chairman of the Panchayat Samiti or its representative, President or Sarpanch of local authority or its representative, Extension Officer and Assistant Cotton Extension Officer. It is, therefore, clear that besides agriculturists and traders the Market Committee consists of others also.

19. On the other hand as seen above, the Board is constituted under Section 10 read with Rule 97. In view of Section 10 as it stands after its amendment in 1973, the Board need not consist only of the members of the Market Committee. It is possible for the State Government to amend Rule 97 and provide for inclusion of persons other than members of Market Committee as some of the members of the Board. In other words, the Legislature does not intend that the Board should consist only of the members of the Market Committee. Hence the argument

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advanced on behalf of the respondents that the Board is nothing but a part and parcel of the Market Committee because all its members are also members of the latter, loses its force. In this connection it may be pertinent to note that any member of the Market Committee cannot be member of the Board. The membership of the Board is restricted to only two categories of the members of the Market Committee, viz. those of agriculturists and traders. Though Rule 97 (1) (b) speaks of two members elected from the Co-operative Societies Constituency and one member elected from the Village Panchayat's Constituency, read in the light of Sec.13 (1) (a) it is evident that these are agriculturist members of the Market Committee. Technically any member of the Market Committee other than an agriculturist or trader can be member of the Board only if he happens to be Vice-Chairman of the Market Committee. Such a limited composition of the Board even under the rule as it is at present indicates that the Board is not intended to be part of the Market Committee unlike its sub-committees.

20. It may be noted in this context that Section 30 of the Act does make provision empowering a Market Committee to appoint one or more sub-committees consisting of one or more of its members including co-opted members and to delegate to them such of its powers and duties as it may think fit to do. Now if the legislature thought that settlement of disputes between buyers and sellers was function of the Market Committee it would not have enacted Section 10 and it would have been enough to say that the Market Committee should arrange to settle such disputes either itself or through a sub-committee, particularly when the legislature has under Section 30 specifically empowered Market Committee to appoint sub-committees and delegate to them its functions. In short, if the legislature intended that the Board should function as a sub-committee of the Market Committee. Section 10 would not have found place in the Act. The only function assigned to a Market Committee in relation to the Board is to constitute it in the manner prescribed. Once that is done, the Board has to function as provided in Rule 97 while conducting the business of settling disputes. The only duty which the Market Committee is required to perform in the matter of settlement of disputes is to maintain a complete record of all disputes and to communicate decisions thereon to the connected parties. (see sub-rule (6) of Rule 97). But that is only ministerial function.

21. All this leads to the inevitable conclusion that the Board is a body entirely independent of the Market Committee in performing its functions and discharging its duties and its decisions cannot be termed as decisions of the Market Committee within the meaning of Section 143 of the Act. If that is so, obviously the State Government cannot interfere with a decision of a Board in exercise of its power under that section.

22. In the view we take it is not necessary to examine the other contention urged on behalf of the petitioners. However, since we have heard learned counsel at length we may as well record our decision on them too. In so far as the question of validity of the action on the part of the State Government in simultaneously delegating its same power on more than one person is concerned, it may be noted that the State Government under its notification dated 15-9-1981 published in the official gazette on 17-9-1981 has delegated its power under Section 43 on the Director as well as on the Divisional Joint Registrar of Co-operative Societies. Relying on the phraseology in Section 58 and particularly on the words "the Director or any other officer or person" it is urged that the delegation of the same power can be only to one of them but not to two or all of there at the same time. In this connection emphasis is laid on the word "or" in the expression quoted above. It is submitted that this word cannot be read to mean "and" and use of it is designed to give choice of one of the three persons. It is also submitted that the legislature has used the word "or" and not "and" in order to restrict the option to one only. Had the legislature used the word "and" instead of "or" it would not mean that the powers could be delegated to any one or more of the three persons simultaneously. On the other hand such a provision could be interpreted to mean that the powers were to be delegated to all of them jointly and not severally. In our opinion the word "or" has been used to indicate that powers could be delegated severally to these persons. There is nothing in the language of Section 58 to indicate that the

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legislature intended that State Government should delegate its power to one only. We, therefore, do not find that the said notification in so far as it relates to the delegation of power under Section 43 to the Director and Joint Divisional Registrar of Co-operative Societies is not invalid on this count. In our view, under Section 58 State Government is competent to confer any of its power on more than one person severally. Concurrent exercise of power is not unknown to law. However, since we have held that the power conferred by Section 43 on the State Government cannot be exercised in relation to the decision of a Board constituted under Section 10 of the Act, the question of delegating such a power cannot arise.

23. Apart from what we have said above, it is difficult to sustain the order passed by the first respondent on 25-6-1982 on its own merits. It is needless to say that while settling the dispute between a buyer and seller or deciding an appeal against the decision of an arbitrator deciding such a dispute, the Board discharges quasi-judicial functions. It, therefore, follows that any authority which bias power to revise such a decision of the Board also discharge quasi-judicial functions. If that is so, it is incumbent on such a revisional authority to give an opportunity of being heard to the party to the dispute against whom it records its decision. The doctrine of audi alteram partem would squarely apply to such a case.

24. In the present case the first respondent has adopted a novel procedure. Though the Board had dealt with each dispute individually and had recorded its decision separately in each of them, the first respondent clubbed together not only the decisions recorded by the Board on one particular date in relation to one centre but clubbed together all decisions recorded by the Board in a span of about 4 months in relation to three centres. Consequently he did not record his decision separately in each case decided by the Board by considering it on its own merits but has recorded an Omnibus order embracing several disputes where though the buyer may be only third respondent, the sellers were several individuals. For this process the first respondent has not only not even given an opportunity to the seller of being heard while reversing the order which the Board had passed in their favour, but has not bestowed his attention and has not applied his mind individually to the facts and circumstances of each case. The first respondent has proceeded on the assumption that in each and every case the Board had acted in collusion with certain persons who had manipulated to sell substandard cotton as that of higher grade. Perusal of the impugned order would show that this assumption is based on mere suspicion. This suspicion seems to be based on the ground that some of the applications for referring the dispute to the Board "were not made properly and the same were not filled in and signed properly". The first respondent believed that tenderer of the cotton himself had not signed the applications and some other persons had signed the same for referring, the cases to the Arbitration Committee or to the Dispute Settlement Board. He has cited a few examples in the table given in his order. This reasoning on the face of it is fallacious since the first respondent has admittedly not heard or examined the persons concerned to find out if they had themselves referred the dispute and signed the applications or whether they had been referred in their names by some one else. It is difficult to understand as to how the first respondent could come to such a conclusion without even hearing the sellers in whose name the applications are made, unless the first respondent was conversant with their signatures, which appears to be a remote possibility. Even where the signatures, according to the first respondent, are illegible, they are taken to be those of persons other than the tenderer of the cotton. It is not necessary to dwell much on this aspect of the impugned order.

25. Even with regard to determining the grade of the cotton the first respondent has adopted a queer method. As can be seen from his order, he requested the Managing Director of the third respondent and the State Government in Agriculture and Co-operation Department, who for all practical purposes are the buyers of raw cotton, to arrange to examine the grades of raw cotton through technical experts and accordingly a so called committee of experts consisting of the representatives of the third respondent and the Agriculture Department was constituted and this committee visited the cotton collection centres at Yavatmal,

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and Babulgaon as late as 17th and 18th May, 1982 along with the first respondent and examined the raw cotton there. Several questions arise on this modality of ascertaining grades of raw cotton sold by various sellers at the three centres on several different dates from December 1981 to middle of April 1982. It passes our comprehension as to how the grade of cotton in the case of each dispute could be determined if the cotton, which is subject matter of the dispute, was not available for inspection after such along time. For example, it is difficult to see how raw cotton sold by a person at Yavatmal on 11-12-1981 could be available for inspection at the collection centre there on 17th or 18th May, 1982. The impugned order is not clear as to what actually was done by the said Expert Committee in order to examine the sample concerning each dispute. It would be of interest to note that the Expert Committee consisted of representatives of the buyers but none of the sellers. The first respondent acted on omnibus complaint by Sub-Zonal Manager of the third respondent which seems to have been investigated by the District Deputy Registrar, Yavatmal who recommended to the first respondent to take action in the matter.

26. The other ground on which the first respondent has reversed the decisions of the Board are that the Board had not consulted and obtained expert opinion regarding the grades of cotton and that opinions so recorded was without any basis or facts and that the Board had not recorded its reasons as required by Rule 97 (6). In so far as the first ground is concerned, the first respondent seems to have relied upon sub-section (2) of Section 10 of the Act and has read it to mean that it requires the Board to take its decision only after taking advice of technical experts. It seems that the first respondent has based this view on the last sentence occurring in that subsection, which, as has been said in para 3 above, has been added by the Amendment Act of 1973. Now this portion of that sub-section empowers the State Government to make rules to provide for consulting persons with technical qualifications or for laboratory analysis for ascertaining the quality of any agricultural produce. As said earlier, the State Government has not correspondingly amended the relevant rules after amendment of Section 10 and thus had not made any provision to enable the Board to consult persons with technical qualifications, for ascertaining quality of any agricultural produce. Hence far from it being obligatory on the Board to consult such persons, there is no provision in the rules therefor. The view taken by the first respondent in this respect is, therefore on the face of it, fallacious.

27. In so far as the second ground is concerned, Rule 97 nowhere specifically states that the Board should record its reasons while deciding a dispute. Sub-rule (6) of that rule merely says that Market Committee should communicate the decision to the parties with reasons therefor. It may be that by making this provision the rule-making authority intended that the Board should record its reasons for its decision. Omission to record reasons would at the most amount to irregularity which may not necessarily vitiate the decision.

28. It is not necessary to go deep into the impugned order to bring out its infirmities, since they are writ large on the face of it and even a casual reading of the order would bring out its unsustainability.

29. Relying on the decision of the Supreme Court in Venkateswara Rao v. Govt. of Andhra Pradesh, (AIR 1966 SC 828), of the Patna High Court Devendra Prasad v. State (AIR 1977 Pat 166) and of the Full Bench of the Rajasthan High Court in Jagan Singh v. State Transport Tribunal (AIR 1980 Raj 1), it is submitted on behalf of the third respondent that we should not exercise our writ jurisdiction to quash the impugned order passed by the first respondent on 25-6-1982 as it would have the effect to revive the illegal orders and decisions made by the Board. This arguments proceeds on the assumption that all the decisions recorded by the Board invariably were illegal. There is nothing on record to support this submission, on the other hand, the said order passed by the first respondent is so blatantly illegal that it cannot be allowed to stand. Since, as stated above, the first respondent has not dealt individually with each decision of the Board, it is not unlikely that even tenderers of cotton who had genuine grievance against the decision of the grader of the third respondent or the arbitrators, in determining the grade of

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the raw cotton sold by them, have suffered at the hands of the first respondent, particularly so when they have not been given so much as an opportunity of being heard to sustain the decision of the Board in their favour. Refusing to interfere with such an order would result in great injustice to such persons.

30. In the result both the writ petitions are allowed and the rule in Writ Petition No. 1438 of 1982 is made absolute in terms of prayer Clause (a) thereof and the rule in Writ Petition No. 1821 of 1982 is made absolute in terms of prayer Clause (b) thereof. In the circumstances of the case there shall be no order as to costs in both the petitions.

Petition allowed.

**AIR 1982 BOMBAY 284 "Bhausaheb Tavnappa v. State"**

**BOMBAY HIGH COURT**

Coram : 1 MADON, J. ( Single Bench )

Bhausaheb Tavnappa Mahajan and others, Appellants v. State of Maharashtra and others, Respondents.

Second Appeal No.909 of 1980, D/- 1 -9 -1981.

(A) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.3(1) - AGRICULTURAL PRODUCE - INTERPRETATION OF STATUTES - Notification under - Re­quirement as to publication in news­paper is directory - Held, fact that only gist of notification was published in local vernacular newspaper did not make notification invalid.

Interpretation of Statutes - Mandatory on directory pro­visions.

AIR 1974 Bom 181, Rel. on. (Para 5)

(B) Evidence Act (1 of 1872), S.114(e) - EVIDENCE - Presumption under - Publica­tion of Govt. notification - Court called upon to decide whether, notification was published in accordance with relevant statutory provisions - Evidence led by Govt. to prove due publication - Held presumption that notifications had been regularly published could not be drawn u/s.114(e).

Illustration (e) to S.114 cannot and does not apply there the point at issue is not whether an official act was pro­perly performed, but the point at issue is whether such an act was in fact per­formed, and (2) where evidence has been led on behalf of the Government or the concerned authority to prove that a par­ticular official act had been regularly performed and that evidence clearly shows that such performance had not taken place. In either of these cases, there is no place or scope for drawing any presumption u/s.114. The first point to notice about S.114 is that it uses the words "may presume" in contradistinction to the words "shall presume".

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Under S.4 of the Act whenever it is provided by that Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it, and whenever it is directed by that Act that the Court shall presume a fact, it shall regard such fact proved, unless and until it is disproved. Therefore, it is open to a Court either to draw or not to draw a presumption u/s.114. Normally, the Courts would draw such a presumption when the actual performance of the act is not in dispute in order not to waste public time on the leading of formal proof with respect to the regularity of its performance, but the position is entirely different where the very issue which the Court has to decide is as to the performance of that official act itself. Further it must be borne in mind that by the very terms of the section a presumption u/s.114 is to be drawn in relation to the facts of a particular case, AIR 1945 Bom 368 and AIR 1968 SC 1413, Rel. On (Paras 7, 8, 9)

Held, when the very issue before the Court was whether the Govt. notifications had been duly published and evidence had been led by the Govt. to prove the point in issue, the question of drawing any presumption u/s.114(e) regarding due publication of notifications did not arise. The lower Appellate Court was in error in drawing a presumption u/s. 114 and in holding that the said notification had been duly published as required by the relevant statutory provisions. Further, it was strange that those desiring to prove that the said notification had been properly published did not care to produce any evidence other than two letters. Either no other documentary evidence at all existed, or if it existed and was not produced, the Court was entitled to presume u/s.114(g) that such evidence if produced would have been unfavourable to the person withholding it. (Paras 8, 9)

(C) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.3(1) last part - Maharashtra Agricultural Produce Marketing (Regulation) Rules (1967), R.3 - AGRICULTURAL PRODUCE - INTERPRETATION OF STATUTES - Last part of S.3(1) dealing with third mode of publication and provisions of R.3 are mandatory - Held, Notification No. APMC Kolhapur 67, dt. 3-2-68 issued u/s.3 was invalid for non-compliance with mandatory provisions - Consequently. Notification No. APMC/Kolhapur/68 dt. 16-5- 68 issued u/s.4 pursuant to notification u/s.3 was also invalid.

Interpretation of Statutes - Mandatory and directory provisions.

The notification u/s.3 is issued so as to enable those who may be affected by the declaration of intention were it implemented to submit their objections thereto for the consideration of the prescribed authority. It is also there for those desiring to make suggestions, some of which may be worthwhile, for the prescribed authority to take the suggestions into consideration before issuing a final notification u/s.4. The said Act is a regulatory statute. It affects the right to carryon trade and business of several persons. It also affects agriculturists. It is, therefore, necessary that the Government's intention to issue a notification u/s.4 of the said Act should be brought to the notice of all persons concerned, not only the wholesale dealers in the particular agricultural produce but also all agriculturists. Generally, agriculturists are not literate, and even if they can read, they usually do not subscribe to newspapers. They however, often have occasion to visit the offices of Mamlatdars, Tahsildars, Mahalkaris, Naib-Tehsildar and Panchayat Samitis, and when they do so, when any notice is put up on the notice-board there, either they or someone of them who may be able to read it may come to know about it and inform the others. For people of this class the best mode of publication would be by oral proclamation by beat of drums. Bearing all these factors in mind, though S.3 left it to the discretion of the State Govt. to publish a notification u/s.3 in such manner as in its opinion was best calculated to bring it to the notice of concerned persons, the State Government, instead of leaving such mode of publication to the individual opinion of different officers, thought it fit to prescribe how such publication should be done, and this it did by making R.3 of the said Rules. That rule itself also uses the word 'shall'. It uses the word 'shall' because by the terms of S.3(1) of the said Act with respect to the third mode of publication the word 'shall' is used. The object underlying this provision would clearly show that

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what was intended by the Legislature in requiring the State Government to publish a notification in the manner best calculated to bring to the notice of the persons in the area the Government's intention was to make it a mandatory requirement and that it was in order not to leave the compliance of such mandatory requirement to the individual notions of different officers that the State Government made the said R.3 making the modes of publication specified therein to be mandatory and obligatory. To hold that the provisions in question are directory would be fraught with grave danger, for it would leave it open to executive officers by not complying with any one of them to flout and set at naught the will of the Legislature and the mandatory requirements imposed upon them by the State Government. The provisions contain procedural safeguards, and procedural safeguards are as important as substantive safeguards. Therefore, the last part of S.3(1) dealing with the third mode of publication and the provisions of R.3 are mandatory and not directory, (1967) 1 WLR 1311 (1325) (CA), AIR 1964 SC 1687 and AIR 1974 Bom 181, Ref. (Paras 11, 12)

Held, as the mandatory provisions were not complied with, Notification No. APMC/Kolhapur/67 dt. 3-2-68 issued u/s.3 was inoperative and invalid. As the said notification u/s.3, was invalid and inoperative, the condition precedent for the issuing of a notification u/s.4 was not fulfilled, and, therefore, Notification No. APMC/Kolhapur/68 dt. May, 16, 1968 u/s.4 was also invalid and inoperative. AIR 1972 SC 892 (893, 895), Rel. on. (Para 12)

(D) Civil P.C. (5 of 1908), S.11 - RES JUDICATA - WRITS - Res judicata - Validity of Govt. notifications challenged under Art.226, Constitution, on ground that they were not duly published -Notifications held to be duly published - Suit filed not by petitioners but by a different party challenging notifications on same ground - Suit is not barred by res judicata.

The plaintiffs were members of an unregistered association known as the Kolhapur Grain Merchants Association and had filed a suit challenging certain notifications issued by the Govt. under the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 on the ground that the said notifications were not duly published. The very same notifications had been challenged earlier in a petition under Art.226 of the Constitution by three firms doing business in onions. Being an application under Art.226 of the Constitution, the matter was decided on affidavits. Amongst the various grounds raised to challenge these notifications one ground was that the notification u/s.3 and, therefore, the notification u/s.4 was also invalid. An affidavit in reply was filed to that petition by the Under Secretary to the Government, Agriculture and Co-operation Department, in which was set out in detail how the said notifications were published. The Court accepted the statements made in the affidavit of the Under Secretary and held that the notifications had been properly published.

Held, the decision in the writ petition did not operate as res judicata in respect of the subsequent suit. The petitioners were entirely different from the plaintiffs in the suit. Those petitioners were not even members of the Kolhapur Grain Merchants Association on whose behalf the suit was filed. Secondly, that was a petition under Art.226 of the Constitution which was decided on affidavit. Here there was a suit which had to be decided on evidence and not by accepting implicitly statements made in the written statement of the respondents. Therefore, the question of res judicata did not arise at all. (Para 13)

Cases Referred : Chronological Paras

AIR 1980 SC 1124 : 1980 All LJ 490 5

AIR 1974 Bom 181 : 1974 Mah LJ 338 5, 11

(1973) Special Civil Appln. No.2363 of 1969, D/-6-7-1969 (Bom), Bajomal Parchomal Gaijwani v. State of Maharashtra 13

AIR 1972 SC 892 12

AIR 1968 SC 1413 : 71 Bom LR 48 8

(1967) 1 WLR 1311 (CA) 12

AIR 1964 SC 1687 12

AIR 1961 SC 751 : 1961 (1) Cri LJ 773 10

AIR 1945 Bom 368 : 47 Bom LR 431 : (1946) 47 Cri LJ 123 8

A.M. Setalvad with G.R. Rege, for Appellants; A.B. Naik, Asstt. Govt. Pleader and K.J. Abhyankar, for Respondents. .

Judgement

JUDGEMENT :- The appellants are members of an unregistered association known as the Kolhapur Grain Merchants

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Association, and had filed the suit, out of which this Second Appeal arises in a representative capacity under R. 8 of O. 1 of the Civil P.C., 1908. The said suit was tried by the Joint Civil Judge, Senior Division, Kolhapur. In the suit the Appellants challenged certain notifications issued under the Maharashtra Agricultural Product Marketing (Regulation) Act, 1963, (Maharashtra Act No.XX of 1964). The Appellants' challenge succeeded, and the trial Court declared the said notifications to be null and void, and restrained the Respondents from enforcing the said notifications. The trial Court also directed the parties to bear their own costs of the suit. Though the Appellants' challenge on certain grounds succeeded, their challenge on the ground that these notifications infringed the provisions of Arts.14 and 19(1)(g) of the Constitution of India was negatived. Against the said judgment and decree of the trial Court, not only Respondents Nos.1 and 2, namely, the State and the Director of Agriculture, Forest and Rural Finance, Government of Maharashtra, filed an appeal but Respondents Nos.3 to 5, namely, the Kolhapur Agricultural Produce Market Committee and the President and the Secretary of the said Committee, also filed an appeal. The Appellants also appealed against that part of the judgment which negatived their constitutional challenge to the validity of the said notifications. All these appeals were heard together by the Court of the Assistant Judge at Kolhapur, and by a common judgment the lower appellate Court allowed the appeals filed by the Respondents and dismissed the Appellants' appeal. The lower appellate Court directed the Appellants to pay the costs of the suit and the appeals. It is against this appellate decree that the Appellants have preferred this Second Appeal.

2. It will be now convenient to set out in some detail the facts which have given rise to this litigation. By a notification dt Mar. 1, 1949 issued under the Bombay Agricultural Produce Markets Act, 1939 (Bom XXII of 1939), an Agricultural Produce Market Committee was established to regulate the marketing of groundnut (shelled and unshelled) and gur in the area of Karvir, Radhanagari and Bhudargad Talukas and Panhala Mahal of the Kolhapur District. By another notification dl, Mar. 8, 1959 issued under the said Bombay Agricultural Produce Markets Act the market area of the said Committee was extended so as to include Shanuwadi Taluka of Kolhapur District, and its operation was also extended to regulate the marketing of groundnut (shelled and unshelled) and gur in the said extended area. By another notification dt. Oct. 6, 1963, also issued under the said 1939 Act, the market area of the said Committee was further extended so as to include the area of 43 villages mentioned in the said notification situate on the north of Vedganga river from Kagal Taluka, and its operation was equally extended to regulate the marketing of groundnut (shelled and unshelled) and gur in the extended area. Thereafter the Director of Agricultural Marketing and Rural Finance, Maharashtra State, intended to extend the market area of the said Committee so as to include in it the area of Gagan-Bawada Mahal of the Kolhapur District as also to extend its operations to regulate the marketing of paddy (husked and unhusked) jowar, bajari, wheat, tobacco, cotton (ginned and unginned). chillies, turmeric, gram, gram-dal, tur, tur-dal, udid, udid-dal, masur, masur-dal, mug, mug-dal, onion, peas, val, chola, kulthi, cattle, sheep and goats in addition to groundnut (shelled and unshelled) and gur in the whole of the market area as extended by the said committee. There does not appear to be any particular dispute that while groundnut and gur grow in Kolhapur District, the other gram seeds which were intended to be got regulated by the said Committee are brought into Kolhapur from other places. A notification, namely, Notification No. APMC/Kolhaur/67 dt. Feb, 3, 1968 was published in the Maharashtra Government Gazette, Part I. Poona, dt. Mar, 14, 1968. The said notification was issued u/s.3 of the Maharashtra Agriculture Produce Marketing (Regulation) Act, 1963 (hereinafter referred to as "the said Act"), which had repealed and replaced the said 1939 Act. By the said notification, objections and suggestions were invited by the Director of Agricultural Marketing and Rural Finance. Maharashtra State, Poona, within a period of one month from the date of the said notification. Accordingly, the said Kolhapur

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Grain Merchants Association submitted its representation dt. Apr, 11, 1968. By the telegram dt. Apr. 25, 1968 representatives of the said Association were asked to meet the said Director on Apr, 30, 1968. The said meeting took place, and the representatives of the said Association put forward their point of view before the said Director, apparently without any success, because a notification, namely, Notification No. APMC/Kolhapur/68 dt. May 16, 1968, issued by the said Director U/s.4 of the said Act was published in the Maharashtra Government Gazette. Part I, Poona Division, dt. June 13, 1968. It is these two notifications which were challenged by the Appellants in their suit.

3. In order to understand the contentions of the Appellants with respect to the said notifications advanced before me at the hearing of this Second Appeal, it is necessary now to refer to certain provisions of the said Act. Sections 3 and 4 of the said Act provide as follows:

"3 Notification of intention of regulating marketing of agricultural produce in specified area.

(1) The State Government may, by notification in the Official Gazette, declare its intention of regulating the marketing of such agricultural produce, in such area as may be specified in the notification. The notification may also be published in the language of the area in any newspaper circulating therein, and shall also published in such other manner as in the opinion of the State Government is best calculated to bring to the notice of persons in the area, the intention aforesaid.

(2) The notification shall state that any objections or suggestions which may be received by the State Government within a period of not less than one month to be specified in the notification will be considered by the State Government.

4. Declaration of regulation of marketing of specified agricultural produce in market area.

(1) On the expiry of the period specified in the notification issued under Section 3, the State Government shall consider the objections and suggestions, if any, received before the expiry of such period and may, if it considers necessary hold an inquiry in the manner prescribed.

Thereafter, the State Government may, by another notification in the Official Gazette, declare that the marketing of the agricultural produce specified in the notification shall be regulated under this Act, in the area, specified in the notification. The area so specified shall be the market area. A notification under this section may also be published in the language of the area in a newspaper circulating therein, and shall also be published in such other manner as in the opinion of the State Government is best calculated to bring to the notice of persons in the area the declaration aforesaid.

(2) On any declaration being made under sub-section(1) no local authority shall thereafter, notwithstanding anything contained in any law for the time being in force, establish, authorise or continue or allow to be established or continued any place in the market area for the marketing of that agricultural produce.

(3) Subject to the provisions of Section 3, the State Government may, at any time by notification in the Official Gazette exclude from a market area any area, or include therein an additional area, or may direct that the regulation of the marketing of any agricultural produce in any market area shall cease, or that the marketing of any agricultural produce (hitherto not regulated) shall be regulated in the market area."

Section 58 confers upon the State Government the power to delegate inter alia to the Director of Agricultural marketing all or any of the powers conferred upon it by the said Act. It was in pursuance of such delegated authority that the said Director issued the said two notifications. Section 60 confers upon the State Government the power to make rules for carrying into effect the purposes of the said Act, including prescribing the manner of holding an inquiry. In pursuance of this rule-making power the State Govt. has enacted the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 (herein after referred to as "the said Rules"), Rule 3 of the said Rule is important and requires to be reproduced in extenso. It is as follows:

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"3. Additional mode of publication of notification under Sections 3 and 4. - A notification under Section 3 declaring the intentions of the State Government of regulating the marketing of any agricultural produce in any area specified in such notification and the notification under Section 4 regulating the marketing of agricultural produce in any area shall, in addition to their publication in any newspaper circulating in any such area as required by that section, also be published by affixing copies thereof at the chavdi of each village included in such area and by exhibiting them on the notice board in the office of the Mamlatdar, Tahsildar, Mahalkari or Naib-Tahsildar and of the Panchayat Samiti within whose jurisdiction such area is situated. The State Government shall also require a revenue officer specified in this behalf to give wide publicity to the notification by beat of drums in any such area."

Rule 4 of the said Rules prescribes the procedure for holding inquiry for considering objections and suggestions. Under that rule the Inquiry Officer is by notice to require the persons making the objections and suggestions to appear before him not earlier than fifteen days from the date of the notice. From the dates set out above, it will be apparent that a much shorter time than the prescribed period of fifteen days was given to the said Association. Since, however, no point has been made with respect thereto before me, I do not propose to express any opinion about it.

4. Before me Mr. Setalvad, learned Counsel for the Appellants, has confined himself to raising two points:

(1) The said Act, having been enacted to regulate the marketing of agricultural produce, can only permit the regulation of the first marketing of the product in question. Once the product is marketed, it enters the stream of commerce and becomes a commercial commodity like any other commercial commodity. The application of the provisions of the said Act to such products is not permissible under the said Act and that in any event is not a reasonable restriction on the fundamental tights of the Appellants to carry on trade and business guaranteed to them by Article 19(1)(g) of the Constn.

(2) The provisions of Rule 3 of the said Rules relating to the additional modes of publication are mandatory, and they not having been complied with, the said notifications are invalid and inoperative.

5. So far as the first point is concerned, Mr. Setalvad frankly stated that in view of the judgment of the Supreme Court in Ram Chandra Kailash Kumar and Co. v. State of Uttar Pradesh. AIR 1980 SC 1124, it was not open to him to urge this point before me. So far as the second point is concerned, Mr. Setalvad confined his challenge only to the said notification Dt. February 3, 1968, it being an accepted position that the notification under Section 3 of the said Act is a condition precedent to the issuance of a notification under Sec.4 of the said Act, and that if a notification under Section 3 of the said Act has not been validly or duly published, it would not be operative and would not entitle the State Government to issue a notification under Section 4. The said notification dated February 3, 1968 is expressly stated to be issued under Section 3 of the said Act. Surprisingly enough, though the said notification Dt. May 16, 1968 is also expressly stated to have been issued under Section 3 of the said Act, its entire tenor shows that it was actually issued under Section 4 of the said Act. However, before the trial Court the position was conceded by the Appellants that the said notification dated May 16, 1968 should be treated as having been issued under the said S.4. Turning now to S.3, it prescribes three modes of publication:

(1) Publication in the Official Gazette.

(2) Publication in the language of the concerned area in any newspaper circulating in such area.

(3) Publication in such other manner as in the opinion of the State Government is best calculated to bring to the notice of persons in the concerned area the fact that certain agricultural produce specified in the notification are intended to be regulated under the said Act in the said area. There is no dispute, as indeed there cannot be any, that the said notification under S.3 was published in the Official Gazette.

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The word 'may' is used in the opening words of Section 3 not with respect to the publication of a notification under S.3 in the Official Gazette but with respect to the declaration of Government's intention, because the Government may or may not want to regulate the marketing of certain agricultural produce. So far as the second mode, namely, publication in the language of the concerned area in a newspaper circulating in such area, is concerned, the fact established on the evidence is that the said notification under Section 3 was not at any time published in any vernacular newspaper circulating in the concerned areas, but what had happened was that the gist of the said notifications was published in the 9th March, 1968, issue of a Marathi newspaper 'Satyavadi'. Since, however, the word 'may' is used in Section 3 with reference to this particular mode of publication, prima facie it would be that this requirement is directory. In Yadaorao v. Agricultural Produce Market Committee, Arvi, 1974 Mah LJ 338: (AIR 1974 Bom 181) a Division Bench of this High Court has held that the publication of a notification under S.3 of the said Act in the newspaper is not obligatory and the failure of the State Government or of the Director to publish the notification in the newspaper does not vitiate the: notification in any way. This judgment is binding upon me, and, therefore, the fact that only the gist of the said notification was published in local vernacular newspaper cannot in any manner affect its validity. So far as the third mode of publication is concerned, the publication is to be in such manner as in the opinion of the State Government is best calculated to bring to the notice of the persons in the concerned area its intention to regulate the marketing of certain agricultural produce. This part of the section confers power upon the Government to select particular modes in order to meet different situations and local conditions. The State Government has, however, in stead of leaving it to the discretion of its executive officers to select such mode as appears to them to be the best in the circumstances of a particular case in which such publication is to be made, itself prescribed the mode. The prescription of this mode is to be found in Rule 3 of the said Rules which has been set out earlier. Under Rule 3 in addition to publication in the newspaper required by Section 3 the notification is also to be published (1) by affixing copies thereof at the chavdi of each village included in the concerned area, (2) by exhibiting copies of the notification on the notice-board in the office of the Mamlatdar, Tahsildar, Mahalkari or Naib-Tehsildar and of the panchayat Samiti within whose jurisdiction such area is situated, and (3) by requiring a revenue officer specified in that behalf to give wide publicity to the notification by beat of drums in the concerned area. It is the contention of the Appellants that the modes of publication prescribed by the said Rule 3 are mandatory and that in the present case the requirement of Rule 3 have not been complied with. Mr. Naik, learned Counsel for Respondents Nos.1 and 2, submitted that just as in the case of publication in the newspapers, publication in the manner required by the said R.3 was directory and not mandatory, and if one of the three modes prescribed by the said Rule 3 had no been complied with or not complied with fully, it did not in any manner affect the validity of the notification. Mr. Abhyankar, learned Counsel for Respondents Nos.3 to 5, conceded that the requirements of the modes of publication as found in the said Rule 3 are mandatory and not directory, but in his submission Illus. (e) to Section 114 of the Indian Evidence Act, 1872, applied to the case and the Court must, therefore, presume that the publication of the notification being an official act, such act had been regularly performed.

6. Before examining the legal aspects of these contentions it will be convenient to set out the facts which have been established on the record.

Neither the Appellants nor the Respondents led any oral evidence, but both sides produced certain documents which were exhibited. Three out of these documents are relevant for the present purpose. They are:

(1) The copy of the said notification dated February 3, 1968 sent by the Director of Agricultural Marketing and Rural Finance, Maharashtra State, to the Chairman of the agricultural Produce Market, Kolhapur (Exhibit 133);

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(2) a letter in Marathi bearing Number 670 dated March 21, 1968 from the Secretary of the Agricultural Produce Market Committee, Kolhapur, to the Mamlatdar, Taluka Karveer in the District of Kolhapur, (Exhibit 95);

(3) a letter in Marathi dated March 26, 1968 from the Tahsildar, Bhudargad, to the Secretary of the Agricultural Produce Market Committee (Exhibit 96). Apart from the above three documents, there is no other evidence whatever with respect to the publication of the said notification under Sec.3 in any of the modes prescribed by the said R.3. The said copy of the notification shows that copies thereof were forwarded to the Manager, Yeraoda Prison Press Poona, for the purpose of publishing the said notification in the Maharashtra Government Gazette. They were also sent to the Chairman of the Agricultural Produce Market Committee, Kolhapur, the Divisional Joint Registrar, Co-operative Societies, Poona, the Regional Publicity Officer, Kolhapur, the Collector of kolhapur, the Chief Executive Officer, Zilla Parishad, Kolhapur, the President, Municipal Council, Kolhapur, as also to the District Deputy Registrar, Co-operative Societies, Kolhapur, the District Agricultural Officer, Kolhapur, and the Co-operation and Industries Officer, Zilla Parishad, Kolhapur. At the end of this list of officials to whom the copies were to be sent appears an endorsement containing the request to give wide publicity to the said notification as required by Rr.3 and 4 of the said Rules "by pasting the notification on the market yard as well as in the Village Panchayat office etc." I will take it that though the said endorsement in terms specifically requires that copy of the said notification is to be pasted on the market yard and in the village Panchayat office, the abbreviation 'etc.' refers to the other modes of publication provided for in the said Rule 3. What happened thereafter is shown only by the two letters referred to above. In the said letter dated March 21, 1968 the Secretary of the Agricultural Produce Market Committee, Kolhapur, intimated to the Mamlatdar of Taluka Karveer about the publication of the said notification in the Gazette. He further stated that objections and suggestions had been called for by the said notification and asked the Mamlatdar to affix the copy of the said notification annexed to his said letter on the notice board of his office and publish it. In the margin of the said letter is written in ink in Marathi "and give wide publicity by beat of drums". These words do not appear in the body of the said letter, and the trial Court held that they were subsequently interpolated. The lower Appellate Court, however, did not accept this finding, but held that they were contained in the original letter when dispatched. I shall, therefore, proceed upon the basis of this finding of the lower Appellate Court. This letter, however, does not show that a similar request was made by the Secretary of the Agricultural Produce Market Committee, Kolhapur, to any Mamlatdar other than the Mamlatdar of Taluka Karveer, nor does it show that any such similar request was made to any Tahsildar, Mahalkari or Naib-Tehsildar or to any official of any Panchayat Samiti. The letter Dt. March 26, 1968 from the Tahsildar of Bhudargad is, however, a reply to the said letter dated March 21, 1968. It may show that a similar letter had been addressed by the Secretary of the said Committee to the other Mamlatdars and Tahsildars. What is significant about the said letter dt. March 21, 1968 are its contents. The said reply states that the notification sent to the said Tahsildar had been published by affixing it on the notice board. There is no mention whatever about the said notification having been published anywhere by beat of drums. From this it would follow that though in the letter to the Mamlatdar of Taluka Karveer the direction to give publicity to the said notification by beat of drums was mentioned in the margin thereof, no such direction was contained in the letter to the Tahsildar of Bhudargad, and in the absence of any other evidence to show that any such request was made to any other official, it is not possible to assume that such a request had been contained in all the letters written by the Secretary of the said Committee in this behalf. On the contrary, the said reply of the Tahsildar of Bhudargad is a clear indication to the contrary. What is strange is that nowhere on the record is there any compliance report showing that the publication in the modes required by the said R.3 had been effected.

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7. Mr. Abhyankar, learned Counsel for respondents Nos.3 to 5, however, submitted that even though there may be no evidence with respect to such publication, the Court should proceed to apply the presumption laid down in Illus. (e) to S.114 of the I.E. Act, 1872, and draw a presumption that the said notification had been regularly published as required by the said S.3 and the said R.3. It is not possible to accept this submission for two reasons; (1) Illus (e) to S.114 cannot and does not apply where the point at issue is not whether an official act was properly performed, but the point at issue is whether such an act was in fact performed, and (2) where evidence has been led on behalf of the Government or the concerned authority to prove that a particular official act had been regularly performed and that evidence clearly shows that such performance had not taken place. In either of these cases, there is no place or scope for drawing any presumption u/s. 114.

8. Section 114 of the I.E. Act provides as follows:

"114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."

Then follow certain Illustrations as to the cases in which the Court may draw such a presumption. Illus. (e) being that the Court may presume that judicial and official acts have bee regularly performed. The first point to notice about S.114 is that it uses the words "may presume" in contradistinction to the words "shall presume". Under S.4 of the I.E. Act whenever it is provided by that Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it, and whenever it is directed by that Act that the Court shall presume a fact, it shall regard such fact as proved. Unless and until it is disproved. Therefore, it is open to a Court either to draw or not to draw a presumption u/s. 114. Normally, the Courts would draw such a presumption when the actual performance of the act is not in dispute in order not to waste public time on the leading of formal proof with respect to the regularity of its performance, but the position is entirely different where the very issue which the Court has to decide is as to the performance of that official act itself. In Emperor v. Leslie Gwilt, (1945) 47 Bom LR 431: (AIR 1945 Bom 368), a Division Bench of this Court held that the meaning of Illus. (e) to S.114 is that if an official act is proved to have been done, it would be presumed to have been regularly done, but this Illustration does not raise a presumption that an act was done of which there is no evidence and the proof of which is essential to the case. In this context the observations of the Supreme Court in Gopal Krishna Kelkar v. Mohamed Haji Latif, (1969) 71 Bom LR 48: (AIR 1968 Sc 1413), are pertinent. The Court observed (at p.51) : (at pp. 1415, 1416).

"Even if the burden of proof does not lie on a party the Court may drawn an adverse inference; if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. "

It is strange that those desiring to prove that the said notification had been properly published should not have cared to produce any evidence other than the said two letters referred to above. Either no other documentary evidence at all existed, or if it existed and was not produced, the Court would be entitled to presume that such evidence if produced would have been unfavourable to the person withholding it. This is a presumption which the Court could have legitimately drawn u/s.114 of the I.E. Act read with Illus. (g) thereto.

9. Further, it must be borne in mind that by the very terms of the section a presumption u/s. 114 is to be drawn in relation to the facts of a particular case. Here the facts which constituted the evidence of the respondents were on record, and the question of drawing any such presumption in relation thereto could not have arisen. I therefore, hold that the lower Appellate Court was in error in drawing a presumption u/s. 114

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and in holding that the said notification had been duly published as required by the relevant statutory provisions.

10. The question which now arises is whether by reason of the non-compliance of the statutory provisions the said notification is rendered invalid. The answer to this question depends upon whether the provisions of the last part of S.3 of the said Act and of the said R.3 are directory or mandatory. With respect to the other modes of publication, which in the opinion of the State Government are best calculated to bring to the notice of the concerned persons in the area the intention to regulate the marketing of any agricultural produce, the word used in S.3(1) is 'shall'. Prima facie, the word 'shall' makes a particular requirement mandatory and not directory. There are authorities which have laid down with reference to other statutory provisions and on the interpretation thereof the word 'shall' should be construed as 'may' and vice versa. It was the contention of Mr. Naik on behalf of the State Government and the Director of Agriculture, Forest and Rural Finance, Government of Maharashtra, that the provisions in question are directory and not mandatory. In State of Uttar Pradesh v. Babu Ram Upadhya, AIR 1961 SC 751, the Supreme Court has held that when a statute uses the word 'shall', prima facie it is mandatory, but the court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute and that for ascertaining the real intention of the legislature the court may consider inter alia the nature and the design of the statute, and the consequences which would flow from construing it one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance that the statute provides for contingency of the non-compliance with the provisions, the fact that the non-compliance with the provision is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.

11. Bearing these observations in mind, let us see the intention underlying the various modes of publication prescribed by the said S.3(1) and the said R.3. The provision with respect to the publication of a notification u/s.3 in a newspaper published in the local language and of its publication in such other manner as in the opinion of the State Government is best calculated to bring the intention in such other manner as in the opinion of the State Government is best calculated to bring the intention to regulate the marketing of an agricultural produce to the notice of the concerned person in the area is contained in one single section. While the word used with respect to the requirement of publication in a local newspaper is 'may', with respect to the other mode of publication it is 'shall'. This notification is issued so as to enable those who may be affected by the declaration of intention were it implemented to submit their objections thereto for the consideration of the prescribed authority. It is also there for those desiring to make suggestions, some of which may be worthwhile, for the prescribed authority to take the suggestions into consideration before issuing a final notification u/s.4. The said Act is a regulatory statute. It affects the right to carry on trade and business of several persons. It also affects agriculturists. It is, therefore, necessary that the Government's intention to issue a notification u/s.4 of the said Act should be brought to the notice of all persons concerned, not only the wholesale dealers in the particular agricultural produce but also all agriculturists. Generally, agriculturists are not literate, and even if they can read, they usually do not subscribe to news-papers. They, however, often have occasion to visit the offices of Mamlatdars, Tahsildars, Mahalkaris, Naib-Tehsildars and Panchayat Samitis, and when they do so, when any notice is put on the notice-board there, either they or someone of them who may be able to read it may come to know about it and inform the others. For people of this class the best mode of publication would be by oral proclamation by beat of drums. Bearing all these factors in mind, though S.3 left it to the discretion of the State Government to publish a notification u/s.3 in such manner as in its opinion was best calculated to bring it to the notice of concerned persons, the State Government, instead of leaving such mode of publication to the individual

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opinion of different officers, thought it fit to prescribe how such publication should be done, and this it did by making R.3 of the said Rules. That rule itself also uses the word 'shall'. It uses the word 'shall' because by the terms of S.3(1) of the said Act with respect to the third mode of publication the word 'shall' it used. In this connection, I may usefully advert again to the decision of this High Court in Yadaorao v. Agricultural Produce Market Committee, Arvi, 1974 Mah LJ 338: (AIR 1974 Bom 181). In that case the Court observed (at p.348): (at pp.187, 188):

"The object of the provisions regarding the publication in Ss.3 and 5 of the Act is that the notifications under Ss.3 and 4 must come to the notice of the persons who are going to be affected thereby in the area in which the notifications were to be operative. But it must be noted that in both Ss.3 and 4 when publication in any newspaper in the area is contemplated, the Legislature has advisedly used the words 'may also be published in the language of the area in any newspaper circulated therein'. In the same provisions while the word 'may' is used while referring to the publication in a newspaper, the Legislature while providing for additional publication in such other manner as in the opinion of the State Government is best calculated to bring to the notice of the persons in the area, has used the word 'shall'. "

A little later the Court observed (at p.349): (at p.188):

"It is well known that normally a large part of the agricultural population, which is illiterate, does not subscribe or read newspapers. The newspapers cater to a negligible section of the community who are only literate and if the purpose of publication is to bring to the notice of the persons affected by the notifications, then that would be best served by adopting the method of publication by which a large section of the village community can be reached. That is why it appears that it has been made obligatory on the State Government to find out for itself the best manner of publication possible and that is also why the provisions of R.3 have been made requiring the State Government to have the copies of the notification affixed on the notice boards in the offices of the authorities specified under R.3, which are many a time visited by the agriculturists. Beat of drums is a known method of publication and that has always been found to carry the matters to be publicised to the villagers positively."

12. The object underlying this provision would clearly show that what was intended by the Legislature in requiring the State Government to publish a notification in the manner best calculated to bring to the notice of the persons in the area the Government's intention was to make it a mandatory requirement and that it was in order not to leave the compliance of such mandatory requirement to the individual notions of different officers that the State Government made the said R.3, making the modes of publication specified therein to be mandatory and obligatory. As pointed out earlier, the very same provision with respect to one mode of publication, namely, publication in a newspaper, uses the word 'may', while with respect to the additional mode of publication by the State Government it uses the word 'shall'. In Labour Commr., Madhya Pradesh v. Burhanpur Tapti Mills Ltd. AIR 1964 SC 1687, where a provision of the C.P. and Berar Industrial disputes Settlement Act, 1947, which contained in one place the word 'may' and in another place the word 'shall' fell for consideration of the Supreme Court, the Supreme Court held (at p.1689 (1)):

"The use of the word 'shall' in connection with the action to be taken on a reference by the State Government and 'may' in connection with the action on an application by others in the same section compel the conclusion that on an application by anybody other than the State Government, the State Industrial Court or a District Industrial Court may also refuse to take action."

In substance what the Supreme Court held was that when in the same provision the words 'shall' and 'may' occur, they have different meanings; the word 'shall' is to be construed as being mandatory while the word 'may' is to be construed as being directory. To hold that these provisions are directory would be fraught with grave danger, for it would leave it open to executive officers by not complying with anyone of them to flout and set at naught the will of

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the Legislature and the mandatory requirements imposed upon them by the State Government. The provisions contain procedural safeguards, and procedural safeguards are as important as substantive safeguards. In this connection, it is worthwhile to bear in mind the following observations of Danckwerts, L.J., in the English Court of Appeals in the case of Bradbury v. Enfield London Brouch Council, (1967) 1 WLR 1311 at p.1325 (C.A):

" .... in cases of this kind, it is imperative that the procedure laid down in the relevant statutes should be properly observed. The provisions of the statutes in this respect are supposed to provide safeguards for Her Majesty's subjects. Public bodies and Ministers must be compelled to observe the law; and it is essential that bureaucracy should be kept in its place."

I, therefore, hold that the provisions in question of S.3 and of the said R.3 are mandatory and not directory and that they not having been complied with, the said notification u/s.3 was inoperative and invalid. As the said notification u/s.3 is invalid and inoperative, the condition precedent for the issuing of a notification u/s.4 was not fulfilled, and, therefore, the said notification dt. May 16, 1968 u/s.4 was also invalid and inoperative. In The Municipal Corporation of Bhopal v. Misbabul Hasan, AIR 1972 SC 892, 893, 895(2), where the question was whether all amendment to a rule had been duly made, the Supreme Court held that where a condition precedent for the amendment of the rule had not been followed or complied with, the amendment was inoperative and invalid.

13. Only one point now remains to be dealt with. That is a contention raised by Mr. Abhyankar that the question as to whether the said notifications were duly published or not is barred by res judicata by reason of an unreported decision of a Division Bench of this High Court in Special Civil Application No.2363 of 1969 Bajomal Parcbomal Gaijwani v. State of Maharashtra - decided by Vaidya and Dudhia, JJ., on July 6, 1973. In that case the very same notifications were challenged by three firms doing business in onions in Laxmipuri Market at Kolhapur. This being an application under Art.226 of the Const., the matter was decided on affidavits. Amongst the various grounds raised to challenge these notifications, one ground was that the notification u/s. 3 and, therefore, the notification u/s.4 was also Invalid. An affidavit in reply was filed to that petition by the Under Secretary to the Government, Agriculture and co-operation Department, in which was set out in detail how the said notifications were published. The Court accepted the statements made in the affidavit of the Under Secretary and held that the notifications had been properly published. It is very difficult to understand how this judgment can ever operate as res judicata or what relevance it has to the question which I have to decide. The petitioners there were entirely different from the Appellants here. Those petitioners were not even member of the Kolhapur Grain Merchants Association on whose behalf the suit out of which this Appeal arises was filed. Secondly, as mentioned earlier, that was a petition under Art.226 of the Const. which was decided on affidavit. Here, there was a suit which had to be decided on evidence and not by accepting implicitly statements made in the written statement of the incidents. Thirdly, if the said Under Secretary had set out in the said affidavit the different modes in which the notifications were published, one wonders what prevented the State Government and the concerned authorities from leading that evidence before the trial Court. I, therefore, find no substance in this contention raised by Mr. Abhyakar

14. For the reasons set out above, this Second Appeal must succeed, and I accordingly allow this Second Appeal, set aside the decree of the lower Appellate Court and restore the decree of the trial Court. The Respondents will pay to the Appellants the cost throughout.

Appeal allowed.

AIR 1982 BOMBAY 558 "Taj Mohammad v. Agrl. Produce Market Committee, Nagpur"

BOMBAY HIGH COURT

(AT NAGPUR)

Coram : 1 WAIKAR, J. ( Single Bench )

Taj Mohammad and others, Applicants v. Agricultural Produce Market Committee, Nagpur, Non-Applicant.

Civil Revn, Applns. Nos.818 and 819 of 1980 and C.R. As. Nos.2 to 12 of 1981, D/- 28 -1 -1981.

Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.29, S.46 - Maharashtra Agricultural Produce Marketing (Regulation) Rules (1967), R.7(4), R.120(e) - AGRICULTURAL PRODUCE - INJUNCTION - CIVIL COURT - Agricultural Produce Market Committee - Power to file civil suits - Committee filing civil suits restraining persons from encroaching its statutory right - Mere remedy of criminal prosecution provided under S.46 - Jurisdiction of Civil Court would not be barred - Committee would be justified in moving Civil Court.

Civil P.C. (5 of 1908), S.9, O.39, R.1.

Where an Agricultural Produce Market Committee had filed separate civil suits restraining the certain persons who had no valid licence from working as commission agents within the market area and restrain­ing the rest or certain persons from recovering the commission from the cultivators in excess of the rate prescribed under the licences, the Committee would not be said to be unjustified in moving the Civil Court for issue of a writ of temporary injunction against such persons when the Committee wanted to prevent such persons from encroaching upon its statutory right to re­gulate the marketing of agricultural and other produce in the market areas, for the proper and efficacious enforcement of which the criminal prosecution as provided under Section 46 could not be a remedy. There­fore, merely because the statute provides for a remedy at criminal law, the jurisdiction of the Civil Court would not be barred by necessary implication. Case law discussed. (Paras 17, 24)

Further, the jurisdiction of the Civil Court would not be ousted either expressly or by necessary intendment, as the Committee is endowed with certain monopoly powers for regulating the marketing of agricultural pro­duce within the specified market area. It is also charged with a duty to enforce the pro­visions of the Act. The conferral of such plenary powers and right, though by a sta­tute, certainly constitutes a civil right in the Committee, and merely because penal consequences are provided for that, by itself, would not deprive the Committee of its civil right to seek enforcement of the provisions of the Act or to prevent breach or infringe­ment of its civil right. Therefore so far as the Commission agents who were acting in flagrant violation of the terms of the licence and trying to fleece the poor agriculturists were concerned, the Committee would be entitled to ask the issue of a writ of tem­porary injunction to prevent the breach of the terms of the licence by which those per­sons had bound themselves. (Paras 23, 24)

Cases Referred : Chronological Paras

(1977) 3 All ER 70 : (1977) 3 WLR 300 : 1978 AC 435, Gouriet v. Union of Post Office Workers 12

AIR 1976 SC 425 : 1976 Lab IC 303 13

AIR 1975 SC 2238 14

AIR 1973 Bom 348 19

AIR 1969 SC 78 21

1970 Lab IC 115 : 1969 Mah LJ 710 15

AIR 1957 Bom 34 18, 19

AIR 1944 All 66 17

AIR 1921 Cal 129 20

(1859) 6 CB (NS) 336 : 7 WR 464 : 141 ER 486, Wolverhampton New Waterworks Co. v. Hawkes Ford 15

M.G. Bhangde, for Applicants; K.H. Deshpande, for Non-Applicant in all C.R. Applications.

Judgement

ORDER :- This judgment shall dispose of Civil Revision Applications Nos.818 and 819 of 1980 and Civil Revision Applications Nos.2 to 12 of 1981.

2. The non-applicant (original plaintiff), namely Agricultural Produce Market Committee, Nagpur, is common in all these revi­sion applications. This non-applicant had filed separate suits against each of these ap­plicants for perpetual injunction and had ap­plied for a writ of temporary injunction. The trial Court rejected these applications, but the first appellate Court allowed them and hence these revisions by the original defen­dants. As common question of law and fact was involved in all these matters, the trial Court as well as the first appellate Court also disposed of these applications for tem­porary injunction by common judgment.

3. The Non-applicant Agricultural Pro­duce Market Committee (hereinafter called the Committee) was duly established under Section 11 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (hereafter called the Act). The present revisions fall in two category. Four revision applications Nos.5, 10, 11 and 12 fall in one category, in that the applicants in these revision

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applications admittedly have been ope­rating as commission agents in the market area, without any valid licence. The appli­cants in the rest of the revisions, no doubt, hold a valid licence as Adtiyas or Commission Agents, but admittedly again they have been recovering the commission from the agriculturists at a higher rate of 6 per cent in contravention of the terms of their licences.

4. The non-applicant-Committee, there­fore, filed separate suits restraining the first four applicants from working as Commis­sion Agents within the market area and restraining the rest of the applicants from re­covering the commission from the cultivators in excess of the rate prescribed under the licences.

5. The applications made by the Commit­tee for temporary injunction were all dismissed by the trial Court holding that the plaintiff-Committee has no locus standi or right to file the civil suits as Section 46 of the Act provides for a penalty.

6. In the appeals preferred by plaintiff-Committee, the first appellate Court found that the plaintiff-Committee had made out a prima facie case that the Civil Court has jurisdiction to entertain the suits and to issue in junction and allowed the applications of the plaintiff.

7. In these revisions preferred by the ori­ginal defendants, Shri Bhangde, the learned counsel, submitted that Section 6 of the Act itself enacts a prohibition and an injunction against all persons not to operate without licence or in violation of the terms of the licence issued. Thus this statutory provision itself operates (as) an injunction against such persons and the first appellate Court by granting temporary injunction against these applicant in a way only re-enacted the pro­visions of Section 6 of the Act. He further submitted that there could be no injunction to prevent the breach of any provision of law. In other words, what was complained of was prevention of a public wrong and there was no infringement of any private right. The Committee, according to him, re­ceives fcessw from the purchasers and if these applicants are charging more commission from the cultivators, or are operating as Commission Agents within the market area without licences, there is no damage of loss to the Committee. The aliened conduct of the applicants-therefore, does not entail in civil wrong to the Committee. His further argument is that the Act itself is a self-con­tained code creating rights and liabilities and also providing remedies in case of breach of the provisions of the said Act. He also submitted that grant of a licence by the com­mittee in favour of an applicant does not constitute a contract and as such the provi­sions of O.39, R.2 of the Civil P.C. deal­ing with cases of breach of contract can have no application. So far as cases of those who are operating without a licence, there is no question of any contract at all, or of breach of any contract. Thus, according to him, neither the provisions of R.1 or R.2 of O.39 of the Civil P.C. are attracted. He relied upon several authorities which would be referred to in due course.

8. Shri K.H. Deshpande, the learned counsel appearing for the non-applicant-Com­mittee, submitted that the object of the Act is to regulate the marketing of agricultural produce in market areas and to confer powers upon market committees to be con­stituted for the purposes connected with such markets. The various provisions of the Act, he submitted, make it clear that the Market Committee is endowed with certain powers and is also enjoined certain duties to enforce the provisions of the Act for the above pur­poses. He submitted that if the Market Committee cannot take steps to prevent violation of its monopoly rights, the object of investing the Committee with such power would be defeated. He submitted that there is no doubt a remedy in Criminal Law as pro­vided by Section 46 of the Act, but there is no provision in the Act itself to prevent re­currence of such acts. Again there is no provision in the Act which ousts the juris­diction of the Civil Court, either expressly or by necessary implication. The Act in that sense, therefore, cannot be said to be a self-contained Code as to oust the jurisdiction of the Court. The impugned conduct of the applicants, he submitted, constituted a wrong, in that they had directly infringed the right that is conferred on the Committee and in the absence of any such provision in the Act itself, expressly or by necessary implication ousting the jurisdiction of the Civil Court, the plaintiff could file a civil suit in vindica­tion of such civil right.

9. The crux of the matter is whether the Committee has or has no civil right under the provisions of this Act, and whether these civil suits that are filed are in vindication of a civil right, or only for enforcing the penal provisions of Section 46 of the Act and as such barred.

10. To begin with, I may refer to certain provision of the Act. Firstly, the object of the Act, as can be seen, is to regulate the

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marketing of agricultural and certain other produce in market areas and to establish markets therefor in the State and to confer powers on the Market Committee to be constituted in connection with or acting for purposes connected with such markets, Sec­tion 6 of the Act which deals with regulation of marketing of agricultural produce prohibits or injuncts any person from operating in the market area as a trader or commission agent, or a broker without any licence or otherwise than in conformity with the terms of the licence. Section 11 then refers to establishment of Market Commit­tees and says that the Market Committee so established shall have all such powers and discharge all such functions as are vested in it by or under the Act. Section 12 says that every Market Committee shall be a body corporate and shall have perpetual succes­sion and a common seal and may in its cor­porate name sue or be sued and shall be competent to contract, acquire and hold pro­perty and do all other things necessary for the purposes for which it is established. Sec­tion 29 deals with the powers and duties of a Market Committee and sub-cl. (k) of sub-­section(2) of Section 29 is in these words :

"29(2)(k) enforce the provisions of this Act and rules, bye-laws and conditions of the licences granted under this Act;"

Section 46 provides penalty for contraven­tion of the provisions of Section 6. Thus a person operating without any licence or act­ing in contravention of the terms of the licence is no doubt liable for criminal pro­secution and for punishment as is prescribed under this section.

11. Rule 7(4) of the Maharashtra Agri­cultural Produce Marketing (Regulation) Rules, 1967 is in these terms:

"7 (4). The applicant, on a licence being granted, shall execute an agreement in such form as may be approved by the Director or under the bye-laws, agreeing to abide by the provisions of the Act, these rules and the bye-laws."

Rule 120(e) empowers a Committee to make bye-laws in respect of the form of an appli­cation for grant and licence of renewal and an agreement to be executed before the grant of a licence. Under the prescribed form of the agreement a licensee has to give an undertaking that he would abide by and observe the conditions and terms of the licence. It is thus clear that the Committee is not only endowed with certain power but charged with a duty to enforce the provi­sions of this Act. The Committee is thus constituted the sole authority to regulate the marketing of the agricultural produce in market areas and the persons who are grant­ed the licence to operate as commission agents or brokers or traders are also bound to act in accordance with the terms thereof. Section 46, no doubt, prescribes penal consequences for a person who uses any place in market area for marketing agricultural produce, or operates as a trader or a com­mission agent without any valid licence, but that would not necessarily mean that no civil action can, therefore, lie. The answer to the question whether an action in a Civil Court for an injunction can lie or not de­pends on a proper answer to the question whether the plaintiff has or has no civil right and not by pointing out to the penal provision as contained in Section 46 of the Act. Existence of a penal provision render­ing certain acts punishable under the crimi­nal law does not necessarily imply negation of a civil liability, for it is well known that a certain act may give rise to a criminal action and at the time to an actionable civil wrong.

12. In Gouriet v. Union of Post Office Workers (1977-3 All ER 70), which was relied upon by Shri Bhangde, an action was commenced by a citizen seeking an injunction as the Union of the Post Office Workers had resolved not to accept mail from England to South Africa from a particular date. Though such an action was punish­able, the Attorney General took no steps and the question posed was if the Attorney General does not act himself. "Are the Courts to stand idly by?" as such suggesting impliedly that the Civil Courts have some executive authority in relation to the crimi­nal law. The injunction prayed for was re­fused as it was an offence against the pub­lic and no remedy was provided for enforcement of the public wrong. Though this ruling has no application to the facts of the present case, the following observations of Lord Diplock are, however, relevant and apposite :

"'The second reason why they are impor­tant is that they are relevant to the distinction between an injunction in restraint of crime simpliciter and an injunction to re­strain conduct which although amounting to a crime would also infringe some right belonging to the plaintiff who is applying for the injunction which is enforceable by him in private law. The supersession of private revenge for wrongs by remedies obtainable from Courts of justice and enforce­able by the executive authority of the State

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lies at the common origin both of the crimi­nal law and of the civil private law of tort. So from the outset there have been many crimes which at common law were private wrongs to the person who suffered parti­cular damage from them as well as public wrongs; and the policy of the law has been not to deprive the victim of a private wrong of his redress in civil private law against the wrong-doer merely because the wrong­doer is subject also to punitive sanctions under the criminal law for the same conduct,......"

13. Next ruling Rohtas Industries Ltd. V. Rohtas Industries Staff Union (AIR 1976 SC 425) that was relied upon by Shri Bhangde was a decision under the Industrial Disputes Act. There was a strike and the terms of the agreement inter alia provided that the employees' claim for wages and salaries for the period of strike and the Company's claim for compensation for losses due to strike shall be submitted to the Arbitrators. The award that was passed said that the workmen were not entitled to wages and salaries, but the Company was found entitled to recover from the striking workmen the compensation assessed at Rs. 80,000/-. As the strike was held illegal and the Industrial Disputes Act nowhere provided payment of compensation to the employer, the award, as the Supreme Court held, could not be enforced with these ob­servations (para 27):

"It is common case that the demands covered by the strike and the wages during the period of the strike constitute an indus­trial dispute within the sense of S.2(k) of the Act. Section 23, read with S.24, it is agreed by both sides, make the strike in question illegal. An 'illegal strike' is a crea­tion of the Act. As we have pointed out earlier, the compensation claimed and award­ed is a direct reparation for the loss of pro­fits of the employer caused by the illegal strike. If so, it is contended by the respondents, the remedy for the illegal strike and its fall-out has to be sought within the statute and not dehors it. If this stand of the workers is right, the remedy indicated in S.26 of the Act, viz., prosecution for starting and continuing an illegal strike, is the desig­nated statutory remedy. No other relicft outside the Act can be claimed on general principles of jurisprudence. The result is that the relief of compensation by proceed­ings in arbitration is contrary to law and bad."

14. Relying upon the Premier Automo­biles Ltd. v. Kamlakar Shantaram Wadke (AIR 1975 SC 2238) Shri Bhangde submit­ted that where the statute creates a liability not existing at common law, and gives also a particular remedy for enforcing it, the party must adopt the form of remedy given by the statute and the jurisdiction of the Civil Court is impliedly barred. This was again a case under the Industrial Disputes Act and it was observed that the object of the Act, as its preamble indicates, is to make provision for the investigation and settle­ment of industrial disputes, which means adjudication of such disputes also. The Act envisages collective bargaining, contracts be­tween union representing the workmen and the management, a matter which is outride the realm of the common law or the Indian law of contract. Thus having observed that the powers of the authorities deciding in­dustrial disputes under the Act were very extensive - much wider than the powers of a Civil Court while adjudicating a dispute which may be industrial dispute, the party must adopt the form of remedy given under the statute itself.

15. Shri Bhangde relying upon. The Pig­ment Lakes and Chemical Mfg. Co. Pvt. Ltd. v. Sitaram Kashiram. 1969 Mah LJ 710: (1970 Lab IC 115) referred me to the following observations of Willes I. in The Wolverhampton New Waterworks Co. v. Hawkesford ((1859) 6 CB (NS) 336 at p.356) appearing in this decision which are extracted therein (at p.119 of Lab IC) :-

"There are three classes of cases in which a liability may be established found­ed upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute con­tains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely; but provides no particular form of remedy; there, the party can only proceed by action at common law. But there is a third class, viz. where liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for en­forcing it. The remedy provided by the statute must be followed and it is not competent

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to the party to pursue the course ap­plicable to cases of the second class."

16. It may be pointed out in this connec­tion that S.29(2) of the Act confers two kinds of powers on the Committee under clauses (e) and (k) which are in these terms :

"(e) Prosecute persons for violating the provisions of this Act, the rules and bye-laws made thereunder;

(k) enforce the provisions of this Act and Rules, Bye-laws and conditions, of the licences granted under this Act";

Thus two distinct types of remedies are con­templated under these clauses. Section 46 of the Act, no doubt, provides for a remedy of criminal prosecution, but there is no remedy either sufficient or efficacious for en­forcing the provisions of the Act. The remedy that is provided under Section 46 cannot be said to be a remedy at all so as to enable the Committee to regulate the marketing within its limits in an orderly manner for which no specific provision is made. As such it cannot be said that the present case falls under the third category of cases as submitted by Shri Bhangde, or that the jurisdiction of the Civil Court is impliedly barred.

17. As observed in Firm Kishore Chand Shiva Charan Lal v. Budaun Electric Supply Co. Ltd. (AIR 1944 All 66) it would not be correct to say that there is no remedy in India for the breach of statutory obligation where the statute itself has not provided for the remedy. What the Committee prays for in the present action is to prevent persons from encroaching upon its statutory right to regulate the marketing of agricultural and other produce in the market areas, for the proper and efficacious enforcement of which, the criminal prosecution as provided under Section 46 of the Act cannot be a remedy. In my opinion, therefore, merely because the statute provides for a remedy at criminal law, the jurisdiction of the Civil Court is not barred by necessary implication and the Committee was justified in moving the Civil Court for issue of a writ of tempo­rary injunction against those who tried to infringe the statutory right of the Committee and which the Committee is entitled to seek in effective and efficacious enforcement of its statutory right.

18. Shri Bhangde then relied upon Thana Borough Municipality v. Akbaralli (AIR 1957 Bom 34). This case was under Bombay Municipal Boroughs Act where an owner of the building had started construc­tion of a second floor in contravention of the bye-laws and in spite of the refusal by the Municipality. The Municipality there­upon filed a criminal complaint against him under S.123(7), but inasmuch as there was a congestion in the Criminal Courts, it filed simultaneously a civil suit for an injunction restraining the owner from occupying the suit building either by himself or his tenants and for a direction to demolish the un­authorised construction. On the question whether the civil suit was maintainable, it was held that the obligation imposed upon the owner by the bye-laws was not for the benefit of the Municipality and injunction, therefore, was refused. It is pertinent to note that the provisions of the Bombay Municipal Boroughs Act did not provide for the consequences of building without per­mission and as such it was held that a di­rection as prayed for could not be issued.

19. The decision in Thana Borough Municipality v. Akbaralli (supra) was refer­red to in The Agricultural produce Market Committee, Sholapur v. Pantappa Sayanna (AIR 1973 Bom 348) which was also relied upon by Shri Bhangde, it appears that cer­tain traders were prosecuted and convicted for trading without licence and the limited question was whether a civil suit therefor was barred for recovery of the licence fee from them at the insurance of the Market Committee. It was held that there was no express bar in the Act or in the Rules made thereunder for filing such a suit. It was observed that trading without a licence is a public wrong and therefore such a trader is liable to be prosecuted. But non-payment of fees is also a wrong to the corporate body the funds of which are meant for ser­vices under the Act. The Civil Court's jurisdiction, therefore, it was held, was not impliedly barred. The observations made in Thana Borough Municipality's case were pressed into service for non-suiting this claim for recovery of licence fee, but the said argument was repelled by Vaidya, J. with these observations (para 20):

"That case can have no application to the present case where the suit is for the recovery of licence fees or damages. The suit is not for damages or for an injunction re­garding trading without a licence which is a public wrong."

Though the above observations are relied upon by Shri Bhangde to show that a suit for injunction regarding trading without a licence would not lie, I find that no such principle was laid down in this decision. In repelling the argument that no suit for recovery

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of licence fee can lie in view of the decision reported in the aforestated case, the above observations came to be made. This decision, therefore, cannot be taken as an authority for the decision that no suit for injunction under the Act can lie.

20. In the present cases so far as the ap­plicants, who admittedly are charging at a higher rate than agreed as per terms of the licence, are concerned, they are obviously violating their legal obligation. This legal obligation as contained in the terms of the licence not only restrict their freedom to charge more, but it is impliedly co-related to a right in the plaintiff. In this connec­tion Shri K.H. Deshpande relied upon the following observations to be found in Bhudeb Mookerjee v. Kalachand Mallik (AIR 1921 Cal 129);

"Obligation may be taken to be a tie or bond which constrains a person to do or suffer something; it implies a right in an­other person to which it is correlated, and it restricts the freedom of the obligee with reference to definite acts and forbearances; but in order that it may be enforced by a Court, it must be a legal obligation, and not merely moral, social or religious."

21. As observed by the Supreme Court in Dhulabhai v. State of Madhya Pradesh (AIR 1969 SC 78) (para 32):

"Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and pro­vides for the determination of the right of liability and further lays down that all ques­tions about the said right and liability shall be determined by the Tribunals so consti­tuted, and whether remedies normally as­sociated with actions in Civil Courts are prescribed by the said statute or not."

22. In the instant case, as pointed out earlier though Section 46 of the Act provides for criminal prosecution there is no remedy provided to the Committee to enforce its statutory right as contemplated under Sec­tion 29(e) to enforce the provisions of the Act, the Rules or the Bye-laws and the con­ditions of the licence granted under the Act.

23. On a conspectus of all the relevant provisions of the Act referred to above, it is manifest that the Committee is endowed with certain monopoly powers for regulating the marketing of agricultural produce within the specified market areas. It is also charg­ed with a duty to enforce the provisions of the Act. The conferral of such plenary powers and right, though by a statute, cer­tainly constitutes a civil right in the plain­tiff, and merely because penal consequences are provided for that, by itself, would not deprive the plaintiff of its civil right to seek enforcement of the provisions of the Act or to prevent breach or infringement of its civil right. The jurisdiction of the Civil Court, therefore, is not ousted either ex­pressly or by necessary intendment. So far as the commission agents who are acting in flagrant violation of the terms of the licence and trying to fleece the poor agriculturists are concerned, the Committee is entitled to ask for issue of a writ of temporary injunc­tion to prevent the breach of the terms of the licence by which these persons have bound themselves.

24. In the result, I find that the non-applicant-plaintiff made out a prima facie case and the lower appellate Court was jus­tified in granting the applications for tem­porary injunction. These revisions, there­fore, have to be dismissed. All these revi­sions are dismissed with costs.

25. Shri Bhangde prays for grant of leave to appeal to the Supreme Court. Leave refused.

Revisions dismissed.

AIR 1980 BOMBAY 392 "R. V. Deshpande v. Agrl. Produce Market Committee"

BOMBAY HIGH COURT

Coram : 2 CHANDURKAR AND DESHPANDE, JJ. ( Division Bench )

Raghavendra Vasantrao Deshpande and others, Petitioners v. Agricultural Produce Market Committee and others, Opponents.

Special Civil Appln. No. 5322 of 1976, D/- 2 -8 -1979.

(A) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964) (1963), S.13 and S.14(4) - AGRICULTURAL PRODUCE - ELECTION - General election - Constitution of Market Committee - Names of 12 members already elected notified in Gazette - Market Committee must be deemed to be duly constituted even though election of three members from traders' constituency had been stayed by Court.

The petitioner contended that inasmuch as the election in respect of three members from the traders' constituency had not at all been held, there is no general election as contemplated by Section 14(4) and, therefore, even though the names of 12 members, who have already been elected have been notified, the Market Committee cannot be said to be duly constituted.

Held, there is no substance in this argument. The last paragraph of Sec. 14(4) is intended to provide for a contingency where all the persons who are required to constitute a Market Committee are not elected for one reason or the other when the general elections are held. Now, the election at which the 12 members have been elected was clearly a general election as contemplated by Sections 13 and 14. If the process of election for the election of three members from the traders' constituency would not have been stayed by the Court, three members from that constituency would also have been elected at the said general election. The steps which were being taken for the election of three members from the traders constituency were clearly for the purposes of general election. The words "general election" used in Section 14(4) appear to be used in contradistinction with a bye-election and wherever after the term of office of the members of a Market Committee has expired and steps have to be taken to elect afresh the members of the Market Committee as contemplated by Sections 13 and 14, such an election will be a general election. The word 'election' cannot be restricted merely to that part of the process which deals with actual voting or counting of votes and declaration of results of an elected candidate as contended on behalf of the petitioner. The word 'election' normally embraces the entire procedure to be gone through to return a candidate to the appropriates body for which the election has to be held. The word 'election' is used in the sense of including the process starting with at least the commencement of the filing of the nomination papers and ending with the declaration of the result. Therefore, merely because no election has been held in respect of traders' constituency, it cannot be said that the other members more than 12 in number, whose results were declared and names were published under Section 14(4), were not elected at a general election. Having regard to para 4 of Section 14(4), therefore, the contention that the Market Committee was not properly constituted must be rejected. (Paras 4, 5)

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(B) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.31 - Maharashtra Agricultural Produce Marketing (Regulation) Rules (1967), R.28, R.6 - AGRICULTURAL PRODUCE - Collection of fees - Market Committee has power to require Commission Agent to recover fees payable to it.

Section 31 no doubt provides that it shall be competent to the Market Committee to levy and collect fees in the prescribed manner at such rate as may be decided by it from every purchaser of agricultural produce marketed in the market area. The power to levy and collect fees is regulated by the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967. Rule 28 makes it obligatory on the trader, commission agent, broker, processor, weighman, measurer, warehouseman and surveyor to render such assistance in the collection of fees and prevention of the evasion of payment of fees due under the rules and bye-laws as may be required by the Market Committee. The Commission Agent who wants to carry on business within the market area has to obtain the necessary licence as provided in R.6. The licence is to be granted in Form 1 and certain conditions are attached to the licence. Condition No. 1 of the licence provides that the licensee shall abide by the provisions of the Act and the Rules and the Bye-laws of the Market Committee. Therefore, one of conditions of the licence is that he will comply with Rule 28. Condition No. 8 is that the licensee shall help the Market Committee in preventing evasion of market fees. Condition No. 14 prohibits the licensee from soliciting or recovering any fees or recovering any charges other than those which he is entitled to receive or recover in accordance with the provisions of the Act and the Rules and Bye-laws made thereunder. Thus the Commission Agent having obtained a licence cannot contend that he cannot be required by the Market Committee to recover the lees which are payable to the Market Committee. It is a condition of the licence issued that he shall render all assistance in the matter of collection and no grievance can be entertained that the commission agent cannot be compulsorily required to recover the fees which are payable to the Market Committee. (Para 6)

Cases Referred : Chronological Paras

AIR 1952 SC 64

Bhimrao N. Naik, for Petitioners; S.M. Mhamane (for No. 1) and C.J. Sawant, Addl. Govt. Pleader with W.N. Yande, Asstt. Govt. Pleader (for Nos. 2 to 4), for Opponents.

Judgement

CHANDURKAR, J. :- This petition by a trader, agriculturist and commission agent is directed against a bye-law framed by the Agricultural Produce Market Committee which requires the trader to collect the market fee from the purchaser and credit it with the Market Committee. The challenge is really twofold. Firstly, it is contended that the Market Committee itself was not properly constituted because the elections of three members from the traders' constituency were not held at all as those elections were stayed by an order of this Court in Special Civil Applications Nos. 1670 of 1974 and 1672 of 1974. The 2nd contention is that the bye-law amounts to an onerous burden on the Commission Agents and that it was the duty of the Market Committee to recover its own dues. Reliance is placed on the provisions of Section 31 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (hereinafter referred to as "the Act") under which, according to the petitioner, it is the duty of the Market Committee to recover fees from the purchasers.

2. We shall first deal with the challenge made to the legality of the constitution of the Market Committee. Under Section 13(1) of the Act it is provided inter alia that three members of the Market Committee shall be elected by the traders and commission agents holding licences to operate as such in the market area. Section 14 of the Act provides for election and term of office of the Members of the Market Committee. In the case of a committee which was constituted for the first time, the members of the Market Committee were to hold office for a period of two years, otherwise the members of the Market Committee were originally to hold office for a period of three years which has now been changed to five years. Sec. 14(4) provides that as soon as possible, after the result of any by-election or all the results of a general election are available, the State Government shall publish the names of all the members of a committee in the Official Gazette. Section 14(4) consists of four paras, the second, third and fourth paras read as follows :-

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"If at a general election (including a general election held before the commencement of the Maharashtra Agricultural Produce Marketing (Regulation) (Amendment) Act, 1971, the names of any persons to be elected under Sub-Section (1) of Section 13 cannot for any reason be notified as aforesaid, and if with the available election results, the Committee will consist of not less than 12 members, then the State Government shall publish the names of these members in the Official Gazette;

And as regards the remaining elections, the State Government shall subsequently publish the names of members in the Official Gazette as and when the results of such elections are available, or as the case may be, on failure to elect, the names of persons duly appointed under Sub-Section (2) of this Section, if any.

After every general election, upon the publication of the names of all the members of a Committee, or as the case may be, the publication of the names of not less than twelve members as aforesaid, in the Official Gazette, the Market Committee shall be deemed to be duly constituted."

Now under the second para the provision made is that where the names of any persons to be elected under Section 13(1) cannot for any reason be notified and if the available election results show that 12 members have been elected to the Market Committee, then the names of these 12 members shall be published in the Official Gazette. Under the third para the State Government is required to publish the names of the other members as and when the results of such election are available or on the failure of any person getting elected, the names of persons who are duly appointed under Section 14(2) are required to be notified. Under Section 14(2) it is provided that if for any reason any persons, co-operative society or its managing committee or a Panchayat Samiti or local authority tails to elect any members, the Director shall give notice in writing to them requiring them to elect members within one month from the date of the notice, but on failure again to elect members within the said period, power is given to the Director to appoint on behalf of such persons, co-operative society as its managing committee, Panchayat Samiti or local authority the required number of persons who are qualified to be elected under S.13(1). The 4th para of Sec. 14(4) provides that after every general election when the names of all the members of a committee are published or where, as earlier indicated, the names of 12 members are published, the Market Committee shall be deemed to be duly constituted.

3. The contention of the learned counsel for the petitioner is that inasmuch as the election in respect of three members from the traders' constituency had not at all been held, there is no general election as contemplated by Section 14(4) and, therefore, even though the names of 12 members, who have already been elected have been notified, the Market Committee cannot be said to be duly constituted.

4. In our view, there is no substance in this argument. The last para of Section 14(4) is intended to provide for a contingency where all the persons who are required to constitute a Market Committee are not elected for one reason or the other when the general elections are held. Now, the election at which the 12 members have been elected was clearly a general election as contemplated by Sections 13 and 14 of the Act. If the process of election for the election of three members from the traders' constituency would not have been stayed by the High Court, three members from that constituency would also have been elected at the said general election. The steps which were being taken for the election of three members from the traders' constituency were clearly for the purposes of general election. The words "general election" used in Section 14(4) appear to be used in contradistinction with a bye-election and wherever after the term of office of the members of a Market Committee has expired and steps have to be taken to elect afresh the members of the Market Committee as contemplated by Secs. 13 and 14 of the Act, such an election will be a general election. The word 'election' cannot be restricted merely to that part of the process which deals with actual voting or counting of votes and declaration of results of an elected candidate as contended on behalf of the petitioners. The word 'election' normally embraces the entire procedure to be gone through to return a candidate to the appropriate body for which the election has to be held. The Supreme Court in N.P. Ponnuswami v. Returning Officer, Namakkal, AIR 1952 SC 64, while dealing with the word 'election' in Part XV of the Constitution has pointed out that the word

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has been used in a wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature. It is true that those observations were made in the context of the constitutional provisions, but the Supreme Court has dealt in that case with the general meaning of the word 'election' and has quoted with approval the statement of the law from Halsbury's Laws of England. The observations of the Supreme Court read thus :

"That the word 'election' bears this wide meaning whenever we talk of elections in a democratic country, is borne out by the fact that in most of the books on the subject and in several cases dealing with the matter, one of the questions mooted is, when the election begins. The subject is dealt with quite concisely in Halsbury's Laws of England in the following passage. See page 237 of Halsbury's Laws of England, Edn. 2, Vol. 12 under the heading 'Commencement of the Election' " :

"Although the first formal step in every election is the issue of the writ, the election is considered for some purposes to begin at an earlier date. It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is 'reasonably imminent'. Neither the issue of the writ nor the publication of notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any criterion. The election will usually begin at least earlier than the issue of the writ. The question when the election begins must be carefully distinguished from that as to when 'conduct and management of an election may be said to begin. Again, the question as to when a particular person commences to be a candidate is a question to be considered in each case."

The discussion in this passage makes it clear that the word 'election' can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process."

5. The word 'election' is, therefore, used in the sense of including the process starting with at least the commencement of the filing of the nomination papers and ending with the declaration of the result. Therefore, merely because no election has been held in respect of traders' constituency, it cannot be said that the other members more than 12 in number, whose results were declared and names were published under Section 14(4), were not elected at a general election. Having regard to paragraph 4 of Section 14(4), therefore, the contention that the Market Committee was not properly constituted must be rejected.

6. So far as the second contention is concerned, the provisions of Section 31 no doubt provide that it shall be competent to the Market Committee to levy and collect fees in the prescribed manner at such rate as may be decided by it from every purchaser of agricultural produce marketed in the market area. The power to levy and collect fees is regulated by the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 (hereinafter referred to as 'the Rules'). Rule 28 castes an obligation on the persons referred to therein to render assistance in the collection of fees in such manner as may be required by the Market Committee. Rule 28 of the Rules reads as follows :-

"Keeping of books by trader, commission agent, broker etc. - Every trader, commission agent, broker, processor, weighman, measurer, warehouseman and surveyor and such other market functionary as the Market Committee may specify in this behalf, licensed under these rules shall keep such books in such forms and render such periodical returns and at such times and in such forms as the Director may, form time to time, direct; and shall render such assistance in the collection of fees, and prevention of the evasion of payment of fees, due under these rules and bye-laws and in the prevention of the breach of the provisions of the Act, rules and bye-laws, as may be required by the Market Committee."

The Commission Agent who wants to carry on business within the market area has to obtain the necessary licence as provided in R.6 of the Rules. The licence is to be granted in Form 1 and certain conditions are attached to the licence. Rule 28 which is extracted above makes it obligatory on the trader, commission agent, broker, processor, waighman, measurer, warehouseman and surveyor

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to render such assistance in the collection of fees and prevention of the evasion of payment of fees due under the rules and bye-laws as may be required by the Market Committee, Conditions Nos. 8 and 14 of the licence are important. Before that, we must point out that condition No. 1 of the licence provides that the licensee shall abide by the provisions of the Act and the Rules and the bye-laws of the Market Committee. Therefore, one of conditions of the licence is that he will comply with R.28 of the Rules. Condition No. 8 is that the licensee shall help the Market Committee in preventing evasion of market fees, Condition No. 14 prohibits the licensee from soliciting or recovering any fees or recovering any charges other than those which he is entitled to receive or recover in accordance with the provisions of the Act and the Rules and Bye-laws made thereunder. Thus the Commission Agent having obtained a licence cannot contend that he cannot be required by the Market Committee to recover the fees which are payable to the Market Committee. It is now a condition of the licence issued that he shall render all assistance in the matter of collection and no grievance can now be entertained from any of the petitioners that the commission agent cannot be compulsorily required to recover the fees which are payable to the Market Committee.

7. In this view of the matter, the petition is liable to be dismissed. Rule discharged with costs.

Petition dismissed.

AIR 1979 BOMBAY 38 "V. N. Ambekar v. Alma Sugar Mills"

BOMBAY HIGH COURT

Coram : 1 R. A. JAHAGIRDAR, J. ( Single Bench )

Venkatrao Narayanrao Ambekar, Appellant v. The Alma Sugar Mills and another, Respondents.

Criminal Appeal No. 927 of 1976, D/- 10 -8 -1978.

(A) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.2(1)(t) - AGRICULTURAL PRODUCE - WORDS AND PHRASES - 'Trader' - Who is.

A trader means either a purchaser or a seller of the agricultural produce as defined in the Act. He may of course fulfil both the characters but it is enough if he fulfil one or the other character to be a trader under the Act. A person who buys or sells, not merely a person who buys and sells is a trader within the meaning of that term. (Para 5)

(B) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.6(2) - AGRICULTURAL PRODUCE - Exemption under - Purchases made for personal consumption.

Sub-Section (2) provides for exemption of sales only by particular categories of persons and does not apply to purchases made by any category of persons. If a trader is a buyer or a seller and need not be both, then unless the exemption applies to both the parts of the definition of trader it cannot be said that the purchases made by a person, in the absence of specific words to that effect are exempted from the provisions of Sub-Sec. (1) of S.6 by virtue of provisions contained in S.6(2). Hence it cannot be said that sales made by a person and purchases made of such sales by another person for his personal consumption must be deemed to be exempted under the provisions of Sub-Sec. (2). (Para 7)

(C) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.6(1)(b) - AGRICULTURAL PRODUCE - WORDS AND PHRASES - Applicability - Section is attracted only when a person operates as a trader.

"Words and Phrases".

"Operates as a trader".

It is only when a person buying or selling and, therefore, as a trader operates in the market area that the provisions of S.6(1)(b) are attracted. A person doing a single act of buying or of selling cannot be said to operate as a trader. The word 'operation' implies a continuing or repeated process and not a single act. Though in some context the word 'operate' may mean a single act, applied to a trader it must mean the repeated acts. There must be some regularity or petition in his activities as a buyer or seller of an agricultural produce so that person is characterised as a trader operating in an agricultural produce. (Para 8)

(D) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.6(1) - AGRICULTURAL PRODUCE - WORDS AND PHRASES - Word 'process' - Meaning of.

The word 'process' has got several leanings and in fact may mean different things in different context. But looking to the context in which it is used and gathering the natural meaning of the word in this context, the word 'process' must be held to mean to subject a particular product or a commodity with the object of making it finer or improving its quality. It may mean to treat a particular commodity by any method but not in such a way that the commodity itself is completely transferred into a new commodity. When a particular agricultural produce like sugarcane is crushed rod a large part of the original commodity is thrown away and the juice is alone later by a series of processes concerted into a new product like Khandsari sugar or sugar it will be difficult to say that the sugarcane has been subjected to a process or sugarcane has been processed. (Para 9)

(E) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.6(1) - AGRICULTURAL PRODUCE - Agricultural produce - Sugar and not Khandsari sugar is agricultural produce.

There is warrant for holding that sugar is not always understood to include Khandsari sugar. While interpreting the penal provisions, the interpretation which is more favourable to the accused will have to be accepted and, therefore, Khandsari sugar cannot be treated as agricultural produce for the purposes of the Act of 1964. (Para 10)

Cases Referred : Chronological Paras

1978 Mah LJ 837 5

L.V. Kapse with S.J. Deshpande, for Appellant; S. Malik, for Respondent No. 1. N.M. Kachare, Public Prosecutor, for the State.

Judgement

JUDGEMENT :- This is an appeal preferred on behalf of the Agricultural Produce Marketing Committee of Aurangabad challenging the order of acquittal passed by the learned Judicial Magistrate, First Class, of Aurangabad in Summary Case No. 646 of 1974. The appellant, hereinafter referred to as the complainant is the Secretary of the Marketing

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Committee and the respondent No. 1, hereinafter referred to as the accused is the Manager of a Sugar Mills situated at village Phulamri on the outskirt of Aurangabed city. There is no dispute that the area in which the Sugar Mills is situated comes within the market area as defined under the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, of Aurangabad. The prosecution was launched by the complainant charging the accused with the offence punishable under S.6(1)(a) and (b) read with S.46 of the aforesaid Act which will hereinafter be referred to as the Act of 1964. The prosecution case was that the accused was operating in the marketing area, over which the complainant has jurisdiction, as a trader and also as a processor of the declared agricultural produce. It was also alleged by the prosecution that the accused was operating in some other capacity in relation to the marketing of the declared produce. Such operation is prohibited by S.6 of the Act of 1964 except in accordance with the terms and conditions of the licence which is to be granted under the provisions of the Act of 1964. Admittedly the accused has not obtained such a licence. The Mills of which the accused is the Manager is a manufacturer of sugar but it has come in evidence that it manufactures Khandsari sugar. I must proceed on the basis that the accused is the manufacturer of Khandsari sugar and not sugar. The importance of this distinction will be evident when I consider the defence of the accused.

2. In the trial court the defence of the accused was that he was not liable to obtain any licence because under S.5 of Maharashtra Purchase Tax on Sugarcane Act 1962, hereinafter referred to as the Act of 1962 a licence has been obtained by him. The learned trial Magistrate accepted this defence and held that it was not necessary for the accused to obtain a licence under the Act of 1964. The learned trial Magistrate also found that the manufacture of sugar from the raw material of sugarcane does not amount to processing of an agricultural produce which is sugarcane. He also held that the marketing of sugar by the accused at the factory premises does not amount to using any place in the marketing area for trading in sugar though the sugar is agricultural produce. In view of these findings the learned trial Magistrate acquitted the accused of the offence with which he was charged. The order of acquittal is of 25th Feb. 1976 and is the subject matter of challenge in this appeal.

3. The contention that the licence obtained under S.5 of the Act of 1962 dispenses with the necessity of obtaining licence under S.6 of the Act of 1964 is too absurd to be accepted and happily has not been repeated here. The two Acts deal with two different subjects and operate in altogether different fields.

4. Mr. Kapse, the learned Advocate appearing for the Agricultural Produce Marketing Committee has criticised the judgement of the learned trial Magistrate by contending that he has misdirected himself on several important provisions of law. Mr. Kapse pointed out that large quantities of sugarcane are admittedly being purchased by the accused and if one reads the definition of 'trader' contained in S.2(1)(t) of the Act of 1964 it is clear that the accused is a trader in an agricultural produce. The Schedule to the Act of 1964 mentions Gul, Sugar and Sugarcane as the items of agricultural produce and that sugar and sugarcane are agricultural produce, therefore, cannot for a moment be disputed. Mr. Malik, the learned Advocate appearing for the accused, however, pointed out that the accused purchases sugarcane but does not sell it. In other words, the accused buys an agricultural produce and after it is converted into an altogether different product sells the same. It was his contention that unless a person buys and sells an agricultural produce he cannot be covered by the definition of trader contained in the Act.

5. I am not free to accept this interpretation put by Mr. Malik on the word 'trader' defined under the Act of 1964. Similar contention was advanced in and other case viz., Spl. Civil Appln. No. 857 of 1971 decided on 19-7-1977.\*In that case I, sitting with Chandurkar J., have held, after considering the definition contained in the Act, along with the scheme and objects of analogous Acts of other States, that a trader means either a purchaser or a buyer (sic) (seller) of the agricultural produce as defined in the Act. He may of course fulfil both the characters but it is enough if he fulfils one or the other character to be a trader under the Act. I must, therefore, proceed on the basis that a person who buys or sells, not

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merely a person who buys and sells is a trader within the meaning of that term under the Act of 1964.

\* Reported in 1978 Mah LJ 837.

6. Mr. Malik then proceeded to contend that a careful reading of Sub-Sec. (2) of S.6 would show that the purchases of agricultural produce made by any person for personal consumption are exempted automatically from the provisions of Sub-Section (1) of Section 6. As I have already mentioned above Section 6(1) requires that the person operating in any market area as a trader or processor or otherwise in the marketing of the agricultural produce has to take a licence as provided therein. Sub-Section (2) of Section 6 is in the following terms :-

"Nothing in Sub-Section (1) shall apply to sales by retail, sales by an agriculturist who sells his own produce, nor to sales by a person where he himself sells to another who buys for his personal consumption or the consumption of any member of his family".

7. According to Mr. Malik though the exemption seems to apply to sales by a person, there is implicit in the third part of this Sub-Section that sales made by a person and purchases made of such sales by another person for his personal consumption must be deemed to be exempted under the provisions of Sub-Section (2). I am unable to accept this interpretation put by Mr. Malik on Sub-Section (2). Sub-Section (2) provides for exemption of sales only by particular categories of persons and does not apply to purchases made by any category of persons. If a trader is a buyer or a seller and need not be both, then unless the exemption applies to both the parts of the definition of trader it cannot be said that the purchases made by a person, in the absence of specific words to that effect are exempted from the provisions of Sub-Section (1) of Section 6 by virtue of provisions contained in Section 6(2). The purchases, therefore, made by the accused of the sugarcane are not, in my opinion, exempted from the provisions of Section 6(i), even if it is assumed that the purchases are made for personal consumption in the sense of consumption in the Mills.

8. It is true that a single act of buying by a person may not attract the provisions of Section 6(1) though the definition of trader seems to imply that a person who buys even once becomes a trader within the meaning assigned to it under this Act. It is only when a person buying or selling and, therefore, as trader operates in the market area that the provisions of Section 6(1)(b) are attracted. A person doing a single act of buying or of selling cannot be said to operate as a trader. The word 'operation' implies a continuing or repeated process and not a single act. Though in some context the word 'operate' may mean a single act, applied to a trader it must mean the repeated acts. In the context in which the word 'operate' has been used it must be held to mean a series of acts performed by a person in the capacity as a trader and not a single act of buying or selling. There must be some regularity or repetition in his activities as a buyer or seller of an agricultural produce so that that person is characterised as a trader operating in an agricultural produce. There is no difficulty in holding that in the instant case the large scale purchases made by the accused of sugarcane which is undoubtedly an agricultural produce amounts to an operation by the accused as a trader of the agricultural produce in the market area of Aurangabad. If, therefore, the accused has operated as a trader in the market area without the licence and except in accordance with the terms and conditions of licence required to be taken under Section 6(1) he would be guilty of contravention of the provisions of Section 6(1)(b) of the Act of 1964.

9. Mr. Kapse then proceeded to say that it must also be held that the accused is operating as a processor of agricultural produce because the sugarcane which is being purchased by him is being subjected to certain processes in the factory. I am unable to agree with Mr. Kapse that the transformation of sugarcane into the ultimate product of sugar by several processes amounting to manufacture is tantamount to processing sugarcane. The word 'process' has got several meanings and in fact may mean different things in different context. But looking to the context in which it is used and gathering the natural meaning of the word in this context, the word 'process' must be held to mean to subject a particular product or a commodity with the object of making it finer or improving its quality. It may mean to treat a particular commodity by any method but not in such a way that the commodity itself is completely transformed

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into a new commodity. When a particular agricultural produce like sugarcane is crushed and a large part of the original commodity is thrown away and the juice is alone later by a series of processes converted into a new product like Khandsari sugar or sugar it will be difficult to say that the sugarcane has been subjected to a process or sugarcane has been processed. In my opinion, the character of sugarcane has been destroyed resulting in the appearance of altogether a new product which may be called Khandsari sugar or sugar. I am, therefore, unable to agree with Mr. Kapse that the accused is guilty of operating in the market area as a processor of the sugarcane.

10. The third contention of Mr. Kapsa is that the accused must be held to be guilty of operating in relation to the marketing of the declared agricultural produce which in the instant case is sugar. According to Mr. Kapse what is being manufactured in the factory of the accused is sugar and he is undoubtedly selling the same and, therefore, must be held to be marketing that product. Mr. Malik was quick in showing that what is being manufactured is Khandsari sugar and not sugar. The schedule to Act of 1964 mentions Gul, Sugar and Sugarcane as agricultural produce and according to Mr. Malik the absence of Khandsari sugar In the schedule must lead us to the conclusion that it is not an agricultural produce for the purposes of Act of 1964. It has been contended on behalf of the prosecution that sugar is a generic term which includes Khandsari sugar. But with the external aid that is available Mr. Malik had no difficulty in showing that while interpreting the penal provisions in the instant case sugar cannot be held to include Khandsari sugar also. In this regard he referred to the Act of 1962 as it stood before the amendment In 1974. The Act of 1962 referred only to the broad word 'sugar' and at no place it mentioned Khandsari sugar. By the amendment made in 1974, 'sugar' in the Act of 1962 has been defined as follows :

"Sugar includes Khandsari sugar....." Similarly in the preamble to the Act originally the words manufacture or process of 'sugar' had been used whereas by the amendment of 1974 after the word 'sugar' the words 'including Khandsari sugar' have been included. There is thus warrant for holding that sugar is not always understood to include Khandsari sugar. While interpreting the penal provision, the interpretation which is more favourable to the accused will have to be accepted and, therefore, I hold agreeing with Mr. Malik that what is being manufactured and sold by the accused is not an agricultural produce for the purposed of the Act of 1964.

11. In the result this appeal is partly allowed. The accused is held guilty of the offence punishable under S.46 of the sugarcane within the market area of Aurangabad Agricultural Produce Marketing Committee without a licence issued under S.6. The accused is further sentenced to pay a fine of Rs. 50/-.

Appeal partly allowed.

AIR 1978 BOMBAY 184 "Solapur Municipality v. S. Agrl. Pro. Mkt. Committee"

BOMBAY HIGH COURT

Coram : 1 VAIDYA, J ( Single Bench )

The Municipal Corporation of the City of Solapur, Appellant v. The Solapur Agricultural Produce Market Committee, Respondent.

Second Appeal No. 509 of 1969, D/- 10 -8 -1976.\*

Bombay Agricultural Produce Market Act (22 of 1939), S.4(2)(b) - AGRICULTURAL PRODUCE - MUNICIPALITIES - Power to hold cattle market - Municipal Corporation has no such power in view of Notification No. APM/27, D/-5-1-1965.

Having regard to the special enactment contained in S. 4 (2) (b) and the Govt. Notification No. APM/27 dated January 5, 1965, the Municipal Corporation ceases to have power to hold the cattle market in the area specified in the said Notification. (Para 11)

The provision of S. 4 (2) (b) overrides all other powers given to the Municipal Corporation under the Bombay Municipal Boroughs Act, 1925, bye-laws made thereunder and the provisions of the Bombay Provincial Municipal Corporation Act, 1949. (Para 12)

Bhimrao N. Naik, for Appellant; M.L. Dudhat, for Respondent.

\* Against decision of B. B. Panse, Extra Assistant Judge at Solapur in Civil Appeal No. 496 of 1967.

Judgement

JUDGMENT :- On March 21, 1966, the respondent, Sholapur Agricultural Produce Market Committee, Sholapur, filed Regular Civil Suit No. 225 of 1966, in the Court of the Civil Judge, Senior Division, Sholapur, against the Municipal Corporation of the City of Sholapur, the appellant in the above Second Appeal, for a

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declaration that the Municipal Corporation of the City of Sholapur, which will be hereinafter referred to as the "Municipal Corporation", had no right to establish or authorise or allow to be established any cattle market in the suit area for the purchase and sale of cattle enumerated in the two Notifications, referred to in the Suit, and by reason of the assumption of regulation of marketing of cattle by the plaintiff-Market Committee; and for an injunction restraining the Municipal Corporation from doing anything which would interfere with the Market Committee's exclusive right to conduct and regulate the marketing of cattle and for that reason to restrain the Municipal Corporation from levying and collecting fees on the sale of cattle (Shingoti) and for that reason also to restrain the Municipal Corporation from auctioning the monopoly of collecting fees on the sale of cattle (Shingoti), as published by the Municipal Corporation in some of the local papers.

2. The case made out on behalf of the Market Committee in the plaint, was as follows :

The Market Committee was established under Section 5 of the Bombay Agricultural Produce Markets Act, 1939. In exercise of the powers conferred by Sub-section (4) of section 4 of the said Act, the Government declared North and South Sholapur Talukas, as market area for the purposes of the said Act, in respect of bullocks, he-buffaloes, she-buffaloes, cows, horses, sheep, goats and fodder in addition to rice, wheat, Jowar, Bajari, etc. under the Notification No. APM. 27 (Sholapur) dated April 25, 1964, published in the Maharashtra Government Gazettee of May 21, 1964. The said Notification was as under :

"The Bombay Agricultural Produce Markets Act, 1939. No. APM-27 (Sholapur) :- Whereas by Commissioner, Poona Division, Poona's notification No. APM-27 (Sholapur), dated 12th August, 1959 issued under the provisions of subsection (1) of Section 4 of the Bombay Agricultural Produce Markets Act, 1939 (BomXXII of 1939) the Commissioner, Poona Division, Poona was pleased to regulate the purchase and sale of Rice, Wheat, Jowar, Bajari, Paddy, Gram, Tur, Moog, Udid, Groundnut (shelled and unshelled) Safflower, Linseed, Gul, Chillies and Cotton (ginned and unginned) in the area of the North Sholapur and South Sholapur talukas of the Sholapur district (hereinafter referred to as the said area).

And whereas by notification No. APM-27 (Sholapur) dated 14th December, 1963 issued under the provisions of section 3 of the said Act, the Commissioner, Poona Division, Poona was pleased to declare his intention to regulate the purchase and sale of Bullocks. He-buffaloes, she-buffaloes, Cows, Horses, Sheep, Goats and Fodder in the said area in addition to Rice, Wheat, Jowar, Bajari, Paddy, Gram, Tur, Moog, Udid, Groundnut (shelled and unshelled), Safflower, Linseed, Gul, Chillies and Cotton (ginned and unginned).

And whereas in response to the said notification no objections or suggestions have been received within the prescribed period.

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 4 of the said Act, the Commissioner. Poona Division, Poona is pleased to declare that with effect from the date of publication of this notification in the Maharashtra Government Gazette the said area shall be the market area for the purpose of the said Act in respect of bullocks, He-buffaloes, She-buffaloes, Cows, Horses, Sheep, Goats, and Fodder, in addition to Rice, wheat, Jowar, Bajari, Paddy, Gram, Tur, Moog, Udid, Groundnut (shelled and unshelled), Safflower, Linseed, Gul, Chillies and Cotton (ginned and unginned). Poona, 25th April 1964.'' The areas within the Municipal limits of the Sholapur Borough Municipality were included in the Market area after necessary consultations with the Municipality, as it then was constituted under the Bombay Municipal Boroughs Act, 1925.

3. By another Notification No. APM-27 dated May 1, 1965, issued by the Commissioner, Poona Divn., Poona, the localities mentioned in para. 3 of the plaint were included within the limits of the Sholapur Municipal Corporation, which shall hereinafter be referred to as the "suit area". Wherever marketing in cattle and fodder was going on at the time of the Notification and at the time of the suit, were included in the market yard.

4. It was further submitted on behalf of the Market Committee that under Section 4 (2B) of the Bombay Agricultural Produce Markets Act, 1939, the Municipal Corporation was not competent to establish, authorise or allow to be established, any place in the said areas for

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the purchase or sale of any cattle subsequent to the above Notification.

5. The plaintiff-Agricultural Market Committee, therefore, wrote to the Municipal Corporation, more than once, to the effect that the regulation of marketing of cattle and fodder was assumed by the Market Committee, the Municipal Corporation had no right to collect fees on the sales of cattle or to interfere in any manner whatsoever, in the marketing of cattle and fodder in such ways as to affect the Market Committee's rights in that regard. In spite of this defendant Corporation auctioned away the monopoly of collecting fees on the sales of cattle for the period from April 1, 1965 to March 31, 1966 i. e. for the year 1965-66. The Market Committed submitted that this auction of the Municipal Corporation was ultra vires and hence prayed for the reliefs stated above.

6. The suit was resisted by the defendant-Municipal Corporation contending and raising a number of worthless technical contentions and also the contention that as the cattle market is situate in a land vested in the Municipal Corporation the Market Committee had no right to enter in the said land; and the Market Committee is, therefore, liable to pay to the defendant damages for the use and occupation and for holding cattle market thereon.

7. It was contended that Bombay Agricultural Produce Market Act, 1939, did not apply to the Corporation area and, therefore, the Municipal Corporation could not be disturbed from holding the cattle market not only on the suit area but anywhere within the boundaries of the Sholapur Municipal Corporation. It was also submitted that the cattle market was held in the suit area, since 100 years. The Municipal Corporation was collecting fees on the sale of the animals, and the Market Committee had no right under the Bombay Agricultural Produce Markets Act, to collect fees and taxes on the sales of the cattle, usurping the exclusive right of the Municipal Corporation to collect fees on the sale of cattle within the Municipal limits under the Bombay Municipal Boroughs Act, 1925 and also under the Bombay Provincial Municipal Corporation Act, 1949, which admittedly came into force on May 1, 1965.

8. It was urged on behalf of the Municipal Corporation that not only the Municipal Corporation had the right to collect fees on the sale of the cattle within the said municipal limit; and the suit was, therefore, liable to be dismissed; but on the contrary, the loss of income suffered by the Municipal Corporation due to the plaintiff's action in securing an interim injunction made the Market Committee liable to pay to the Municipal Corporation the rent for the use and occupation of the land and also fees on the sale of the cattle.

9. The learned Civil Judge framed nine issues as per Ex. 29. The parties relied on the correspondence between them and the provisions contained in the aforesaid Acts. The learned Civil Judge by his judgment and decree dated September 30, 1967, held (1) that the Bombay Agricultural Produce Market Act, 1939, applied to the suit area; (2) that the Municipal Corporation ceased to have power to hold the cattle market in the areas specified in the Government Notification No. APM-27 dated January 5, 1965 by virtue of mandatory provisions of Sec. 4 (2) (b) of the Bombay Agricultural Produce Market Act, 1939; (3) that the Agricultural Market Committee had the right to collect fees and taxes on sales of cattle in the notified area; (4) that the B. A. P. M. Act, 1939, applied not only to the wholesale dealers or their brokers but also to the retail sellers between the producers and consumers; (5) that the Municipal Corporation had no right to auction the monopoly of collecting fees (Shingoti) on the sale of cattle; (6) and hence the Municipal Corporation was accountable in respect of fees collected during the year from April 1, 1965 to March 31, 1966; (7) on taking accounts in respect of the fee, it was found that the Municipal Corporation had collected during that period an amount of Rs. 15,000/-; (8) in view of this conclusion, the learned Civil Judge granted the declaration and the injunction sought by the plaintiff and further decreed that the Municipal Corporation should pay to the Market Committee Rs. 15,000/- for the fees recovered by the Corporation during 1965-66, with costs; directing the Market Committee to pay the deficit court-fee stamp. The judgment and decree were confirmed by the Extra Assistant Judge, Sholapur, in an appeal filed by the Municipal Corporation. The concurrent judgments and decrees are challenged in the above Second Appeal.

10. It was argued on behalf of the Municipal Corporation that having regard to a bye-law under which a fee at the

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rate of 2 np. per rupee of purchase money shall be levied on each head of cattle sold in the market appointed by the Standing Committee for the sale of cattle which is at page 199 of the Rules and Bye-laws of the Sholapur Borough Municipality, 1963; and the relevant provisions of the Bombay Municipal Boroughs Act, 1925 and the Bombay Provincial Municipal Corporation Act, 1949, the decrees passed by the two Courts below were erroneous in law.

11. There is no merit in the contention having regard to the special enactment contained in Section 4 (2) (b) of the Bombay Agricultural Produce Market Act, 1939, and the Notifications referred to above. The relevant sub-section reads as follows :

"On and after the date of the declaration of the market area under sub-s. (1) no Municipality or other local authority, notwithstanding anything contained in the enactment relating to such Municipality or authority, shall be competent to establish, authorise or allow to be established any place in the said area for the purchase and sale of any agricultural produce specified in the notification issued under sub-section (1)."

12. It is, therefore, patent that this provision in the Bombay Agricultural Produce Market Act, 1939, overrides all other powers given to the Municipal Corporation under the Bombay Municipal Boroughs Act, 1925, bye-laws made thereunder and the provisions of the Bombay Provincial Municipal Corporation Act, 1949.

13. The two Courts were, therefore, right in decreeing the plaintiffs suit. The Second Appeal is therefore dismissed with costs.

Appeal dismissed.

AIR 1976 BOMBAY 13 "Gangadhar v. State"

BOMBAY HIGH COURT

(AT NAGPUR)

Coram : 2 CHANDURKAR AND DHARMADHIKARI, JJ. ( Division Bench )

Gangadhar Sadashiorao Watane and others, Petitioners v. The State of Maharashtra and another, Respondents.

Special Civil Applns. Nos. 2123 and 2084 of 1974, D/- 12 -2 -1975.

(A) Constitution of India, Art.358, Art.360 - EMERGENCY - LEGISLATION - Applicability of Art.358 to legislation based on financial stringency.

Article 358 deals with the suspension of provisions of Article 19 during the emergency. It is not open for the High Court to go behind the proclamation, Only because Article 360 appears in the Statute book after Article 358, it cannot be said that the provisions of Article 360 appears in the Statute book after Article 358 are not applicable to a legislation providing for the mode of payment of advance price due to financial stringency or paucity of funds. The protection given by Article 358 to a legislation made during the subsistence of emergency is a blanket protection. It is not open for the petitioners during the emergency to challenge a legislation on the ground that it is violative of their fundamental right guaranteed under Article 19. It is not also permissible for them to avail of the same right obliquely or indirectly, 1973 Mah LJ 813, Rel. on. (Paras 3, 5)

(B) Constitution of India, Art.31 - Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act (47 of 1971), S.25 - RIGHT TO PROPERTY - Compulsory acquisition - Provision in S.25 whether amounts to compulsory acquisition.

The sale of the cotton by the petitioners under the provisions of the Act at the centres opened by the Government at a price to be determined by the Government in exercise of the power conferred upon it by the Act cannot be termed to be a compulsory acquisition or requisition of the property within the meaning of Article 31 of the Constitution. The legislation merely requires a person to sell the cotton to the Government or its agent as per provisions of the Act and monopoly scheme. It does not empower the Government either to acquire or take possession of property, (Para 5)

(C) Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act (47 of 1971), S.25 (as amended in 1974) - AGRICULTURAL PRODUCE - Order issued by Government under S.25 not providing for payment of interest - Validity.

If no provision has been made in the Order issued by the Government under Section 25 of the Act for payment of any interest, on that count the order is not

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either illegal or beyond the scope of section itself. The proviso to Section 25 itself makes a provision for payment of interest where the payment of the advance price or any part thereof is deferred for any reason. According to the proviso to Section 25, the tenderer is entitled to get interest from the date of tender of the cotton by him till the date of payment of such amount at such a rate which cannot be less than ten per cent per annum. In a given case it can be more if the Government so specifies by general or special order. If the advance price or any part thereof is not paid to the tenderer immediately after the cotton is tendered, it will amount to a deferred payment as contemplated by the proviso to Section 25. (Para 7)

(D) INTERPRETATION OF STATUTES - Interpretation of Statutes - Statement of Objects and Reasons - Value of.

The Statement of Objects and Reasons of a Statute may and does often furnish valuable historical material in ascertaining the reasons which induced the legislative to enact a Statute. It can legitimately be taken into account in ascertaining the intention of the legislature, such as the history of the Statute the reason which led to its being passed, the mischief which it intended to suppress and the remedy provided by the Statute for curing the mischief. It is useful to find out as to what was the law before the Act was passed, what was the mischief or defect for which law had not Provided, what remedy legislature has provided and the reason of the remedy AIR 1970 Bom 232 (FB) and AIR 1973 SC 913. Rel. on. (Para 10)

(E) Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act (47 of 1971), S.25 (as amended in 1974) - AGRICULTURAL PRODUCE - GOVERNMENT RESOLUTION - Government resolution dated 28-12-1974 - Validity.

As to whether a person or authority to whom powers have been delegated by the legislature can make an order, rule or regulation or bye-law with retrospective effect or not, will obviously depend upon the statutory provisions. Section 25 of the Act itself contemplates a situation under which the power can be exercised by the Government after the cotton is tendered by the tenderer and the amount remains to be paid or is still payable to him. The order issued by the Government on 28-12-1974 did not operate retrospectively as it did not touch the payments already, made. The order regarding payment of the amount either in lump sum or in instalments operated on the amount which was still payable. In this view of the matter, the order did not operate retrospectively Apart from this, by Ordinance No. XXIII of 1974 a fiction had been created and the amending provisions of the Act deemed to have come into force from 17th November 1974. The fiction created by the Legislature will have to be extended to its logical conclusion. This obviously means that on 17th November, 1974 itself Section 25, as was amended by the Ordinance, was on the Statute book. Hence, it was open to the Government to issue a general or special order at any time determining the mode of payment of the advance price which was still payable to the tenderer. (Paras 10, 11)

(F) INTERPRETATION OF STATUTES - LEGISLATURE - Interpretation of Statutes - Duty of Court - Motive of legislature.

The Court in construing and interpreting the provisions of an enactment has to ascertain the meaning and intention of legislature from the language used in the Statute itself and it is not concerned with the motives of the legislature. (Para 13)

(G) INTERPRETATION OF STATUTES - LEGISLATION - Interpretation of Statutes - Policy of legislation - Whether Court can consider.

The policies of the Government which are expressed in the shape of legislation are to be considered by the members of the legislature and not by the Courts of law. A Statute cannot be challenged on the ground that it is the result of some alleged wrong policy of the Government. (Para 13)

Cases Referred : Chronological Paras

AIR 1975 SC 32 : 1975 2 SCR 42 4, 8

AIR 1973 SC 913 : 1973 Cri LJ 902 10, 13

1973 Mah LJ 813 3

AIR 1969 SC 1100 : (1969) 3 SCR 447 13

AIR 1970 SC 385 : (1970) 1 SCR 678 9, 10

AIR 1970 Bom 232 : 1969 Math LJ 933 (FB) 10

AIR 1963 SC 274 : (1963) 1 SCR 721 10

AIR 1960 Mys 326 10

AIR 1959 Punj 453 : 61 Pun LR 514 (FB) 10

AIR 1956 All 35 : 6 STC 287 10

AIR 1954 SC 92 : 1954 SCR 587 5

AIR 1950 SC 27 : 1950 SCR 88 13

(1870) 40 LJ QB 28 : 6 QB 1 10

In S.C. A. No. 2123 of 1974 :-

V.R. Manohar and A.M. Deshmukh, for Petitioners: A.S. Bobde and V.A. Bobde, (for No. 1) and G.V. Patil, (for Nos. 1 and 2), for Respondents. In S.C.A. No. 2084 of 1974 :-

P.V. Holey and A.M. Deshmukh, for Petitioners; A.S.Bobde and V.A. Bobde (for No. 1) and R.V. Patil (for Nos. 1 and 2), for Respondents.

Judgement

DHARMADHIKARI, J.:- The petitioners in both these petitions are agriculturists and cultivators in the Vidarbha region of the State of Maharashtra and according to them, they solely depend upon agriculture for their maintenance

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and livelihood. The petitioners in these cases have tendered their Cotton at the cotton centres as per the provisions of the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971, referred to hereinafter as the Act. It is contended by them that they were entitled to receive 80 per cent of the guaranteed price for the quantity of cotton tendered by them and the action of the respondent' incorporated in Government resolution dated 28th December, 1974 providing revised mode of payment to the cotton tenderers under the scheme, and the provisions of Sections 25, 26 and 27 of the Act, depriving them of their right to get 80 per cent guaranteed price in lump-sum, is violative of their fundamental right under Article 31 of the Constitution of India. It was also contended by the petitioners that Sections 25 to 27 of the Act, as amended, are also violative of their fundamental right under Articles 14 and 31 of the Constitution of India, as the cotton tendered by them is being acquired by the State without payment of reasonable compensation. It was also faintly argued before us that the said provisions are contrary to the basic objects of the Act itself. A contention was also raised on behalf of the petitioners that the Government's order issued under Section 25 of the amended Act dated 28th December, 1974 is bad in law, it being retrospective in operation. For this purpose a reference was made to and clause 4 clause 7 of the said order, Shri Manohar, the learned counsel for the petitioners in Special Civil Application No. 2123 of 1974, further contended that the order issued by the Government dated 28th December, 1974 is beyond the scope of Section 25 itself as no provision has been made in the said order for payment of interest for an intermittent period, namely, the period between the point of time, the cotton is tendered and the amount is actually deposited in the Bank. For this purpose he has drawn our attention towards the averments made in para. 10 of the return filed on behalf of the respondent No. 1, wherein it was admitted that though the date of tender of cotton was 12th December 1974, the amount was credited in the Bank account on 18th December, 1974. According to Shri Manohar, no provision has been made in the order issued by the Government for payment of any interest for this period, namely, from 12th Dec., 1974 to 18th Dec., 1974, and therefore the petitioners are deprived of their property, namely, the cotton, without any compensation. Therefor, in substance, the petitioners in Special Civil Application No. 2123 of 1974 have challenged the provisions of S.25 of the Act as well as the order issued thereunder by the State Government on the ground that it is violative of their fundamental right guaranteed under Article 31 of the Constitution of India. It is also contended that the order issued by the Government under Section 25 of the Act is bad in law, it being retrospective in nature and beyond scope of Section 25 of the Act.

2. Shri Holey, the learned counsel for the Petitioners in Special Civil Application No. 2084 of 1974, contended before us that there is no nexus between the emergency declared under Article 352 of the Constitution of India and the present legislation, and therefore, the petitioners are entitled to challenge the present enactment on the ground that it is violative of the petitioners' fundamental right guaranteed under Article 19 of the Constitution of India. It is contended by the learned counsel that under the Constitution two distinct and separate provisions are made for declaration of emergency, Article 352 of the Constitution confers a power upon the President to declare emergency if he is satisfied that a grave emergency exists whereby the security of India or any part of the territory thereof is threatened, whereas Art.360 confers a power upon the President to declare emergency if he is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened. Therefore, according to the learned counsel, to the present legislation the provisions of Article 358 are not applicable. According to the learned counsel as Article 360 appears on the Statute book after Article 358 it is not applicable to a legislation which is based on financial stringency or paucity of funds. He further contended that the present legislation, namely, the Maharashtra Raw Cotton (Procurement. Processing and Marketing) Act, 1971, and in particular Maharashtra Ordinance No. XXIII of 1974 has been promulgated providing a mode of payment of the advance price because of financial stringency or paucity of funds. According to the learned counsel, the present legislation has, therefore, no nexus with the emergency declared under Article 352 of the Constitution and hence it is open for the petitioners to challenge the said legislation on the ground that it is violative of the petitioners' fundamental right guaranteed under Article 19 of the Constitution.

3. In our opinion, the contention raised by Shri Holey needs to be mentioned only for being rejected. Art.358 of the Constitution deals with the suspension of provisions of Article 19 during the emergency. It is not open for this Court to go behind the proclamation. Only because

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Article 360 appears in the Statute book after Article 358, it cannot be said that the provisions of Article 358 are not applicable to a legislation providing for the mode of payment of advance price due to financial stringency or paucity of funds. The protection given by Art.358 to a legislation made during the subsistence of emergency is a blanket protection. This Court has considered this aspect of the matter in detail in Rajaram v. State of Maharashtra. (1973 Mah LJ 813) while dealing with the present legislation itself. In view of this, in our opinion, it is not open for the petitioners to challenge the present legislation on the ground that it is violative of their fundamental right guaranteed under Article 19 of the Constitution of India. In all fairness to Shri Manohar, he has not adopted this part of the argument of Shri Holey.

4. On behalf of the petitioners in Special Civil Application No. 2123 of 1974 it is contended by Shri Manohar that the provisions of Section 25 and the order issued by the State Government in substance amount to acquisition of the cotton of the petitioners without payment of compensation or price therefor. According to him, under common law the petitioners, who are the agriculturists have right to sell their cotton anywhere they desire. By the present legislation a monopoly has been created and their right to sell the cotton has been restricted. Under the present legislation it is compulsory for the agriculturist that he must sell the cotton to the State Government or its agent. Under the provisions of Sale of Goods Act an agriculturist is entitled to get price for his goods as soon as they are sold. The postponement of payment of price as has been done in the present case, practically amounts to acquisition of cotton without payment of price or on payment of a meagre price. He further contended before us that 30 per cent of the advance price, which is offered to the agriculturists immediately on sale practically amounts to non-payment of any price for the goods. The petitioners, who are agriculturists, are not able to incur any expenditure on their agriculture from this amount, nor the amount paid to them is enough to meet two ends. In substance, therefore, it is contended by Shri Manohar that the acquisition of raw cotton of the petitioners by the State Government under the provisions of the Act amounts to compulsory acquisition of their property, namely, the cotton, without any authority of law and is therefore, violative of the petitioners' fundamental right under Article 31 of the Constitution. In support of this contention he sought assistance from the provisions of Article 19(1) (f) of the Constitution of India and contended that Sec.25 of the Act and the order issued thereunder are not a reasonable restriction upon the petitioners' right to acquire, hold and dispose of their property. He further contended that no time limit has been prescribed by the Act or the order issued by the Government for payment of 30 per cent of the advance price after the cotton is tendered. According to the learned counsel, no provision has also been made for payment of any interest from the time of tender of cotton till the payment of this 30 per cent of advance price. According to Shri Manohar, postponement of purchase price coupled with non-payment of interest amounts to unreasonable restriction upon the fundamental right of the petitioners under Article 19 (1) (f) read with Article 31 of the Constitution of India. For this proposition he has relied upon the decision of the Supreme Court in Godhra Electric Co. v. State of Gujarat, (AIR 1975 SC 32).

5. It is not possible for us to accept this contention of Shri Manohar. It cannot be disputed that is view of the provisions of Article 358 of the Constitution, while a proclamation of emergency is in operation, the provisions of Art.19 are suspended during the pendency of emergency. If this is so, then it is not open for the petitioners to contend during the pendency of emergency that the present legislation violates their fundamental right guaranteed under Article 19 of the Constitution of India. If this is so, in our opinion, it is not also permissible for the petitioners to avail of the same right obliquely or indirectly. The protection given by Article 358 to a legislation made during the subsistence of emergency against an attack on the ground of violation of Article 19 of the Constitution is a blanket protection if the legislation is otherwise legal and constitutionally valid. In this view of the matter, in our opinion, it is not open for the petitioners to take aid of the provisions of Article 19 of the Constitution of India for contending that they are being deprived of their property without authority of the law, meaning thereby that the law, which deprives them of their property, is violative of their fundamental right guaranteed under Article 19 of the Constitution. Apart from this, in our opinion, the sale of the cotton by the petitioners under the provisions of the Act at the centres opened by the Government at a price to be determined by the Government in exercise of the power conferred upon it by the Act cannot be termed to be a compulsory acquisition or requisition of the property within the meaning of Article 31 of the Constitution. The present piece of legislation merely requires a person to sell

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the cotton to the Government or its agent as per provisions of the Act and monopoly scheme. It does not empower the Government either to acquire or take possession of property. In this view of the matter, in our opinion, it is not necessary to refer to the decision of the Supreme Court in State of West Bengal v. Subodh Gopal Bose. (AIR 1954 SC 92) on which reliance was placed by the learned counsel in support of his contention. Moreover, after the said decision of the Supreme Court. Article 31 of the Constitution of India itself was amended. In the present case if it is not possible for the petitioners to attack the present legislation on the ground that it is violative of their right guaranteed under Art.19 of Constitution, then, in our opinion, no argument based on infringement of Article 31 read with Article 19 of the Constitution can be independently set up.

6. It was then contended by Shri Manohar that the order issued by the State Government dated 28th December, 1974 has not made any provision for payment of interest from the date of tender of cotton till the date of actual credit of the amount in the Bank by the respondents.

7. For properly appreciating this contention it will be useful to reproduce Section 25 of the Act, as amended which reads as under :

"25 (1) Every tenderer of cotton at the collection centre shall in the first instance be entitled to receive eighty percent of the guaranteed price for the quantity of cotton tendered by him, which shall be payable to him in lump sum or in such instalments, not exceeding two, as the State Government may, from time to time, having regard to the availability of the funds, by general or special order determine. The payment of eighty per cent of the guaranteed price in this manner shall be the advance price payable to the tenderer.

(2) The difference between the guaranteed price and the advance price shall be payable to the tenderer within a period of three months after the close of every cotton season:

Provided that, where the payment of the advance price or any part thereof is deferred for any reason or the difference between the guaranteed price and the advance price is not paid immediately after the close of any cotton season, there shall be paid to the tenderer by or on behalf of the State Government interest on the amount which remains unpaid, from the date of tender of cotton by him or from the close of the cotton season, as he case may be, till the date of payment of such amount, at such rate not less than ten per cent per annum, as the State Government may, from time to time, by general or special order, specify." It is no doubt true that no prevision, has been made in the order issued by the State Government dated 28th December. 1974 for payment of interest for the period between the date of tender of cotton till the date of actual credit of the amount in the Bank by the respondents. As already referred to hereinbefore, in the return filed on behalf of the respondent No. 1, it is an admitted position that thirty per cent advance price, which was payable to the tenderer of cotton at the collection centre, was deposited in some cases after more than 6 days. It is also true that no provision has been made in the Order issued by the Government under Section 25 of the Act for payment of any interest for this intervening period. However, in our opinion, on that count it cannot be said that the order issued by the State Government under Section 25 of the Act is either illegal or is beyond the scope of the section itself. The proviso to Section 25 of the Act itself makes a provision for payment of interest where the payment of the advance price or any part thereof is deferred for any reason. According to the proviso to Section 25 of the Act, the tenderer is entitled to get interest from the date of tender of the cotton by him till the date of payment of such amount at such a rate which cannot be less than ten per cent per annum. In a given case it can be more if the Government so specifies by general or special order. In the absence of such a specification by general or special order under the provisions of Section 25 of the Act read with the proviso, the tenderer of the cotton is entitled to get interest at the rate of 10 per cent per annum from the date of the tender of the cotton by him till the date of payment of such amount. In this particular case, the payment of such amount is by the credit in the Bank account. The date on which the amount is credited in the Bank account of the tenderer will be deemed to be the date on which the payment is made to him. If the advance price or any part thereof is not paid to the tenderer immediately after the cotton is tendered, in our opinion, it will amount to a deferred payment as contemplated by the proviso to S.25 of the Act.

8. Shri A.S. Bobde, the learned counsel for the respondent No. 1, contended before us that the delay in actual credit of the amount in the Bank cannot be termed to be a deferred payment as contemplated by the proviso to Section 25 of the Act. According to him, the delay in crediting the amount in the Bank could be caused due to administrative exigency of the Government or its agent, or in a

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given case the delay could be by the Banking authorities. In our opinion, whatever may be the reason for non-payment of the advance price or any part thereof as soon as the cotton is tendered, so far as tenderer is concerned, it will be a deferred payment as contemplated by proviso to Section 25 of the Act. As per provisions of Section 25 of the Act, the tenderer is entitled to get payment of the advance price or any part thereof as soon as the cotton is tendered. Any postponement by the Government or its agent in payment of this price amounts to deferred a payment. This being the position, in our opinion, the tenderer will be entitled to get interest at the rate which will not be less than 10 per cent per annum from the Government or its agent from the date of tender to the date of actual payment of the amount. The amount remains unpaid till it is actually paid or credited in the Bank account. As a provision has been made for payment of interest in S.25 itself, it was not obligatory on the part of the Government to have made any provision in the order issued under S.25 of the Act, unless Government wanted to prescribe higher rate of interest than the minimum prescribed by the Act itself. Therefore, it is not possible for us to hold that on, that count the order issued by the Government is any way bad in law. As a specific provision for payment of interest is already made in the Act, in our opinion, the law laid down by the Supreme Court in the Godhra Electricity Co. v. The State of Gujarat, (AIR 1975 SC 32) has no application to the facts and circumstances of the present case, nor it can be said that the present legislation is violative of petitioner's fundamental right guaranteed under Art.31 of the Constitution of India.

9. It was then contended by Shri Manohar that Section 25 of the Act does not confer any right upon the State Government to issue any general or special order determining the mode of payment of 80 per cent of the guaranteed price with retrospective effect. According to him, the subordinate authority exercising subordinate legislative function cannot issue an order which can operate with retrospective effect. For this proposition Shri Manohar has relied upon a decision of the Supreme Court in the Income-tax Officer, Alleppey v. I. M. C. Ponnoose, (AIR 1970 SC 385).

10. For properly appreciating the contention it will be useful to refer to the aims and object leading to the promulgation of the Ordinance by which Sections 25, 26 and 27 of the Act are amended. It is no doubt true that the Statement of Objects and Reasons leading to the passing of an enactment cannot be looked into as a direct aid to construction, yet it can be used for the limited purpose of ascertaining the condition prevailing at the time when Ordinance was issued and the purpose for which amendment was made. The Statement of Objects and Reasons of a Statute may and do often furnish valuable historical material in ascertaining the reasons which induced the legislature to enact a Statute. It can legitimately be taken into account in ascertaining the intention of the legislature, such as the history of the Statute, the reason which led to its being passed, the mischief which it intended to suppress and the remedy provided by the Statute for curing the mischief. It is useful to find out as to what was the law before the Act was passed, what was the mischief or defect for which law had not provided, what remedy legislature has provided and the reason of the remedy. [See Smt. Radhabai v. State of Maharashtra, 1969 Mah LJ 933 = (AIR 1970 Bom 232) (FB) and A.C. Sharma v. Delhi Administration, (AIR 1973 SC 913)]. The Statement of Objects and Reasons appended to the Ordinance is as follows :

" STATEMENT

1. Consequent upon consistent demand from numerous organisations of cotton cultivators throughout the State, the State Government decided to review the Monopoly Cotton Procurement Scheme from the cotton season beginning on the 1st July 1974. After taking into consideration any action required for solving difficulties experienced in the implementation of the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971, during the years 1972-73 and 1973-74, and particularly for minimising hardships experienced by cotton growers in obtaining their due payments expeditiously, suitable amendments were made in certain provisions of that Act, by Maharashtra Act No. XLVIII of 1974.

2. Accordingly, necessary steps for raising adequate funds for procurement, processing and marketing of cotton during the year 1974-75 were inter alia initiated by submitting an application to the Reserve Bank of India, for sanctioning a credit limit unto Rs. 125 crores, having regard to the revised guaranteed prices for various varieties and grades of kapas, which were fixed by the State Government in consultation with the Central Government after taking into consideration various factors involved.

3. It was expected that, as in the years 1972-73 and 1973-74, the Reserve Bank of India would assist the Maharashtra State Co-operative Bank Ltd. in raising necessary finance for the operation of the Scheme with the help of the

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nationalised banks. Unfortunately, the Reserve Bank of India has now put severe restrictions on the availability of credit for various purposes, with a view to curbing inflationary pressures on the national economy and controlling the level of rising prices of essential commodities required by the community at large. These credit curbs and the consequent restrictions on the supply of funds by nationlised banks not only hastened the downward trends of cotton prices, but also restricted very considerably the availability of funds for trading and other purposes. Although it appears obligatory on the part of the Reserve Bank of India not only to make available sufficient funds for raising of crops but also for processing and marketing of agricultural produce by the co-operatives, the Reserve Bank of India, in view of the national economic situation, has brought down its own limit of credit from Rs. 25 crores to Rs. 20 crores for the operation of the Scheme during the year 1974-75, and also expressed its inability to persuade the nationalised banks, as in the past, to make available adequate funds for the operation of the Scheme through the agency of the Maharashtra State Co-operative Bank Ltd.

4. The overall situation arising from the factors mentioned in the foregoing paragraphs was examined by the State Government and though several attempts were made to persuade the concerned Ministries of the Central Government and the Reserve Bank of India to re-consider the matter, no hopes could be entertained for obtaining substantial additional credit required for the operation of the Scheme. If the Scheme was, therefore, to be continued, it could be continued only within the total availability of funds to the extent of Rs. 50 crores (consisting of Rs. 20 crores from the Reserve Bank of India; Rs. 20 crores from the Maharashtra State Co-operative Bank and Rs. 10 crores from the funds available with the Maharashtra State Co-operative Marketing Federation Ltd.)

5. Since the decision to revive the Scheme was taken in consultation with the members of Parliament from the State, members of the State Legislature and representatives of various co-operative organisations of agriculturists in the State, it was considered necessary to explain to them the financial position presented by the credit squeeze measures brought into force by the Central Government and the Reserve Bank of India as a part of the national economic policy. Accordingly, a meeting of the representatives of members of Parliament, members of the State Legislature, Presidents and Chairmen of the District Central Co-operative Banks, the Maharashtra State Co-operative Marketing Federation Ltd., Taluka/Block Level Co-operative Sale and purchase Societies, and the Agricultural Produce Market Committees in the cotton growing tracts of the State was convened by the Chief Minister at Nagpur, on the 17th November, 1974. This meeting reviewed the entire situation and recommended unanimously that since the Monopoly Cotton Procurement Scheme is in the best interest of the cotton cultivators, it should not under any circumstances be suspended, but it must be implemented and that cotton cultivators would in their own interests whole-heartedly help the Government in over-coming the financial difficulties faced by the Scheme. Accordingly, the meeting recommended that the State Government should adhere to the practice of paying 80 per cent of the guaranteed trice as advance price to the tenderers, but this payment should be as under:-

(a) In the first instance, 30 per cent, in cash should be paid to the borrower as well as non-borrower members. However, in the case of borrower members 50 per cent should be deducted towards repayment of the co-operative dues and in the case of non-borrower members 50 per cent should be treated as deposit by them with the scheme, with interest at the rate of 10 per cent, per annum.

(b) The payment of full amount of 80 per cent advance should be made to the tenderers by the end of June and the balance of the guaranteed price as well as final price should be worked out and paid by the end of October 1975.

(c) In the case of any borrower member, if his entire loan is less than 50 per cent of the guaranteed price to be paid to him, the remaining amount should be treated as deposit witch the Scheme at the same rate of interest of 10 per cent per annum. The meeting also recommended that monopoly cotton procurement operations should be started forthwith and accordingly all cotton collection centres in the State have already been started and procurement operations are in full-swing.

6. Since the revised mode of payment has no statutory binding and is being questioned in some quarters, it is considered expedient to amend suitably the provisions of Sections 25, 26 and 27 of the Raw Cotton Act to leave no scope of any doubt or challenge.

7. Accordingly, it is considered necessary to make such amendments in the Act immediately, with a view to securing and facilitating the implementation of the Scheme more effectively. The amendments to Sections 25, 26 and 27 would legalise the mode of payment as agreed to by the representatives of the cotton

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cultivation with effect from the date on which these decisions were taken, i.e. from the 17th day of November, 1974.

8. As both Houses of the State Legislature are not in session and immediate action is required to be taken to amend the Act for the purposes aforesaid, this Ordinance is promulgated."

After the Ordinance was promulgated the State Government vide Government resolution dated 28th December 1974 passed a resolution prescribing revised mode of payment for cotton tenderers under the Cotton Monopoly Procurement Scheme. It was to take effect from the 17th November 1974. By the said resolution it was directed that 80 per cent of the guaranteed price is to be paid in two instalments and that the said order was to take effect from 17th November 1974, the date on which the Maharashtra Ordinance XXIII of 1974 has come into force. Prior to the present Ordinance every tenderer of the cotton at the collection centre was entitled to receive 80 per cent of the guaranteed price for the quantity of the cotton tendered by him. It seems that thereafter the Government approached the Reserve Bank of India for sanctioning a credit limit upto Rs. 125 crores, having regard to the revised guaranteed prices for various varieties and grades of kapas, which were fixed by the State Government in consultation with the Central Government after taking into consideration the various factors involved. However, the Reserve Bank of India, in view of the national economic situation, instead of granting higher credit facilities, brought down its own limit of credit from Rs. 25 crores to Rs. 20 crores for the operation of the scheme during the year 1974-75. In spite of the best efforts it was not possible for the Government to secure any credit facilities or funds for running the monopoly cotton procurement scheme. In view of the situation created because of the financial stringency a meeting was held on 17th November 1974 in which the representatives of the Bodies who were interested in running the scheme were present and from the statement attached to the Ordinance it seems that the said meeting recommended that the State Government should adhere to the practice of paying 80 per cent of the guaranteed price as advance price to the tenderers, but this payment should be in instalments. In pursuance of the decision taken in this meeting and at the instance of the Government, the Maharashtra State Co-operative Marketing Federation issued a Circular dated 23rd November 1974 prescribing the method of payment to be followed under the Monopoly Cotton Procurement Scheme in respect of season 1974-75. A copy of this circular is at page 37 of the paper-book of Special Civil Application No. 2123 of 1974 as Annexure A. After this, a letter dated 30th November 1974 was sent by the Government to the Managing Director, Maharashtra State Co-operative Marketing Federation. It is stated in the said letter that the decision taken in the aforestated meeting dated 17th November 1974 and the statements made thereunder have been approved by the Government and the revised scheme, as mentioned in the said letter, has also been unanimously approved in the meeting of the representatives of the cotton growers, M.L. As., Chairman of the Sales and Purchase Societies and the Market Produce Committees, held at Nagpur on 17th November 1974. It seems from the record that the payment was being made to the tenderers of cotton according to the scheme incorporated in the Circular of the Marketing Federation dated 23rd November 1974 and the Government letter dated 30th November 1974. However, it was noticed by the Government that this revised mode of payment has no statutory binding force and was being questioned in some quarters, and therefore, it was considered expedient to amend suitably the provisions of Sections 25, 26 and 27 of the Act, to leave no scope for any doubt or challenge. Accordingly, the Maharashtra Ordinance No. XXIII of 1974 was issued by the Government, amending Sections 25, 26 and 27 of the Act. By sub-clause (2) of clause 1 of the Ordinance it was declared that the amending Ordinance of 1974 shall be deemed to have come into force on the 17th day of November 1974 itself. Therefore, it is quite clear that the Ordinance was given retrospective effect with effect from 17th November 1974. A legal fiction was created by the said Ordinance and for all practical purposes it was declared that Sections 25, 26 and 27 of the Act, as amended, will be deemed to have come into force from 17th day of November 1974 itself. It is no doubt true that an authority exercising subordinate legislative function cannot make a Rule, Regulation or By-law which can operate with retrospective effect. In this context it has been laid down by the Supreme Court in the Income-tax Officer, Alleppey v. I. M. C. Ponnoose, AIR 1970 SC 385 (cit supra) as under:-

"Now it is open to a sovereign legislature to enact laws which have retrospective operation. Even when the Parliament enacts retrospective laws such laws are - in the words of Willes, J. in Phillips v. Eyre, (1870 40 LJ QB 28 at p. 37 - 'no doubt prima facie of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with

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future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law.' The Courts will not, therefore, ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the Courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or byelaw which can operate with retrospective effect : See Subba Rao, J., in Dr. Indramani Pyarelal Gupta v. W. R. Nathu, (1963) 1 SCR 721 = (AIR 1963 SC 274) to the majority not having expressed any different opinion on the point; Modi Food Products Ltd, v. Commr. of Sales Tax, U. P., AIR 1956 All 35; India Sugar Refineries Ltd. v. State of Mysore, AIR 1960 Mys 326 and General S.Shivdev Singh v. State of Punjab. (1959) 61 Punj LR 514 = (AIR 1959 Punj 453) (FB)."

From this decision of the Supreme Court it is quite clear that as to whether a person or authority to whom such powers have been delegated by the legislature can make an order, rule or regulation or bye-law with retrospective effect or not, will obviously depend upon the statutory provisions. However, in our opinion, it is not necessary to decide this question in the present case in view of the specific language used in Section 25 and the Ordinance. As per the provisions of Section 25 of the Act the advance price is made payable to the tenderer of cotton at the collection centre. In the first instance he is entitled to receive 80 per cent of the guaranteed price of the quantity of cotton tendered by him. This amount shall be payable to him in lump sum or in such instalments not exceeding two, as the State Government may, from time to time having regard to the availability of the funds, by general or special order determine. Section 25 of the Act confers a right upon the State Government to determine the mode of payment of the advance price. This determination could be made from time to time, having regard to the availability of the funds. The determination contemplated is with regard to the amount which is payable to the tenderer. In the case before us, the petitioners were paid 30 per cent of the advance price under the scheme which was framed by the Marketing Federation under its Circular dated 23rd November 1974 and the Government letter dated 30th November 1974. Even assuming that as per the unamended provisions, as it then stood, the tenderer was entitled to receive 80 per cent of the guaranteed price immediately, it cannot be disputed that in the present case only 30 per cent of the guaranteed price was paid to him as an advance price. Rest of the amount which forms part and parcel of the advance price is still payable to him. If this is so, then, in our opinion, it is open for the State Government in exercise of the powers conferred upon it under Section 25 of the Act to issue a general or special order determining the mode of payment of this amount which is still payable. The Government might determine to pay this amount in lump sum or in such instalments not execeeding two. This determination depends upon the availability of the funds. Section 25 of the Act itself contemplates a situation under which the power can be exercised by the Government after the cotton is tendered by the tenderer and the amount remains to be paid or is still payable to him. The order issued by the Government does not operate retrospectively as it does not touch the payments already made. The order regarding payment of the amount either in lump sum or in instalments operates on the amount which is still payable. In this view of the matter, in our opinion, it cannot be said that the order issued by the Government dated 28th December 1974 operates retrospectively. By the order issued by the State Government the mode of payment of the amount which is payable to the tenderer is only altered. This alteration is to take erect prospectively. Section 25 of the Act itself confers a right upon the State Government to issue an order determining the mode of payment regarding the amount which is still payable to the tenderer.

11. Apart from this, it cannot be forgotten that by Ordinance No. XXIII of 1974 a fiction has been created and the amending provisions of the Act are deemed to have come into force from 17th November 1974. The fiction created by the Legislature will have to be extended to its logical conclusion. This obviously means that on 17th November 1974 itself Section 25, as is amended by the Ordinance, was on the Statute book. If this is so, it is open to the Government to issue a general or special order at any time determining the mode of payment of the advance price which is still payable to the tenderer. This is not a case where it could be said that Section 25, as amended

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was itself not on the Statute book on 17th November 1974. From the language of Section 25 of the Act itself it is quite clear that the power given by the said section to the Government in its ambit covers the amount which is still payable to the tenderer and it is open to the Government to issue a general or special order determining the mode of the payment of this amount which has not been paid to the tenderer, but is still payable. The order issued by the Government dated 28th December 1974 in its effect does not touch the amount which is already paid to the tenderer, namely, 30 per cent advance price which was paid to the tenderer under the scheme then existing. The said order does not seek to set at naught the transaction of sale or the amount already paid. The sale transaction remains intact and unaffected and so does the 30 per cent amount already paid. It is only the amount which is still payable that is affected. The total price payable is also not affected. The order operates prospectively on the amount which is still payable. In this view of the matter, in our opinion, there is no substance in the contention raised on behalf of the petitioners that the order issued by the Government dated 28th December 1974 is retrospective in its operation.

12. It was faintly argued by Shri Manohar that the provisions of Ss.25, 26 and 27 of the Act are contrary to the basic object and the policy behind the legislation.

13. As observed by the Supreme Court in Municipal Committee. Amritsar v. The State of Punjab, (AIR 1969 SC 1100) :

"The Courts in India have no authority to declare a statute invalid on the ground that it violates the "due or process of law." Under our Constitution, the test of due process of law cannot be applied to the statutes enacted by the Parliament or the State legislatures. This Court has definitely ruled that the doctrine of "due process of law" has no place in our constitutional system : A.K. Gopalan v. The State of Madras, 1950 SCR 88 = (AIR 1950 SC 27), Kania, C. J. observed (at p. 120 of SCR) = (at p. 42 of AIR);

"There is considerable authority for the statement that the Courts are not at liberty to declare an Act void because in their opinion it is opposed to a spirit supposed to pervade the Constitution but not expressed in words \* \* \* \* 'it is only in express constitutional provisions limiting legislative power and controlling the temporary will of a majority by a permanent and paramount law settled by the deliberate wisdom of the nation that one can find a safe and solid ground for the authority of Courts of Justice to declare void any legislative enactment.'"

The Court in construing and interpreting the provisions of the enactment has to ascertain the meaning and intention of legislature from the language used in the Statute itself and it is not concerned with the motive' of the legislature. As observed by the Supreme Court in A.C. Sharma v. Delhi Administration, AIR 1973 SC 913 (cit supra) :

"Statement of Objects and Reasons for introducing a Bill in the Legislature is not admissible as an aid to the construction of the statute as enacted: for less can it control the meaning of the actual words used in the Act. It can only be referred to for the limited purpose of ascertaining the circumstances which actuated the sponsor of the Bill to introduce it and the purpose for doing so. The preamble of a statute which is often described as a key to the understanding of it may legitimately be consulted to solve an ambiguity or to ascertain and fix the meaning of words in their context which otherwise bear more meanings than one. It may afford useful assistance as to what the statute intends to reach, but if the enactment is clear and unambiguous in itself then no preamble can vary its meaning. While construing a statute one has also to bear in mind the presumption that the legislature does not intend to make any substantial alteration in the existing law beyond what it expressly declares or beyond the immediate scope and object of the statute."

Further, in our opinion, it cannot be said that the present Ordinance is beyond the scope of or is contrary to the object of the Legislation. It is no doubt true that there is some substance in the grievance made by the petitioners that the 30% of the advance price which is being paid to them is not enough to meet the expenses which they are required to incur for the purpose of agriculture as well as their household expenditure. But the Policies of the Government which are expressed in the shape of legislation are to be considered by the members of the legislature and not by the Courts of law. A Statute cannot be challenged on the ground that it is the result of some alleged wrong policy of the Government. We are not aware of any authority which has laid down that a provision of a statute can be struck dawn on the ground that the policy behind the enactment is either wrong or hostile. As already observed a provision of statute can be declared as unconstitutional and void by the Courts of law if it is beyond the competence of legislature or if it contravenes any of the provisions of the Constitution. In this view of the

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matter, it is not possible for us to accept this contention also.

14. These were the only contentions argued before us.

15. In the result, therefore, both the petitions fail and are dismissed. However, in the circumstances of the case there will be no order as to costs.

Petitions dismissed.

AIR 1974 BOMBAY 68 (V. 61, C. 19) "Mir Islam Ali v. Panchayat Samiti, Telhara"

BOMBAY HIGH COURT

(AT NAGPUR)

Coram : 2 PADHYE AND DHARMADHIKARI, JJ. ( Division Bench )

Mir Islam Ali, Petitioner v. Panchayat Samiti, Telhara and others, Respondents.

Special Civil Appln. No. 489 of 1973, D/- 31 -7 -1973.

(A) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964) (1963), S.15(1), Proviso and S.18 - AGRICULTURAL PRODUCE - PANCHAYAT - Elected representative of Panchayat Samiti on Market Committee - His representation could be cancelled by the Panchayat Samiti before expiry of his term of office.

The words "shall hold office so long as they continue to be such representatives" used in proviso to Section 15(1) of the Act clearly connote that during the term of office of members of a market committee, such person who is a member by virtue of his being a representative of a local authority which includes a Panchayat Samiti, can be discontinued as such representative by cancellation of his earlier representation by the Panchayat Samiti which had earlier elected him or by the Panchayat Samiti which was subsequently formed after fresh elect ions. The word "otherwise" in Section 18 would take in, such a case. Where the newly formed Panchayat Samiti passed a resolution by majority cancelling representation of the petitioner, he could not continue to be a member of market committee though three years have not yet expired. (Paras 11 and 12)

(B) Maharashtra Agricultural Produce Marketing (Regulation) Rules (1967), R.89 - AGRICULTURAL PRODUCE - PANCHAYAT - Applicability - Cancellation of representation of Panchayat Samiti on Market Committee in exercise of power under proviso to S.15(1) of the Act - R.89 has no application. (Para 13)

(C) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.18 - AGRICULTURAL PRODUCE - Information about vacancy - Failure to give - Effect.

Whenever, information regarding the vacancy is given to the Director as contemplated by Section 18, by necessary implication it casts an obligation upon him to apply his mind and to decide and determine dispute if the said occurrence of vacancy is challenged before him. Where the petitioner who was a representative of Panchayat Samiti on market committee and was also the Chairman of the market committee without informing the Director of the cancellation of the petitioner's representation filed a writ petition challenging the jurisdiction of the Panchayat Samiti to cancel his representation, it was held that the petitioner could not contend that unless such an intimation was given it was not open for market committee to proceed further in the matter. Case law referred. (Paras 15, 16)

S.N. Paunikar and B.P. Jaiswal, for Petitioner : R.B. Agrawal, S.N. and N.S. Khardekar, (for No. 1) and M.B. Mor, Asstt. Govt. Pleader (for Nos. 2 and 3), for Respondents.

Judgement

PADHYE, J. :- This petition seeks the quashing of the resolution of the respondent No. 1. Annexure 4 and the orders of the respondent No. 2 at Annexures 5 and 7. It also seeks a writ of prohibition prohibiting the respondents 2 and 3 from issuing any directions which will have the effect of disturbing the status quo of the petitioner. The grievance of the petitioner arises in this way.

2. The petitioner Mir Islamali was an elected member of the Panchayat Samiti. Telhara from Hiwarkhed Panchayats Electoral College for a term of 5 years having been elected in the year 1967. After the establishment of a market committee for the market area of Telhara Block within the jurisdiction of the Panchayat Samiti. Telhara, a representative of the Panchayat Samiti. within the area of the market committee had to be sent to the market committee. The Panchayat Samiti, Telhara being within its jurisdiction, the Panchayat Samiti, Telhara decided to send the petitioner as its representative to the market committee. Telhara and accordingly the petitioner was elected as its representative. The name of the petitioner was duly published in the Official Gazette dated 19-1-1972.

3. After the petitioner was sent to the market committee Telhara as an elected representative of the Telhara Panchayat Samiti the election of the Chairman of-the Market Committee was held and in that election which was held on 21-4-1972, the petitioner was elected as a Chairman of the Market Committee, Telhara his being the only name proposed. The petitioner thereafter continued to be the Chairman of the Telhara Market Committee and was functioning as such. The petitioner in the ordinary course would have continued as the

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Chairman of the Telhara Market Committee till 20-4-1975 by virtue of the provisions of Sec. 14(3) of the Agricultural Produce Marketing (Regulation) Act, 1963, hereinafter called the Marketing Act.

4. However In the months of July and August 1972, elections of the new members of the Panchayat Samiti, Telhara were held. The petitioner contested the said election and was elected as a member of the Panchayat Samiti. The results were declared on or about 2-8-1972. The petitioner even thereafter continued to be the member and Chairman of the Market Committee, Telhara.

5. It, however, appears that a member of the newly elected body of the Panchayat Samiti. Telhara, tabled resolution to the effect that an elected representative of the Panchayat Samiti should be sent to the Market Committee in place of the sitting member Mir Islamali, i.e. the petitioner. The resolution was accordingly passed on 25-1-1973 to the effect that the representation of Mir Islamali is cancelled and in his place the Chairman of the Panchayat Samiti. Telhara Sahado Narayan Boplate be sent as member on the Telhara Agricultural Produce Market Committee. The Collector by his memorandum dated 12th February, 1973 intimated the Chairman of the Panchayat Samiti that since a new Panchayat Samiti had been reconstituted on 12-8-1972 the petitioner Mir Islamali could not continue to function on the market committee as member after that date. The Chairman was, therefore, directed by this memorandum to intimate the name of the Chairman or the elected representative of the Panchayat Samiti who should be notified for this purpose under Section 14(4) of the Marketing Act. It appears that there was a further memorandum by the Collector on 7th March 1973 in continuation of his earlier memorandum dated 12th February 1973 informing that the question about the nomination of a member of the Panchayat Samiti on the market committee was referred to the Government for final orders. It is the aforesaid resolution and these two memos of the Collector that have been challenged in the present petition.

6. The petitioner contends that he was elected as a representative of the Panchayat Samiti, Telhara to represent the Panchayat Samiti as a member of the Market Committee, Telhara. The term of the office of a member being 3 years from the date of its first meeting, which was held on 21-4-1972, the petitioner was entitled to continue as a member on the market committee till 20-4-1975 and that his representation could not be cancelled during the period of this term.

7. Section 13 of the Marketing Act provides for the constitution of market committees. The Market Committee after the amendment by Maharashtra Act No. 32 of 1970 consists of 18 members out of whom as provided in Section 13(1)(d) one is to be either the Chairman of the Panchayat Samiti within the jurisdiction of which the market area or the major portion thereof is situated of the representative elected by such Panchayat Samiti. Under Section 14(3) the members of a market committee, not being a committee constituted for the first time, is to hold office for a period of 3 years, This Market Committee of which the petitioner was elected a Chairman was not a committee constituted for the first time and, therefore, the petitioner who became a member of the market committee and was elected representative of the Panchayat Samiti could hold office for a period of 3 years, unless for any reason he ceases to be such a member. The petitioner contends that as his term as a member of the market committee is for a period of 3 years, his representation by the Panchayat Samiti could not be cancelled during that period. Of course, if he was disqualified or removed for good reasons as provided under the Act and the Rules, the matter would be different, but so far as the Panchayat Samiti which sent him as its elected representative of the market committee is concerned, his representation could not be cancelled.

8. The respondents, and particularly the respondent No. 1 contend that the petitioner having been elected as a representative by the Panchayat Samiti which has since ceased to function, his representation will not continue after the said Panchayat Samiti ceased to function and the New Panchayat Samiti consisting of the newly elected members would have a right to send its own representative on the market committee. It is, therefore, contended by the respondent No. 1 that the new Panchayat Samiti was authorised to cancel the representation of the petitioner and either the Chairman of the Panchayat Samiti or another representative elected by the new Panchayat Samiti could take his place.

9. The question, therefore, that falls for consideration is whether the new body of the Panchayat Samiti was within its powers in cancelling the representation of the petitioner as the member of the market committee. The term of the Panchayat Samiti is co-extensive with the term of the Zilla Parishad. The Panchayat Samiti, however is not a body corporate with perpetual succession and common seal as the Zilla Parishad is A Zilla Parished is a continuous body and does not cease to be a corporate body and

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there is a continuity in its life as well as functioning. The councillors of a Zilla Parishad hold office till the time the new councillors take over and thus there is no disruption or hindrance in the continuance of the Zilla Parishad. That cannot be said of a Pam naval Samiti which is not a body corporate having perpetual succession though its term of office is coextensive with that of a Zilla Parishad. Since after every new election it is a fresh body that come into existence it could be said to be independent of the obvious body. We are considering here a case when there is only one Panchayat Samiti i.e. the Telhara Panchayat Samiti, which is functioning within the area of the Telhara Agricultural Produce Market Committee.

10. It is true that the term of office of a member of the market committee is for a period of 3 years from the date of its first meeting, but that term is not inflexible and in certain circumstances that term can be cut short For example, a vacancy in the office of a member may be caused by resignation death or removal as provided in Sections 16, 17 and 18 of the Marketing Act. The vacancy could also be caused if the member incurs disqualification as in Rule 41 of the Maharashtra Agricultural Produce1 Marketing (Regulations) Rule 1967 read with Rule 89 of the said Rules. Apart from that, the proviso to Section 15(1) of the Marketing Act itself shows that though ordinarily the term of office of a member of a market committee is for a period of 3 years, that term can be cut short if he causes to continue to be a representative so far as the Co-operative Society or a local authority is concerned and in the case of persons who art licensees if those persons cease to be holders of their licences. A 'local authority' as defined by Section 2(1)(g) of the Marketing Act includes a Panchayat Samiti Thus the Panchayat Samiti is a local authority. The proviso to Section 15(1) of the Marketing Act clearly envisages a situation where a representative sent on the market committee by a Panchayat Samiti ceases to continue to be such representative and if he ceased to continue to be such representative then necessarily the term of office of that person as a member of the market committee in the capacity as a representative of the Panchayat Samiti must necessarily be cut short and ceases to have effect as soon as he ceases to be a representative of the Panchayat Samiti. It is not therefore, correct to say that once a person has been sent by a Panchayat Samiti as its elected representative on the market committee, he must continue as a member of the market committee for a full term of 3 years. If this contention were to be accepted, then the proviso to Section 15(1) will be meaningless and can never be given effect to. The proviso contemplate.1 a situation where the elected representative of the Panchayat Samiti even done the term of the market committee can cease to be a representative of that Panchayat Samiti. It, therefore, follows that on such representative ceasing to be a representative, a fresh representative can be sent by the Panchayat Samiti as a member on the market committee.

11. S. 18 of the Marketing Act deals with casual vacancies. The casual vacancies may occur on account of death or on account of resignation as provided by Section 16. removal as provided by Section 17 or his becoming incapable of acting as such having been disabled physically or mentally. The casual vacancy may also occur otherwise than in the aforesaid contingencies The word 'otherwise' used in Section 18 would take in a case of ibis kind where a new Panchayat Samiti comes into existence in place of the old one. by which a representative was elected or where the same Panchayat Samiti which elected a representative or, a new Panchayat Samiti cancels the representation which was made earlier. The words "shall hold office so done only as they continue to be such representatives used in the proviso to Section 15(1) clearly connote that during the term of office of the members of a market committee such person who is a member by virtue of his being a representative of all local authority which includes a Panchayat Samiti can he discontinued as such, representative Such a continuance (sic) of the representation can be by cancelling his earlier representation by the Panchayat Samiti which had earlier elected him or by the Panchayat Samiti which was subsequently formed after fresh elections.

12. In the instant case, the newly formed Panchayat Samiti passed a resolution by majority of votes expressly cancelling the representation of the petitioner and. therefore, on the passing of such a resolution the petitioner ceased to be an elected representative of the Panchayat Samiti, Telhara on the market committee of Telhara and as such would not continue to be a member of the Telhara Market Committee.

13. It was contended on behalf of the petitioner that the petitioner was not given any opportunity by the Collector of being heard before his representation was cancelled or before it was declared that he discontinued to be a member of the market committee Reference was made to Rule 89 of the Rules. It refers to a declaration of disqualification of member of the Market Committee by the Collector.

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This declaration is to be made in the cases mentioned therein. Such a declaration can be made if the member was subject to any of the disqualifications mentioned In Rule 41 at the date of his lection or nomination, or if he has incurred any of the disqualifications mentioned in Rule 41 after his election or nomination or he has ceased to be an agriculturist or has ceased to represent a firm, corporate body or a co-operative marketing or processing society. This rule has no application to a case of this kind. This is not a case of disqualification under Rule 41, nor is the Panchayat Samiti a corporate body and, therefore. Rule 89 could not be invoked. The power is to be found in the proviso to S. 15(1) itself. That power could be exercised by the Panchayat Samiti at any time. It could be exercised not only by the Panchayat Samiti which elected the petitioner as its representative on the market committee, but also by the Panchayat Samiti which was formed subsequently.

14. It was then contended by the petitioner that if this case is covered by the provisions of Section 18 of the Marketing Act, it was for the Chairman of the Market Committee to communicate the occurrence of the vacancy to the Director and after such a communication the vacancy should have been filled in as soon as convenient by process of fresh election of the representative of the Panchayat Samiti on the Market Committee. It was urged that such a procedure has not been followed in this case and, therefore, the action of the Panchayat Samiti is illegal.

15. We have already held that the term 'otherwise' used in Section 18 of the Marketing Act would cover a case of this kind. Therefore, normally it was necessary that the information in this behalf should have been given to the Director, and thereafter the vacancy should have been filled in as soon as conveniently as per the provisions of Section 13(1)(d). On the basis of the provisions of Section 18 it was contended by the respondents that it was for the Director to decide and determine the matter Involved in this writ petition and on this count the present petition is not maintainable. From the provisions of S. 18 of the Act it is quite clear that the legislature in its wisdom has chosen a high officer to whom to give information regarding the occurrence of vacancy. Giving such an information is not a mere formality, nor us the said officer expected to act as mere post office. A perusal of Section 18 will show that after the communication of the occurrence of the vacancy the vacancy is required to be filled In Boon as possible. The term 'vacancy' used. In this context must mean a lawful and valid vacancy in the office and that such a vacancy is brought about by any one of several modes to which a reference is made in Section 18 of the Act. If the power to fill in the vacancy is made dependent on its having occurred, in our opinion, it is implicit that the Director or the person upon whom the power of the Director are conferred should be satisfied that in fact and in taw a vacancy has occurred in the office. The provisions of Section 18 themselves postulate that the authority to whom the intimation of vacancy is required to be given by the Chairman is impliedly invested with the power to determine whether the intimation given is in respect of a vacancy having been legally and validly occurred. In choosing a high officer of the rank of Director to whom an intimation about occurrence of vacancy has to be given, in our opinion, the legislature by necessary implication must have intended to vest him with all the necessary implied power to determine the said question, if a dispute is raised challenging the very occurrence of the vacancy or its legality. The Maharashtra Agricultural Produce Marketing (Regulation) Act. 1963 is a complete Code in itself and in our opinion the legislature has taken care to make the said Act self-contained and has provided for the remedies for most of the contigencies so as to ensure smooth working of the market committee. Therefore, whenever information regarding the vacancy is given to the Director as contemplated by Section 18 of the Act, by necessary implication it casts an obligation upon him to apply his mind and to decide and determine the dispute if the said occurrence of the vacancy is challenged before him. Dealing with somewhat identical provisions under the Bombay Panchayats Act and the Maharashtra Municipalities Act, 1965, this Court has taken the similar view in Ramkrishna v. Secy Village Panchayat Borjai, 1966 Man LJ 937 : (AIR 1967 Bom 334) and Smt. Gangabai v. President, Municipal Committee. Tumsar, 1969 Mah LJ 654 : (AIR 1970 Bom 170).

16. However, in this particular case the petitioner himself is the Chairman of the Market Committee and it could not be expected of him that he will give an intimation to the Director about the vacancy which has occurred relating to his own office which is borne out by the very writ petition which he has filed. The petitioner has not disputed the validity of the resolution passed by the Panchayat Samiti cancelling his representation on the ground that the meeting in which it was passed was either invalid, or the procedure required under the Act has not been followed while passing the said resolution. The action of the Panchayat

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Samiti is challenged in this writ petition on the only ground that the Panchayat Samiti had no jurisdiction or authority to pass such a resolution in view of the provisions of the Marketing Act, which challenge we have already negatived. The petitioner cannot be allowed to take advantage of his own wrong in not giving the due intimation of the occurrence of the vacancy to the Director and then contend that unless such an intimation was given it was not open for the market committee to proceed further in the matter, and therefore, in our opinion, there is no substance in the contention raised by the petitioner.

17. In view of this, the petitioner could not, after the resolution of the Panchayat Samiti cancelling his representation, continue as a member on the market committee. Telhara, representing the Panchayat Samiti, Telhara. The cancellation of the representation of the petitioner being in order, the petitioner is not entitled to any of the reliefs claimed by him.

18. The petition, therefore, Jails and is dismissed with costs.

Petition dismissed.

AIR 1974 BOMBAY 128 (V. 61, C. 38) "Z.P. Bhandara v. Agrl P. Market Committee"

BOMBAY HIGH COURT

(AT NAGPUR)

Coram : 2 PADHYE AND DHARMADHIKARI, JJ. ( Division Bench )

Zilla Parishad, Bhandara, Petitioner v. Agricultural Produce Market Committee, Tirora and others, Respondents.

Special Civil Appln. No. 288 of 1972, D/- 27 -6 -1973.

(A) C.P. and Berar Agricultural Produce Market Act (19 of 1935), S.3, S.4 - AGRICULTURAL PRODUCE - Notifications under - Legality - Challenged after a lapse of several years - Not permissible.

Can a Zilla Parishad challenge the legality of the notifications published several years before under Act (19 of 1935) ? No.

The Zilla Parishad was well aware of the publication of the notifications. The enactment of the new Act (20 of 1964) does not give a new cause of action to the Zilla Parishad to challenge the old notifications. Laches and absence of an attempt to explain the delay are circumstances enough not to permit the Zilla Parishad to challenge the legality of the said notifications. (Para 1)

(B) C.P. and Berar Agricultural Produce Market Act (19 of 1935), S.3 and S.4 - AGRICULTURAL PRODUCE - REPEAL AND SAVINGS - Repealed - Notifications published under deemed as if published under Act (20 of 1964).

Where notifications under Ss.3 and 4 of Act (19 of 1935) were published and the Act was repealed, can subsequent notifications for the same cause be published under repealing Act (20 of 1964) ? Yes.

S.64(2) of the Act (20 of 1964) is in the nature of a saying clause. By this deeming provision the declarations made under the repealed Act are treated as if made under the new Act. The market area which was already declared under the repealed Act was, therefore, available even for the purposes of extension under the New Act. The authorities were competent to issue notifications under Sections 3 and 4 of the new Act extending the areas or establishing the market. (Para 3)

(C) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964) (1963), S.3, S.4 - AGRICULTURAL PRODUCE - Objections invited under - Enquiry - Necessity.

Where the Zilla Parishad filed a written objection and where no enquiry was held or no personal hearing was given, can the final notification published be held to be illegal ? No.

Where the written objection filed by the Zilla Parishad was duly considered, merely because an enquiry was not held or a personal hearing was not given to the Zilla Parishad does not render the notification illegal. Section 4(1) contemplates that the State Government 'may' if it considers necessary, hold an enquiry. The use of the word 'may' clearly indicates that it is not obligatory on the State Government to hold an enquiry. (Para 7)

(D) Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964)(1963), S.2(1)(a) - AGRICULTURAL PRODUCE - WORDS AND PHRASES - LEGISLATURE - Enlargement of definition of "agricultural produce" - Intra vires State Legislature.

The items included in the definition are not unconnected or foreign to the regulation of the agricultural produce marketing. In pith and substance it is a legislation meant for regulation of marketing of agricultural and some other produce. If the State Legislature has power to legislate on the subject, it is also competent to have its own dictionary by defining a phrase or term used in the Act. The definition of the words "agricultural produce" is not ultra vires of the legislative powers of the State Legislature. (Para 9)

J.N. Chandurkar, for Petitioner; V.A. Masodkar and M.P.M. Pillai (for No. 1) and M.M. Qazi. Addl. Govt. Pleader (for Nos. 2 to 4), for Respondents.

Judgement

DHARMADHIKARI, J. :- The petitioner, Zilla Parishad, Bhandara, constituted under Section 8 of the Maharashtra Zilla Parishad and Panchayat Samitis Act 1961, has filed this writ petition challenging the notifications issued by the Director of Agricultural Marketing and Rural Finance, Maharashtra State Poona-1, dated 15-10-1970 and 15-11-1971 issued under Sections 3 and 4 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (Act No. XX of 1964) hereinafter referred to as the Act. Under the Central Provinces and Berar Agricultural Produce Market Act, 1935 (Act No. XXIX of 1935), hereinafter

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of 1935, a notification under Section 3 was issued by the Commissioner, Nagpur Division, Nagpur, dated 10-10-61 declaring the grain market at Tirora, in Gondia tahsil of Bhandara district to be a market for sale and purchase of agricultural produce and laying down the limits of the said market, which was to include the area described as a market yard, the market proper and the market approaches as specified in the said notification. It is not disputed before us that the respondent Agricultural Produce Market Committee was carrying out its business in this grain market after the said notification was issued by the Commissioner. After coming into force of the Act No. XX of 1964 a notification under Section 3 of the said Act was issued by the Director of Agricultural Marketing and Rural Finance, Maharashtra State dated 16-10-1970. By this notification it was proposed to extend the said area so as to include in it all the villages in the area of Tirora Panchayat Samiti and to regulate the marketing of various agricultural produce referred to in the said notification. The objections or suggestions in this behalf were also invited within a period of one month from the date of publication of the notification in the Maharashtra Government Gazette. The said notification was published in the Government Gazette on 12-11-1970. It is contended by the petitioner that the petitioner had objected to the said notification issued by the Director under Section 3 of the Act. After considering all the objections raised, a final notification under Section 4 of the said Act was issued by the Government, vide notification dated 15-11-1971 declaring that with effect from the date of the publication of the said notification in the Maharashtra Government gazette the marketing of the agricultural commodities as mentioned in the said notification and in the area referred to therein was to be regulated. These two notifications have been challenged by the petitioner Zilla Parishad in the present writ petition. The Zilla Parishad has also challenged the notification issued by the Commissioner dated 10-10-1961 in exercise of the powers conferred upon him by Sub-Section (1) of Section 3 of the Act of 1935 and a subsequent notification dated 10-2-1962 issued by the Commissioner in exercise of the powers conferred by Section 16 of the said Act upon him. According to the petitioner, these two notifications issued under the Act of 1935 were illegal, and therefore, the subsequent notifications under Act No. XX of 1964, which are based on the notification issued under the repealed Act are consequently illegal and are liable to be quashed and set aside. The notification issued under Sections 3 and 4 of the Act No. XX of 1964 are also challenged on the ground that though Zilla Parishad has raised specific objections to the notification issued under Section 3 of the Act, the said objections were not considered by the Director before issuing the notifications under Sub-Section. (3) of Section 4 of the Act. So far as the challenge to the notifications dated 10-10-1961 and 10-2-1962 issued under the provisions of the Act of 1935 is concerned, we have not allowed the learned counsel for the petitioner to challenge the said notifications in this writ petition after a lapse of several years. The said notifications have been challenged by the Zilla Parishad in this writ petition after inordinate delay, which is not even sought to be explained in this petition. The Zilla Parishad is a creation of a Statute, and therefore, is a statutory body. The Agricultural produce Market Committee is also a creation of a Statute, and therefore, is a statutory body. The Zilla Parishad was well aware of the notifications issued under the earlier Act of 1935 in the year 1961 and 1962 itself. The enactment of the new Act, namely, the Act No. XX of 1964 has not given any new cause of action to the petitioner to challenge the said old notifications. This long delay laches and the absence of an attempt to explain the delay, are, in our view, the circumstances enough not to permit the petitioner Zilla Parishad to challenge the said notifications after the lapse of several years in this writ petition. Therefore, we have not permitted the learned counsel for the petitioner to challenge the said notifications dated 10-10-1961 and 10-2-1962 in this writ petition.

2. While challenging the notifications issued under Sections 3 and 4 of the Act No. XX of 1964 it is contended by Shri. Chandurkar, the learned counsel for the petitioner, that assuming that the notifications issued under the Act of 1935 were good notifications, the said notifications constituted market area specified there in the notifications themselves. It is no doubt true that under Section 64(2) of the Act No. XX of 1964 the area or place declared to be a market area or any place or market declared to be a market under the enactment so repealed on the commencement of the new Act, shall be deemed to be a market declared under this Act, still it cannot be said that the market existing prior to coming into force of the Act No. XX of 1964 was a market established under the new Act. This being the position, according to Shri Chandurkar, as there was no market established under the new Act the question of extension

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does not arise, and therefore, the notification issued under Sections 3 and 4 of the new Act are illegal. It is not possible for us to accept this contention of Shri Chandurkar.

3. It cannot be disputed that under the old Act a market or a market area was constituted and established. By Section 64(1) of the Act No. XX of 1964 the Act of 1935 has been repealed, but Sub-Section (2) of Section 64, which is in the nature of the saving clause, the market and the market area as well as the place declared under the enactment to repealed on the commencement of the new Act is deemed to be the market area or the market declared under this Act. By this deeming provision the declarations made under the repealed Act have been treated to be the declarations as if they are issued under the new Act. This legal fiction will have to be carried out to its logical conclusion. Therefore, by virtue of this saving clause it will have to be held that the declarations made under the Act of 1935 by notifications dated 10-10-1961 and 10-2-1962 establishing the market will be the market declared under the provisions of the Act No. XX of 1964 for all purposes. This being the position in law, in our opinion, it was competent for the Director of Agricultural Marketing and Rural Finance to issue notifications under Sections 3 and 4 of the new Act extending the areas or establishing the market under the new Act itself. The market area which was already declared under the repealed Act was, therefore, available even for the purpose of extension under the new Act, because the said market is deemed to have been declared under the Act No. XX of 1964 itself. In this view of the matter, in our opinion, there is no substance in this contention raised by Shri Chandurkar.

4. It was then contended by Shri Chandurkar that by the notification issued under Section 3 of the Act by the Director of Agricultural Marketing and Rural Finance the objections were invited within a period of one month from the date of publication of the notification in the Maharashtra Government Gazette. As already stated, the said notification was published in the Government gazette dated 12-11-1970. According to Shri Chandurkar, in pursuance of this notification inviting objections, the petitioner Zilla Parishad had raised objections vide Annexure-IV. It was not possible for us to ascertain the date of the said objections, but it seems that the said objections were raised well within time, namely, within a period of one month from the date of the publication of the notification under Section 3 of the Act No. XX of 1964. According to Shri Chandurkar, though the notification dated 15-11-1971 issued under Section 4 of the Act specifically refers that the suggestions and/or objections received in response to that notification during the prescribed period have been considered before issuing the notification under Section 4, in fact the objections raised by the Zilla Parishad were not considered. It is not possible for us to accept this contention of Shri Chandurkar also.

5. Apart from the fact that the notification issued under Section 4 of the Act dated 15-11-1971 specifically makes a reference that all the suggestions and objections received in response to the notification issued under Section 3 of the Act during the prescribed period were duly considered by the authorities before issuing the notifications under Section 4, in the return filed before us on behalf of the respondents Nos. 2 to 4, namely, the Commissioner, Nagpur Division, Nagpur, the Director of Agricultural Marketing and Rural Finance, Maharashtra State, Poona-1 and the State of Maharashtra, it is specifically averred that while taking the decision on the issue of final notification under Section 4(1) of the Act all the pros and cons of the objections raised by the Zilla Parishad in the matter were considered and it was thought that since the Zilla Parishad, Bhandara, has raised the objections merely on the grounds of its affected income position and depletion of its monetary resources, it was thought that the same should not be allowed to block the way of regulation of the cattle market which by itself, ensures fair dealing and all the open market facilities for the buyers and the sellers. In view of this categorical statement made in the return it is quite clear that the objection raised by the Zilla Parishad was duly considered by the authorities before issuing the notifications under Section 4 of the Act.

6. However, it was contended by Shri Chandurkar that the petitioner Zilla Parishad was not given any opportunity of being heard before the said objection was decided by the authorities. For this purpose Shri Chandurkar has placed reliance upon the provisions of Section 4 of the Act. It will be useful at this stage to reproduce Sections 3 and 4 of the Act No. XX of 1964, which are as under :

"3.(1) The State Government may, by notification in the official gazette, declare its intention of regulating the marketing of such agricultural produce, in such area, as may be specified in the notification. The notification may also be published in the language of the area in any newspaper circulating therein, and shall also be published in such other

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manner as in the opinion of the State Government is best calculated to bring to the notice of persons in the area, the intention aforesaid.

(2) The notification shall state that any objections or suggestions which may be received by the State Government within a period of not less than one month from the date of the notification will be considered by the State Government.

4. (1) On the expiry of the period specified in the notification issued under Section 3, the State Government shall consider the objections and suggestions, if any, received before the expiry of such period and may, if it considers necessary hold an inquiry in the manner prescribed.

Thereafter, the State Government may, by another notification in the official Gazette declare that the marketing of the agricultural produce specified in the notification shall be regulated under this Act, in the area specified in the notification. The area so specified shall be the market area. A notification under this section may also be published in the language of the area in a newspaper circulating therein, and shall also be published in such other manner as in the opinion of the State Government is best calculated to bring to the notice of persons in the area the declaration aforesaid.

(2) On any declaration being made under Sub-Section (1) no local authority shall thereafter, notwithstanding anything contained in any law for the time being in force, establish, authorise or continue or allow to be established, authorised or continued any place in the market area for the marketing of the agricultural produce.

(3) Subject to the provisions of Section 3, the State Government may, at any time by notification in the official Gazette, exclude from a market area any area, or include therein an additional area, or may direct that the regulation of the marketing of any agricultural produce in any market area shall cease, or that the marketing of any agricultural produce (hitherto not regulated) shall be regulated in the market area."

Relying upon the provisions of Sub-Section (1) of Section 4 reproduced above, it was argued by Shri Chandurkar that it was necessary for the Director of Agricultural Marketing to hold an inquiry in the manner prescribed before issuing the final notification under Section 4 of the Act. It is not possible for us to accept this interpretation placed by Shri Chandurkar on the provisions of Sections 3 and 4 of the Act.

7. Sub-Section (2) of Section 3 of the Act No. XX of 1964 contemplates that a notification issued under Section 3 should state that any objections or suggestions which may be received by the State Government within a period of not less than one month from the date of the notification will be considered by the State Government. Then comes Sub-Section (1) of Section 4 which lays down that on the expiry of the period specified in the notification issued under Section 3, the State Government shall consider the objections and suggestions, if any, received before the expiry of such period and thereafter come the crucial words used in the said section, namely, "and may, if it considers necessary, hold an enquiry in the manner prescribed". The use of the word "may" in the said section clearly indicates that it is not obligatory upon the State Government to hold an enquiry in all cases. The holding of an enquiry is contemplated only in such cases where it is thought expedient by the State Government, or the State Government considers that such holding of an enquiry is necessary. In this particular case it cannot be said that any holding of such an enquiry was necessary or was considered necessary by the State Government. In this view of the matter, in our opinion, it cannot be said that only because an enquiry was not held or a personal hearing was not given to the Zilla Parishad the notification issued under Section 4 is illegal. The provisions of the Act only make it obligatory on the part of the Government or its delegate to consider the objections and the suggestions. For considering such objections and suggestions it is not necessary that a personal hearing should be given to the objector. Such hearing is not contemplated by the provisions of the Act or even under the general principles. In the present case the objection raised by the petitioner Zilla Parishad was in writing and the said objection was duly considered by the Director, and therefore, in our opinion. It cannot be said that there was any infirmity in the notification issued under Section 4 of the Act.

8. It was then contended by Shri Chandurkar that the Act No. XX of 1984 is so far as it enlarges the definition of agricultural produce vide Section 2(1)(a) including under its import the various categories, which are not agricultural produce, is ultra vires of the legislative powers regarding the regulation of markets for agricultural produce. It is contended by Shri Chandurkar that the Act has been enacted by the legislature for the purpose of regulating agricultural produce marketing. The word "agriculture", as normally used, will not include animal husbandry, forest etc. as specified in the definition itself, and therefore, the

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said definition in clause (a) of Section 2(1) of the Act is ultra vires of the legislative powers of the State Legislature. It is not possible for us to accept this contention of Shri Chandurkar also.

9. From the preamble of the Act it is quite clear that the present Act has been enacted by the State Legislature to regulate the marketing of agricultural and certain other produce in market area. Essentially the present legislation to a legislation meant for regulating the market. It is not disputed before us by Shri Chandurkar that the State legislature is competent to make laws with respect to the matters, namely market, agriculture, horticulture, animal husbandry, apiculture, pisciculture and forest etc. Once it is held or conceded that the State legislature has no power to legislate on the topic. In our opinion, it cannot be said that the State legislature has no power to lay down its own definitions regarding the various terms used in the Act. In most of the modern Acts of legislature there is an interpretation clause or a definition clause enacting that words or phrases when found in the Act are to be understood as regards that Act in a certain sense or are to include certain things which but for such definition clause they would not normally include. In other words, as a part of its legislative function legislature may enact law and define its meaning. Normally definitions in a Statute or enactment are provided in order to give some artificial meaning to words or phrases used in the Act. As a matter of fact, normally whenever a legislature wants to expand or restrict the normal connotation of the word, the said term is defined in the Act. Thus it is well within the competence of the State legislature to define any term or phrase by laying down its own definition which may in a given case be an artificial definition. In the present case by Section 2(1)(a) the legislature has d fined "agricultural produce" as under :

" 'Agricultural produce' means all produce' (whether processed or not) of agriculture, horticulture, animal husbandry, apiculture, pisciculture and forest specified in the Schedule".

Thereafter the various matters which are included in this definition have been specified in the Schedule attached to the Act. It is an artificial definition whereby the legislature has included all these matters in the compass of the phrase agricultural produce for the purposes of the Act. Moreover, it cannot be said that the items included in the definition are wholly unconnected or foreign to the regulation of the agricultural produce marketing. The items specified in the said definition are intimately connected with the agricultural marketing in this country. In pith and substance this is a legislation meant for regulation of marketing of agricultural and certain other produce. In this view of the matter, in our opinion, it cannot be said that the definition of the term "agricultural produce" as incorporated in Act No. XX of 1964 is ultra vires of the legislative powers of the State legislature. It has not been shown to us as to how it can said that the said definition is beyond the legislative competence of the State legislature, though an argument in that behalf is advanced. If the legislature has the power to legislate on the subject then it cannot be said that it was not competent for the legislature to have its own dictionary by defining the phrases or terms used in the Act. In this view of the matter, in our opinion, there is no substance in this contention of Shri Chandurkar.

10. It was then contended by Shri Chandurkar that Sub-Section (3) of Section 4 only contemplates extension of a market area or inclusion of an additional market area therein. In the present case it cannot be said that there is any extension of the market area or the marketing of the agricultural produce which was not hitherto regulated. According to Shri Chandurkar, the notification issued under Section 4 has failed to achieve its object. A specific stress was placed by him on the last portion of the said notification which is as under :

"Now, therefore, in exercise of the powers conferred under Sub-Section (3) of Section 4 of the Maharashtra Agricultural Produce Marketing (Regulation) Act 1963 (Maharashtra Act XX of 1964) read with Government notification Agriculture and Co-operation Department No. APM/1063-27543/C-1, dated the 15th September 1967, the Director of Agricultural Marketing, Maharashtra State, Poona hereby declares that, with effect from the date of publication of this notification in the Maharashtra Government Gazette the marketing of agricultural commodities as mentioned in the above paragraphs in the area referred to therein shall be regulated."

According to Shri Chandurkar, the words used in this notification will not mean that there is any extension of area or marketing of any agricultural produce as contemplated by Sub-Section (3) of Section 4 of the Act. It is not possible for us to accept this contention of Shri Chandurkar.

11. The said notification will have to be read as a whole. If the said notification is read as a whole, it is quite clear that by this, the marketing of the agricultural commodities as mentioned in the

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earlier paras, of the said notification and the area referred to in the earlier part of the said notification is contemplated to be regulated. Initially the respondent-Committee was operating within the market-yard as specified in the notification dated 10-10-1961 issued under the Act of 1935. By the subsequent notification issued under the Act of XX of 1964, either under Section 3 or under Section 4, the area of operation is extended and is to include all the villages in the area of Tirora Panchayat Samiti. The marketing of the agricultural produce which was not being regulated by the said Committee prior to coming into force of the said Act was also sought to be extended by including regulation of marketing of various agricultural produce specified in the said notification. In this view of the matter, in our opinion, it cannot be said that there is either no extension either in the area of the marketing of the agricultural produce as contemplated by Sub-Section (3) of Section 4 of the Act. In this view of the matter, in our opinion, there is no substance in this contention raised by Shri Chandurkar.

12. In the result therefore, the petition fails and is dismissed. However, in the circumstances of the case there will be no order as to costs.

Petition dismissed.

AIR 1974 BOMBAY 181 (V. 61, C. 46) "Yadaorao v. Agrl. Produce Market Committee"

BOMBAY HIGH COURT

(AT NAGPUR)

Coram : 2 CHANDURKAR AND NAIK, JJ. ( Division Bench )

Yadaorao Ramchandra Rao Majarkhede and others, Petitioners v. Agricultural Produce Market Committee, Arvi and others, Respondents.

Special Civil Appln. No. 566 of 1971, D/- 11 -7 -1973. (Application under Article 226 of the Constitution of India).

(A) Index Note :- Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.58 - AGRICULTURAL PRODUCE - DELEGATION OF POWER - Notification D/-16-09-1967 issued by State Government delegating its powers to the Director is not ultra vires the power of the State Government.

Brief Note :- (A) A review of the different provisions of the Act clearly indicates that virtually the duty and the function of implementing the Act is vested in the Director. It is difficult to comprehend that when the provision with regard to delegation of the powers of the State Government was to be made, the legislature intended that the only one person who, under the Act, is entrusted with several important powers and functions, was to be deliberately left out and that the legislature intended that the powers of the State Government were to be delegated only to person other than the Director. (Para 8)

The word 'other' in the context in which it is used in Section 58 must be held to be superfluous. It therefore cannot be said that the State Government was not competent to delegate its powers to the Director as was done by the notification, dated 16-09-1967. As such the notifications under Sections 3 and 4 of the Marketing Regulation Act could not be challenged on the ground that they were issued by the Director without authority of law. (Para 9)

(B) Index Note :- INTERPRETATION OF STATUTES - Interpretation of Statutes - Literal meaning raising anomaly - Literal meaning should not be given.

Brief Note :- (B) If the language is ambiguous and its literal sense gives rise to an anomaly or results in something which would defeat the purpose of the Act, it is permissible not to give a literal meaning to the language used by the legislature. AIR 1969 SC 513, Followed. (Para 9)

(C) Index Note :- Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.3 - AGRICULTURAL PRODUCE - BOOKS, NEWS PAPERS AND PRESS - Notification regulating marketing of any agricultural produce - Publication - Mode of - Failure to publish in (he newspaper does not vitiate the notification -

Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964), S.4(1), S.4(2)

Maharashtra Agricultural Produce Marketing (Regulation) Rules (1967), R.3, R.4 .

Brief Note :- (C) The object of the provisions regarding the publication in Sections 3 and 4 is that the notifications must come to the notice of the persons who are going to be affected thereby in the area in which the notifications were to be operative. Both Sections 3 and 4, while they make it obligatory on the State Government to publicise the notification, the manner of publication is left to the State Government. As contrasted with the provisions referring to the duty of the State Government of publicising the notification in such manner as it thinks best, the publication of the notification in the newspaper is not made obligatory. (Paras 10, 11)

The provisions of Rule 3 also cannot be construed as making the publication of notification in newspaper obligatory. If Sections 3 and 4 themselves do not make publication in a newspaper mandatory the rule cannot

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be construed as requiring something more to be done than what is provided in the section. (Para 11)

Cases Referred : Chronological Paras

AIR 1969 SC 513 : 1969 Lab IC 837, Sahadra (Delhi) Saharanpur Light Rly. Co. Ltd. v. S.S. Rly. Workers Union 6

AIR 1957 Bom 78 : 1957 Cri LJ 364, State v. N.A. Rahimbhoy 9

(1953) 1 QB 380 : 1953-1 All ER 390, R. v. Wimbledon Justices 6

(1909) 2 KB 24 : 78 LJKB 479 R. v. Ettridge 7

1897 AC 22 : 66 LJ Ch 35, Salomon v. A. Salomon and Co. Ltd. 6

(1889) 23 QBD 29 : 60 LT 860, R. v. Mansel Jones 6

(1887) 2 Ex 115 : 36 LJ Ex 97, Latham v. Lafone 6

(1879) 4 QBD 245, The Queen v. Bishop of Oxford 9

H.W. Dhabe and M.P.M. Pillai, for Petitioners; V.A. Masodkar (for No. 1) and M.B. Mor, Asst. Govt. Pleader (for Nos. 2 to 5), for Respondents.

Judgement

CHANDURKAR, J. :- This petition filed by the petitioners, who claim to be the agriculturists, is directed against the two notifications issued under Sections 3 and 4 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, hereinafter referred to as the Marketing Regulation Act, and as also against the action taken by the Collector, Wardha, for holding elections to all the Agricultural Produce Marketing Committees in Wardha District. Notification was issued by the Director of Agricultural Marketing and Rural Finance. Maharashtra State, on June 3, 1970, by which the Director declared his intention to extend the marketing area of the Agricultural Produce Market Committee, Arvi, in Arvi Tahsil of the Wardha District so as to include in its area all the villages covered in the area of Panchayat Samiti. Arvi, and Panchayat Samiti Karanja established under the Maharashtra Zilla Parishad and Panchayat Samities Act, 1961, and proper Arvi Town in Arvi Tahsil of Wardha District and to regulate the marketing of all the commodities mentioned in paragraph 2 of the said notification in the area so extended. Objections and suggestions, if any, were invited by the Director within a period of one month from the date of publication of the notification in the Government Gazette. Copies of these notifications were sent to the Manager, Government Printing Press, Nagpur, for being published in the next issue of the Maharashtra Government Gazette, the Chairman, Agricultural Produce Market Committee. Arvi, the Divisional Joint Registrar, Co-operative Societies, Nagpur, the Chief Executive Officer, Zilla Parishad, Wardha, the Regional Publicity Officer, Nagpur, the Municipal Council, Arvi, the Mamlatdar or the Block Development Officer, Arvi, as also the District Deputy Registrar, Co-operative Societies, Wardha, the District Agricultural Officer Wardha, and the Co-operation and Industries Officer, Zilla Parishad, Wardha, with a request that a wide publicity should be given to the notification by pasting it on the market yard and prominent places. It appears that no objections or suggestions were received to these notifications and, therefore, a notification under Sub-Section (3) of Section 4 of the Marketing Regulation Act was issued by the Director on 23-9-1970 relating to the Marketing of Agricultural Commodities as specified in the notification with effect from the date of the publication of the said notification. Copies of this notification were also sent to the persons and the authorities to whom the copies of the first notification were sent. While issuing this notification as also the first notification, the Director was acting in exercise of the powers which were delegated to him by the State Government in the exercise of its powers under Section 58 of the Marketing Regulation Act by notification No. APM/I063/27543-C-1, dated September 15, 1967, published in Part IV-B of the Maharashtra Government Gazette dated September 28, 1967. The Collector, Wardha, then fixed an election programme for election of all the Agricultural Produce Marketing Committees in the Wardha, District. There were, five Agricultural Produce Marketing Committees and in each of these there were three constituencies, viz., (1) Traders Constituency, (2) Village Panchayats Constituency and (3) Co-operative Societies Constituency. The programme of elections prepared by the Collector was that the last date for filing in the nominations was March 31, 1971. The publication of the list of nominations after scrutiny was to be made on April 5, 1971, the date of withdrawal was fixed as April 20, 1971; the date of publication of the final list of candidates was fixed as April 25, 1971; date of polling was fixed as May 3, 1971, the date of counting of votes was fixed as May 7, 1971 and the date of publication of the results was fixed as May 9, 1971. By a memorandum dated March 17, 1971, the date of the election was changed to May 5, 1971, but no change was made in the date of counting of votes or for declaration of the result.

2. The case of the petitioners in this petition is that the notification dated September 23, 1970, was issued without publishing the said notification in accordance with Rules 3 and 4 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967, hereinafter referred to as the Rules. A similar challenge to the notification under Section 3 of the Marketing Regulation Act is made by the petitioners. The petitioners claim that they had no notice at all of the publication of the notification under Sections 3 and 4 and these notifications were. therefore, illegal and ultra vires the provisions of the Rules and of Sections 3 and 4 of the Marketing Regulation Act. Another ground on which the petitioners challenged the two notifications issued by the Director

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was that the notifications have been issued by the Director to whom the State Government could not have delegated its power under the Act. They claimed that they were entitled, to contest the elections but could not do so because they had no knowledge of the notification as also of the programme of the elections fixed by the Collector.

3. It is not disputed in this petition either by the respondent No. 1, who is the Agricultural Produce Market Committee, Arvi, or by other respondents, viz., the Collector, the Director, the State of Maharashtra and the Returning Officer for elections that the notifications were not published in any newspaper. The Marketing Committee also admitted that the notifications were not published in the Panchayat Offices. The Marketing Committee, however, contested the right of the petitioners to stand for the election since, according to the Committee, the last date for filing the nomination forms had already expired. The real contest is between the petitioners and the other respondents. The other respondents have stated that the maximum publicity was given to the two notifications. It was alleged on the basis of the information received from the District Deputy Registrar, Co-operative Societies, Wardha, that the Marketing Committee and the Tahsildar concerned had pasted the notification in question on notice boards of the Marketing Committee and in the Chavadies in the villages in the area of operation and that the villagers in the villages concerned were also informed about the said notifications by beat of drums. In addition to this, according to the contesting respondents, pamphlets were printed and supplied to the Gram Panchayats concerned for the purpose of wide publicity. It was, therefore, denied that the notifications were not published as required by Rule 3. In their return the respondents have also alleged that since no suggestions or objections were received after the first notification dated June 3, 1970 was published, no further inquiry was required to be made and the notification under Section 4 has been validly issued. They controverted the allegation that the petitioners did not know of the election programme and, according to the contesting respondents, the petitioners could have easily noticed the election programme which was sent to the various officers such as the Marketing Committee. Arvi, Pulgaon, Block Development Officers. Panchayat Samiti, Arvi and Karanja and Tahsildar, Arvi, for publication by affixing the same on their notice boards and that the programme was accordingly published. It was also alleged that the programme was published by pasting it on the notice boards of various offices in Marathi language and that the publication was made in accordance with the Act and the Rules. It is also denied that the Director did not have power to issue notification under Sections 3 and 4 of the Marketing Regulation Act.

4. We shall first take up the contention of the learned Counsel for the petitioners that the notification dated September. 16, 1967 issued by the State Government delegating its powers to the Director is ultra vires the powers of the State Government, because under Section 58 of the Marketing Regulation Act, the power of the State Government could be delegated, not to the Director but only to any officer other than the Director. This, according to the learned Counsel, is the only construction possible on the provisions of Section 58 of the Act without doing violence to the language of Section 58. The notification, which is challenged is as follows :

"In exercise of the powers conferred by Section 58 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, (Man. XX of 1964), the Government of Maharashtra hereby delegates to the officers specified in column 1 of the Schedule appended hereto, the powers exercisable by the Government or as the case may be by the Director of Agricultural Marketing and Rural Finance, State of Maharashtra, under the said Act as specified against them in column 2 of the said Schedule."

Section 58, regarding the construction of which, much debate has taken place, reads as follows :-

"The State Government, by notification, in the Official Gazette, and subject to such conditions, if any, as it may think fit to impose, delegate all or any of the powers conferred upon it or on the Director to any other officer or person specified in the notification." (underlining is ours.)

It may be stated that by an Act No. 32 of 1970, which came into force on September 3, 1970, Section 58 was amended by substituting the words "upon it to the Director or any other officer or person; and delegate any powers of the Director, to any other officer or person specified in the notification," in place of the words underlined by us. The amended section now reads as follows :

"The State Government may, by notification in the Official Gazette, and subject to such conditions, if any, as it may think fit to impose, delegate all or any of the powers conferred upon it to the Director or any other officer or person; and delegate any powers of the Director, to any other officer or person, specified in the notification."

5. Section 2(f) of the Act defines the "Director" as meaning a person appointed as the Director of Agricultural Marketing and Rural Finance for the State of Maharashtra. Even in this definition an amendment was made by an Act No. 32 of 1970 by deleting the words "and Rural Finance". The amended definition now stands as meaning a person appointed as the Director of Agricultural Marketing for the State of Maharashtra.

6.Now, the contention of the learned Counsel for the petitioners is that the

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section as it was originally framed and which alone falls for consideration before us, must be read as a whole and if it is so read, the only construction which is possible is that the powers which are conferred upon the State Government can be delegated to an officer or a person specified in the notification but other than the Director. The contention is that the words "to any other officer or person" clearly indicate that the intention of the legislature as disclosed by the words used in Section 58 was that the power to delegate was to be exercised not in favour of the Director where the powers of the State Government were to be delegated but that they were to be delegated to an officer or person other than the Director, Mr. Dhabe relies on certain principles of construction of statutes to which a reference has been made by the Supreme Court in Shahadra (Delhi) Saharanpur Light Rly. Co. Ltd., v. S.S. Rly. Workers Union (AIR 1969 SC 513). In paragraph 6 of the judgement the Supreme Court has observed as follows :

"But the intention of the legislature, as observed by Lord Watson in Salomon v. A. Salomon and Co. Ltd., 1897 AC 22 at p. 28 "is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact." It is well settled that the meaning which words ought to be understood to bear is not to be ascertained by any process akin to speculation and the primary duty of the court is to find the natural meaning of the words used in the context in which they occur, that context including any other phrase in the Act which may throw light on the sense in which the makers of the Act used the words in dispute. In R. v. Wimbledon Justices, 1953-1 QB 380, Lord Goddard said; "Although in construing an Act of Parliament the Court must always try to give effect to the intention of the Act and must look not only at the remedy provided but also at the mischief aimed at, it cannot add words to a statute or read words into it which are not there..............." Similarly, in R. v. Mansel Jones, (1889) 23 QBD 29 Lord Coleridge said that it was the business of the courts to see what Parliament had said instead of reading into an Act what ought to have been said. So too, in Latham v. Lafone, (1887) 2 Ex 115 at p. 12t, Martin B. Said : "I think the proper rule for construing this statute is to adhere to its words strictly; and it is my strong belief that, by reasoning on long drawn inferences and remote consequences, the courts have pronounced many judgement affecting debts and actions in a manner that the persons who originated and prepared the Act never dreamed of". In the light of these principles we ought, therefore, to give a literal meaning to the language used by Parliament unless the language is ambiguous or its literal sense gives rise to an anomaly or results in something which would defeat the purpose of the Act."

Relying on these observations, it is contended that the grammatical and literal meaning should be given to the words "to any other officer or person" and if such literal meaning is given, the provision clearly contemplates that the powers under the Act conferred upon the State Government could be delegated to any officer or person other than the Director.

7. Now, while there is no doubt that the principles which are set out by the Supreme Court are well settled it is also well settled that if the language is ambiguous of its literal sense gives rise to an anomaly on results in something which would defeat the purpose of the Act, the statute is not required to be construed according to the literal meaning of the words as pointed out by the Supreme Court in the observations quoted above. We must ascertain from the provisions of Section 58 as to what was the object of enacting that provision. It is obvious that Section 58 was intended to provide for delegation of all or any of the powers conferred upon not only the State Government but also the Director. The intention to provide for delegation of powers of the State Government is manifest in the provisions of Section 58 of the Act. The question is whether this intention is achieved by construing the section by giving the words therein their literal meaning. Now, so far as the provision relating to delegation of all or any power conferred on the Director is concerned, the wording of Section 58 does not present any difficulty at all. As already pointed out above, the Director contemplated by Section 2(f) is an officer of the State Government and he is also defined as a person appointed as Director of Agricultural Marketing for the State of Maharashtra. It is clear that if the powers of the Director under the Act had to be delegated such powers could be delegated only to an officer or a person other than the Director himself. When the statute uses the words "to any other officer or person" with reference to the delegation of the powers of the Director the Officer off person contemplated thereby is an officer or person other than the Director. The use of the word "other" always indicates that what is contemplated is something different from and not the same as the one in question. Where, therefore, Section 58 uses the words "any other officer or person", the word "other" was used in order to indicate that the officer or person to whom the powers are to be delegated would be an officer or person other than the Director though the same, purpose could have been achieved even without using the word 'other'. So far as this part of the section is concerned, there is no difficulty in construing it according to the well established principles of giving the words a literal meaning and following a grammatical construction. We are, however, faced with some difficulty when it has to be found out whether these words could be similarly construed with reference to the delegation

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of the powers of the State Government as contemplated by Section 58. If the use of the word "other" contemplates that the officer or the person on whom the powers are to be conferred is an officer or person other than the officer or person earlier named, then such a construction would lead to mean that the State itself was an officer or a person. It is apparent on reading of Section 58 that the legislature could have made an independent provision enabling the State Government to delegate its powers without providing in the same provisions for the delegation of the powers of the State Government and the Director. It is not disputed before us that S.58 is a composite provision dealing with the delegation of powers of the State Government as also the powers which are conferred on the Director by the Act. If the section is read as enabling the State Government to delegate its powers in the manner as canvassed by the learned Counsel for the petitioners, the relevant part of the section will read as follows :

"The State Government may ............... delegate all or any powers conferred upon it .................. to any other officer or person specified in the notification".

If so read, the effect of the section will be that the State Government will have to be treated as an officer in contradistinction with 'other officer or person' to whom the powers are to be delegated. It cannot be disputed that the State Government cannot be equated with an officer or a person as it is an independent entity itself. If the State Government cannot be equated with an officer, which is the only result possible if the literal meaning of the word "other" is taken into account, then in our view, the words of the section do not give effect to the intention of the legislature. The result is that the very purpose for which Section 58 was enacted is frustrated because the provisions relating to delegation of its powers by the State cannot become effective because the State is neither an officer nor a person in which sense alone the word 'it' can be construed. A rational construction of the section can be achieved only if the use of word "other" is treated as superfluous. It is permissible to do violence to the words in a statute where applying the words of a statute literally would defeat the obvious intention of the legislation and produces an unreasonable result. Maxwell in his Interpretation of Statutes has observed in Chapter 10 as follows :-

"In determining either the general object of the legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord, with convenience, reason, justice and legal principles should, in all cases of doubtful significance, be presumed to be the true one. "An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available." Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction."

We may also refer to a decision of Darling, J., in Rex v. Ettridge, 1909-2 KB 24 at p. 28, in which while delivering the judgement of the Court of Appeal, the learned Judge observed :

"We are of opinion that we may in reading this statute reject words, transpose them, or even imply words if this be necessary to give effect to the intention and meaning of the Legislature, and this is to be ascertained from a careful consideration of the entire statute."

The question in that case turned on a construction of the powers of the Court of Appeal in Section 4 of the Criminal Appeal Act, 1907. Section 3 of the Act provided that "a person convicted on indictment may appeal under that Act to the Court of Criminal Appeal.........with the leave of the Court of Criminal Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law." Sub-section (3) of Section 4 of that Act provided as follows :

"On an appeal against the sentence the Court of Criminal Appeal shall, if they think that a different sentence ought to have been passed, quash the sentence passed at the trial and pass such other sentence warranted in law, by the verdict .........(underlining is ours) in substitution therefor as they think ought to have been passed and in any other case shall dismiss the appeal."

The appellant before the Court of Criminal Appeal was a person who had pleaded guilty and the argument there was that since the judgement of conviction was pronounced without any verdict and was in consequence of the plea of guilty, the Court had no power to substitute any other sentence for the on which was quashed. The argument on behalf of the prosecution there was that the words "by the verdict" may be rejected by the Court and the statute read as though they were not there. Darling, J., rejecting the contention of the accused, observed, as follows :

"It appears to us unreasonable to place the Court of Criminal Appeal in the position of having either to leave the sentence untouched or to release the guilty person unpunished. No reason for making such a difference between the treatment of a person convicted on his own confession and that of one convicted by a jury has been suggested to us, nor can we imagine one. If such difference were intended, it is nowhere affirmatively expressed, but is merely to be inferred from the presence in Section 4, Sub-Sec. (3), of the words "by the verdict". Why these words are there we may guess unprofitably but cannot certainly say. They are

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not necessary to enable the Court to pass a substituted sentence for one quashed where the appellant has been found guilty by a jury, and we cannot believe that they were deliberately inserted for the express purpose of disabling the Court or limiting its power on the consideration of an appeal against sentence by one who has pleaded guilty. Yet, were we to hold that these words "warranted in law by the verdict" do apply to a case in which sentence has "followed on a plea of guilty, we could give them no other effect. Where there has been a verdict these words are plainly superfluous.

Where (as in this case) there has been no verdict they cannot be read in any way which would not defeat what was plainly the intention of the Legislature."

The Court of Appeal thus held, ignoring those words, that even in a case where the appeal was by a person, who had pleaded guilty, after the sentence was quashed, the new sentence could be substituted.

8. The validity of the contention of the petitioners, therefore, ultimately turns on whether we can impute to the legislature the intention to make the delegation of the powers of the State Government impossible when the very purpose of the provision is to provide for such a delegation. The purpose and the intention with which Section 58 was framed, can clearly be achieved by leaving out of consideration the word other". It is difficult for us to accept the contention that the Legislature had intended that the State Government could delegate its powers to any other officer or person except the Director, as contended by the learned Counsel for the petitioners, which, according to him, is alone the proper construction possible after giving the words their literal meaning. We cannot forget that the various provisions in the Act indicate that the legislature contemplated that most of the important functions under the Act were to be performed by the Director. Under Section 2(2) of the Act, the Director has been empowered to decide whether a person is or is not an agriculturist for the purpose of the Act and his decision has been treated as final under the Act. Establishment of markets is one of the most important purposes of the Act and that power and duty is by Section 5, of the Act given to the Director. The Director has not only to establish a particular market, but he has also been given the power to establish subsidiary markets. The power to grant licence, which is incidental to the regulation of the market, has been given to the Director in a case where the Market Committee has not started functioning. In a case where the Market Committee grants or refuses to grant or renew the licence, or cancels the licence, the Director has been made an appellate authority to go into the correctness of the decision of the Market Committee. The duty of fixing the date of the first meeting of the Market Committee is also that of the Director under Section 15(2) of the Act. Under Section 16(1) resignation of his office by the Chairman of the Market Committee has to be addressed to the Director. Under Section 22(2) date for the election meeting for the election of the Chairman and the Vice-Chairman of the Market Committee has to be fixed by the Director and presided over by him or by sortie other person authorised by him in this behalf. Even the dispute with regard to the validity of an election of a Chairman or the Vice-Chairman is to be decided by the Director in a case where he is the presiding officer. In any other case the officer presiding has to refer the dispute to the Director for decision. The decision of the Director, subject to an appeal to the State Government, is final. Section 29 indicates that he exercises control over the function of the Market Committee because the Committees have to provide facilities for marketing of such agricultural produce as the Director may from time to time direct. Even the Market Committee has to obtain approval of the Director under Section 30 where the Market Committee appoints one or more sub-committees for delegating the powers of the Market Committee, Section 40 is an important section, which is to be found in Ch. VIII, which is headed as "Control" and the Director has been given wide and extensive powers for the supervision over the affairs of the Market Committee. There is an obligation on the officers, servants and the members of the Market Committee to furnish all information to the Director where the affairs of the Market Committee are investigated. The Director is also empowered to make an order with regard to seizure of account books and funds and property of the Market Committee under certain conditions. Under Section 56(2), it is provided that no prosecution under the Act shall be instituted except by the Director or any officer authorised by him in that behalf or by the Secretary or any other person duly authorised by the Market Committee in that behalf. A review of the different provisions of the Act clearly indicates that virtually the duty and the function of implementing the Act is vested in the Director. It is difficult to comprehend that when the provision with regard to delegation of the powers of the State Government was to be made, the legislature intended that the only one person who, under the Act, is entrusted with several important powers and functions, was to be deliberately left out and that the legislature intended that the powers of the State Government were, to be delegated only to person other than the Director.

9. The learned Counsel appearing on behalf of the petitioners referred us to a decision of this Court in Stale v. N.A. Rahimbhoy, AIR 1957 Bom 78, in which a passage from Queen v. Bishop of Oxford. (1879) 4 QBD 245 was quoted with approval.

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In that case it was observed that the Act ought to be so construed that no part of it became superfluous, void or insignificant. We have already referred earlier to the decision of the Supreme Court which is an authority for the proposition that if the language is ambiguous and its literal sense gives rise to an anomaly or results in something which would defeat the purpose of the Act, it is permissible not to give a literal meaning to the language used by the legislature. The construction, which we have adopted, does not affect the provision even so far as it relates to the Director. Even if we treat the word "other" in the context of indicating the officer or person to whom the powers of the Director are to be delegated as superfluous, the intention of the legislature is still effectively carried out. While the use of the word "other" no doubt indicates that the officer or person other than the Director was contemplated, even without it the same meaning is alone possible on a plain and grammatical construction, because if the powers of the Director are to be delegated, they mast necessarily be delegated to a person other than the Director himself. The word 'other' in our view therefore must be held to be superfluous, because it is only then that effect can be given to the intention of the legislature. We are not, therefore, inclined to accept the contention of the petitioners that it was incompetent for the State to delegate its powers to the Director as was done by the impugned notification. Consequently, we must hold that the notification dated September 16, 1967 is not ultra vires the powers of the State Government and the impugned notifications under Sections 3 and 4 of the Marketing Regulation Act cannot be challenged on the ground that they are issued by the Director without authority of law.

10. That brings us to the second contention raised on behalf of the petitioners. The contention is that the manner of publication of notification under Sections 3 and 4 of the Marketing Regulation Act has not been resorted to inasmuch as the notifications were not published in any of the newspapers, viz., Arvi Samachar and Arvi Times, which are published in Marathi from Arvi and in Tarun Bharat which is circulated widely in Arvi Tahsil. Similarly it is argued that the publication is not also made in the manner prescribed by Rule 3 of the Rules. Since a reference to the relevant provisions of Sections 3 and 4 and Rule 4 is necessary, we reproduce the relevant parts of those provisions. Section 3 of the Marketing Regulation Act read as under :

"The State Government may, by notification in the Official Gazette, declare its intention of regulating the marketing of such agricultural produce, in such area, as may be specified in the notification. The notification may also be published in the language of the area in any newspaper circulating therein, and shall also be published in such other manner as in the opinion of the State Government is best calculated to bring to the notice of persons in the area, the intention aforesaid."

Section 4 reads as under :

A notification under this section may also be published in the language of the area in a newspaper circulating therein, and shall also be published in such other manner as in the opinion of the State Government is best calculated to bring to the notice of persons in the area the declaration aforesaid. Rule 3 of the Rules is as follows :-

"A notification under Section 3 declaring the intention of the State Government of regulating the marketing of any agricultural produce in any area specified in such notification and the notification under Section 4 regulating the marketing of agricultural produce in any area shall, in addition to their publication in arty newspaper circulating in any such area as required by that section, also be published by affixing copies thereof at the Chavdi of each village included in such area and by exhibiting them on the notice board in the office of the Mamalatdar, Tahsildar, Mahalkari or Naib-Tahsildar and of the Panchayat Samiti within whose jurisdiction such area is situated. The State Government shall also require a revenue officer specified in this behalf to give wide publicity to the notification by beat of drums in any such area." Now, we may at the outset point out that there is no positive averment in the petition as to whether the petitioners have made any attempts to find out how and in what manner the notification under Sections 3 and 4 were published. We are not, therefore, inclined to go into the challenge to the notification on the ground of want of proper publication except to a limited extent, viz., whether it was obligatory for the Director to have the notifications published in a newspaper and whether failure to publish the notifications under Sections 3 and 4 in a newspaper, would vitiate the notifications as contended on behalf of the petitioners. It is an admitted fact that the notifications were not published in any newspaper. Now, the provisions of Sections 3 and 4 with regard to the publication of the notifications contemplated thereby are identical. The object of the provisions regarding the publication in Sections 3 and 4 of the Act is that the notifications under Sections 3 and 4 must come to the notice of the persons who are going to be affected thereby in the area in which the, notifications were to be operative. But it must be noted that in both the Sections 3 and 4, when publication in any newspaper in the area is contemplated, the legislature has advisedly used the words "may also be published in the language of the area in any newspaper circulated therein". In the same provisions while the word "may" is used while referring to the publication in a newspaper, the legislature while providing for additional

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publication in such other manner as in the opinion of the State Government is best calculated to bring to the notice of the persons in the area, has used the word "shall".

11. Both Sections 3 and 4, while they make it obligatory on the State Government to publicise the notification, the manner of publication is left to the State Government. The State Government is required to publicise the notification in such manner as is best calculated to bring the notification to the notice of persons in the area to which the election relates. As contrasted with the provisions referring to the duty of the State Government of publicising the notification in such manner as it thinks best, the publication of the notification in the newspaper is not made obligatory. We cannot leave out of consideration the object of making the provisions with regard to publication. The object is to bring the notification to the notice of the public. This can be done in several ways. Publication of the notification in a newspaper is one of the ways, no doubt, but both Sections 3 and 4 make it clear that while the State Government is required to publicise the notification in a manner other than by publication in the newspaper, importance is sought to be given to the manner of publication, which the State Government thinks will best serve the purpose of the publication. The provisions of Rule 3 of the Rules also do not assist the petitioners because even there the emphasis is on the publication by affixing copies of the notifications at the chavdi of each village included in the area in question and by exhibiting them on the notice boards in the office of the Mamalatdar, Tahsildar, Mahalkari or Naib-Tahsildar and of the Panchayat Samiti within whose jurisdiction such area is situated. The rule, no doubt, mentions that this form of publication is to be made in addition to the publication in any newspaper. But the rule refers back to Sections 3 and 4 where it states that the publication is to be made by the State Government in the manner referred to above in addition to the publication of the notifications in any newspaper circulating in any such area as required by that section. If Sections 3 and 4 themselves do not make publication in a newspaper mandatory the rule cannot be construed as requiring something more to be done than what is provided in the section, especially when the reference is made to the manner of publication as required by Sections 3 and 4. The rule 3 also requires that the State Government shall require a Revenue Officer specified in that behalf to give wide publicity to the notification by beat of drums in any such area. It is well known that normally the large part of the agricultural population, which is illiterate, does not subscribe or read newspapers. The newspapers cater to a negligible section of the community who are only literate and if the purpose of publication is to bring to the notice of the persons affected by the notifications, then that would be best served by adopting the method of publication by which a large section of the village community can be reached. That is why it appears that it has been made obligatory on the State Government to find out for itself the best manner of publication possible and that is also why the provisions of Rule 3 have been made requiring the State Government to have the copies of the notification affixed on the notice boards in the office of the authorities specified under Rule 3, which are many a time visited by the agriculturists. Beat of drums is a known method of publication and that has always been found to carry the matters to be publicised to the villagers positively. The failure, therefore, of the State Government or of the Director to publish the notification in the newspapers named by the petitioners cannot vitiate the notifications in any way. The petitioners are even silent with regard to the extent of the circulation of the newspapers referred, to by them and there is nothing known about the extent of the circulation of those newspapers : in the return filed on behalf of the contesting respondents it has been positively alleged that the notifications have been published not only by beat of drums but by pasting them on the notice boards of the Marketing Committees and Chavdis in the villages in the area of their operation. It is also said that the pamphlets were printed and were supplied to the Gram Panchayats concerned for the purpose of wide publicity. We have already pointed out above that the petitioners are not in a position to make any positive statement with regard to the nature of the publicity given to the notification in question, It is not their case that the notifications were not published at all, or that in some villages the notifications were not notified by beat of drums or by other methods referred to by the contesting respondents in their affidavit. It is not, therefore, possible to entertain the challenge on behalf of the petitioners that the notifications are vitiated on the ground1 that they have not been properly published.

12. The last contention which was sought to be raised was that the election programme framed by the Collector was not published in the manner laid down by R.43(2). Rule 43(2) provides that the Collector shall, not less than 45 days before the date fixed for the poll, publish in Marathi the dates so appointed by means of a notice in a newspaper circulating in the market area and paste copies of such notice on the notice board of the Market Committee and in village chavdis and other conspicuous places in the villages included in the market area. In our view, this contention has now become purely academic. The Collector had fixed the date of polling as May 5, 1971, by his memorandum dated March 17, 1971. The election programme which was fixed by the Collector has now become ineffective since the elections were stayed by this Court vide order dated 29-4-1971. The Collector will now

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have to go through the procedure all over again of making out a fresh programme of election and it is not necessary to go into the contention whether the election programe originally notified is vitiated by any non-compliance with the provisions of Rule 43 (2) of the Rules, as alleged.

13. In the view which we have taken, the petition stands dismissed. It will now be open to the Collector to hold elections after making out a fresh programme of elections. The petitioners shall pay the costs of the respondents 2 to 5 in one set. They shall also pay the costs of the respondent No. 1.

Petition dismissed

AIR 1973 BOMBAY 348 (V 60 C 80) "Agri. P. M. Committee v. Pantappa"

BOMBAY HIGH COURT

Coram : 1 VAIDYA, J. ( Single Bench )

The Agricultural Produce Market Committee, Sholapur, Petitioner v. Pantappa Sayanna Vangari, Respondent.

Civil Revn. Appln. Nos. 697, 698 to 701 of 1967, D/- 26 -9 -1972, against order of A. R. Simpi, Dist. J., Sholapur, D/- 1 -2 -1967.

(A) Bombay Agricultural Produce Markets Act (22 of 1939), S.4(2) and S.20 read with Bombay Agricultural Produce Markets Rules (1941), R.65 - AGRICULTURAL PRODUCE - CIVIL COURT - LICENSE - Trading without licence - Prosecution and conviction for - Subsequent suit to recover licence fees - Maintainability.

Civil P.C. (5 of 1908), S.9.

Brief Note : - (A) Merely because the traders were prosecuted and convicted for trading without licence, can it be said that a civil suit for recovery of the licence fees from them at the instance of the market committee is not maintainable ? - No. It is maintainable.

There is no express bar in the Act or in the rules made thereunder for filing such a suit. It may be that the trading without a licence is a public wrong and therefore such a trader is liable to be prosecuted. But nonpayment of fees is also a wrong to the corporate body the funds of which are meant for services under the Act. The penalty is provided only for trading without a licence. It is not a penalty for non-payment of licence fee. The general principle of implied exclusion of civil Courts' jurisdiction cannot, therefore, bar such a suit. (Paras 15, 16)

Under the Act there is a duty cast on traders to obtain licence and the Market committee has a right to grant licence on payment of licence fees. Since the Act does not provide any remedy regarding that right, the general principle ubi jus ibi remedium will apply. AIR 1957 Bom 34, Disting. (Paras 17, 18, 19, 20, 21)

(B) Civil P.C. (5 of 1908), S.9 - CIVIL COURT - Exclusion of jurisdiction of Civil Court - Principles as laid down in AIR 1969 SC 78, Reiterated. (Para 17)

Cases Referred : Chronological Paras

AIR 1969 SC 78 : (1968) 3 SCR 662, Dhulabhai v. State of Madhya Pradesh 17

AIR 1957 Bom 34 : 58 Bom LR 636, Thana Borough Municipality v. Akbarali Hasanali 4, 5, 19

(1952) 1 KB 101 : (1951) 2 All ER 835, Biddle v. Truvox Engineering Co. Ltd.; Greenwood and Bateley Ltd. 8

1949 AC 398 : (1941) 1 All ER 544, Cutler v. Wandsworth Stadium Ltd. 7

(1935) 1 KB 75 : 152 LT 194, Monk v. Warbey 7

(1923) 2 KB 832 : 129 LT 777, Phillips v. Britannia Hygienic Laundry 8

1912 AC 149 : 106 LT 161, Black v. Fife Coal Co. 7

1898 AC 387 : 78 LT 569, Pasmore v. v. Oswaldtwistle Urban District Council 7

(1898) 2 QB 402 : 79 LT 284, Groves v. Wimborne (Lord) 7

1892 AC 345 : 67 LT 486, Cowley v. New Market Local Board 7

(1884) 13 QBD 109 : 51 LT 158, Vallance v. Falle 8

(1877) 2 Ex D 441 : 36 LT 761, Atkinson v. Newcastle Waterworks Co. 7

(1831) 1 B and Ad 847 : 42 Digest 750, 1758, Doe v. Bridges 7

U.R. Lalit, for Petitioner; K.J. Abhyankar, for Respondent.

Judgement

ORDER :- These five applications in revision under Section 115 of the Code of Civil Procedure, are filed by the Agricultural Produce Market Committee, Sholapur, constituted under the Bombay Agricultural Produce Markets Act, 1939, and now governed by the Maharashtra Agricultural Produce Marketing (Regulations) Act, 1963, and will be hereinafter referred to as "the Market Committee". The Market Committee filed five suits, from which the above revisions arise, against five traders of Sholapur in

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August, 1965, claiming to recover from each of them Rs. 100/- as licence-fees, or in the alternative, as damages with interest at 12 p. c. p. a. as the defendants traded in the yards of the Market Committee without obtaining respectively a licence during the period from September 1, 1963 to August 31, 1964.

2. It was alleged in the plaint that all the defendants in five suits, who are dealing in the agricultural produce as defined by the Bombay Agricultural Produce Markets Act, 1939, within the market area as traders, were purchasing and selling agricultural produce in the market yard, and hence they were bound to obtain a licence after paying licence-fees to the Market Committee, as laid down by Sections 4, 5-A and 20 of the Bombay Agricultural Produce Markets Act, 1939 and Rule 65 (7) of the Bombay Agricultural Produce Markets Rules, 1941. The plaintiff Market Committee further alleged that in the year 1963-64, without obtaining licences required under the Act and the Rules, the respective defendants carried on the trade in the market yard in the agricultural produce. On January 30, 1964, a notice was sent to each of them to obtain necessary licence. Ignoring the said notice and in violation of the law, the defendants continued that trade in the market-yard. Hence, the Market Committee prosecuted them in respect of the transactions of trade done by each of the traders and they were convicted on May 13, 1965 under Section 4 (2), read with Section 20, and Rule 65 (7) framed under the Bombay Agricultural Produce Markets Act, 1939, and sentenced to pay a fine of Rs. 15/- each, or in default, to suffer simple imprisonment for 7 days.

3. The plaintiff Market Committee submitted that the Market Committee had a right to recover from every trader, buying or selling agricultural produce within the market area or yard of the Market Committee as licence-fees Rs. 100/- under the Marketing Act, and further that as the defendants traded without paying the licence-fees, the Market Committee was entitled to recover the licence fees as damages. In spite of this and notwithstanding the conviction of the defendants, the defendants did not care to pay the licence fees for the year 1963-64. Hence a suit was filed for the recovery of licence fees from each of the defendants.

4. The suit was resisted by the defendants contending, inter alia, that the rules under which the licence fees were claimed were ultra vires and that the suit was not tenable in the Civil Court. The learned Joint Civil Judge (Junior Division) Sholapur, framed three issues in the light of the pleadings of the parties :

"(1) Whether the remedy of a suit for recovery of licence fees or compensation is available to the plaintiff?

(2) Is the new rule providing for licence fee of Rs. 100/- per year, irrespective of the nature of trade or business carried on by the licencee, invalid, ultra vires or illegal, for any reason mentioned in the defendant's written-statement ?

(3) Whether the present suit is maintainable in view of the fact that the defendant was prosecuted, convicted and sentenced for doing business without licence?"

On a careful consideration of the provisions of the Act and the Rules, the learned Civil Judge decided all the issues in favour of the Market Committee. The learned Civil Judge relied on the decision of this Court in Thana Borough Municipality v. Akbaralli Hasanali, 58 Bom LR 636 : (AIR 1957 Bom 34) and held that as the Market Committee was entitled to recover the licence fees and it suffered loss by non-payment by the defendants, the suit for the recovery of the amount of Rs. 100/- as licence fees was maintainable and decreed the plaintiff's suit.

5. Feeling aggrieved by the said Judgment and decree, the defendants filed five respective appeals, which were disposed of by a common Judgment by the District Judge, Sholapur, on February 1, 1967, by reversing the finding of the trial Court, relying on the aforesaid decision in 58 Bom LR 636 : (AIR 1957 Bom 34) though he came to the conclusion that the bye-laws and the rules were legally framed by the Committee and the Market Committee was entitled to receive Rs. 100/- as licence fees from each of the defendants. The learned Judge reversed the decree on the ground that the Civil Court had no jurisdiction to entertain the suit, in the absence of specific provision in the Act enabling the Market Committee to sue to recover licence fees who traded without a licence, observing as follows : -

"But the Legislature did not intend to empower the Market Committee to recover its licence fee from such persons. To trade without a licence was considered as a public wrong and not as a private wrong. The Market Act was passed and the Market Committees were established for the better regulation of buying and selling of agricultural produce and, therefore, it was considered that no private wrong was committed by a person if he traded without a licence, but such a person committed a public wrong, and, therefore, deserved criminal prosecution. There is no provision which empowers the Market Committee to file a suit to recover the licence fee."

In arriving at this conclusion, as stated above, he relied on the ruling in 58 Bom LR 636 : (AIR 1957 Bom 34) and the passage from Halsbury's Laws of England Vol. I, Third Edn. quoted therein.

6. The said decision of the District Judge is challenged in the above revision application on the ground that the decision is erroneous in law and the learned District Judge erred in holding that the suit was not

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maintainable as the Civil Court had no jurisdiction to try the claim of the Market Committee for the recovery of licence-fees.

7. The correct principles which should be applied are as stated by Halsbury's Laws of England, Vol. I, Third edition, at paragraph 11, on page 9, which are as follows :

"Although a person who suffers an infringement of some private right may in general maintain an action in respect thereof, yet in the case of a right which depends upon statute it may be that there is some statutory remedy which alone he can pursue. In general, where a penalty is imposed for the breach of a statutory obligation, no action will lie at the suit of the person injured by the breach, but where it appears that the duty is imposed for the benefit of particular persons, there arises a common law a correlative right of action in such persons if they are injured by its breach; the only rule which in all circumstances is valid is that the answer to the question whether a right of action in the injured individual arises must depend on a consideration of the whole Act and the circumstances, including the preexisting law, in which it was enacted."

This passage in Halsbury's Laws of England is based firstly on Cutler v. Wandsworth Stadium Ltd., (1949 AC 398, at page 407), where it was laid down as follows :

"No action lies at the suit of an individual bookmaker against the occupier of a licensed dog-racing track on which a totalisator is lawfully in operation for failure to provide him with "space on the track where he can conveniently carry on bookmaking" in accordance with Section 11, sub-s. (2) (b) of the Betting and Lotteries Act, 1934. The obligation imposed by that section is enforceable only by criminal proceedings for the penalties specified in Section 30, sub-s. (1), of the Act."

Lord Simonds observed as follows : -

"It is, I think, true that it is often a difficult question whether, where a statutory obligation is placed on A., B., who conceives himself to be damnified by A's breach of it has a right of action against him. But on the present case I cannot entertain any doubt. I do not propose to try to formulate any rules by reference to which such a question can infallibly be answered. The only rule which in all circumstances is valid is that the answer must depend on a consideration of the whole Act and the circumstances, including the pre-existing law, in which it was enacted. But that there are indications which point with more or less force to the one answer or the other is clear from authorities which, even where they do not bind, will have great weight with the House. For instance, if a statutory duty is prescribed but no remedy by way of penalty or otherwise for its breach is imposed, it can be assumed that a right of civil action accrues to the person who is damnified by the breach. For, if it were not so, the statute would be but a pious aspiration. But "where" an Act "(I cite now from the judgment of Lord Tenterden C. J. in Doe v. Bridge, (1831) 1 B and Ad. 847) creates an obligation, and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner." This passage was cited with approval by the Earl of Halsbury I. C. in Pasmore v. Oswaldtwistle, (1898 AC 387); Urban District Council. But this general rule is subject to exceptions. It may be that, though a specific remedy is provided by the Act, yet the person injured has a personal right of action in addition. I cannot state that proposition more happily, or indeed more favourably to the appellant, than those in the words of Lord Kinnear in Black v. Fife Coal Co. Ltd., (1912 AC 149). "If the duty be established I do not think there is any serious question as to the civil liability. There is no reasonable ground for maintaining that a proceeding by way of penalty is the only remedy allowed by the statute. The principle explained by Lord Cairns in Atkinson v. Newcastle Waterworks Co., ((1877) 2 Ex D 441) and by Lord Herschell in Cowley v. Newmarket Local Board, (1892 AC 345) solves the question. We are to consider the scope and purpose of the statute and in particular for whose benefit it is intended. Now the object of the present statute is plain. It was intended to compel mine-owners to make due provision for the safety of the men working in their mines, and the persons for whose benefit all these rules are to be enforced are the persons exposed to danger. But when a duty of this kind is imposed for the benefit of particular persons, there arises at common law a correlative right in those persons who may be injured by its contravention." An earlier and a later example of the application of the principle will be found in Groves v. Wimborne (Lord), ((1898) 2 QB 402) and Monk v. Warbey, ((1935) 1 KB 75) in the former of which cases the Act in question was described by A. L. Smith L. J. as "a public Act passed in favour of the workers in factories and workshops to compel their employers to do certain things for their protection and benefit."

After these principles, Lord Simonds considered the facts of the case before him in the light of the provisions of the Act, and observed as follows : -

"For the sanction of criminal proceedings emphasizes that this statutory obligation, like many others which the Act contains, is imposed for the public benefit and that the breach of it is a public not a private wrong. Then it was said that the obligation imposed by Section 11 on the occupier of a track was intended for the benefit of bookmakers and, to make this argument more cogent, it was contended that only Ss. 11, 12, 13 and 14 of the Act together with Sections 29 and 30 need be looked at in order to get that

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purview of the Act which the authorities prescribes. From this I dissent. Part II may perhaps be ignored, but Part I and Part III must clearly be read as a whole. So reading it, I have no doubt that the primary intention of the Act was to regulate in certain respects the conduct of race tracks and in particular the conduct of betting operations thereon. If in consequence of those regulations being observed some bookmakers will be benefited, that does not mean that the Act was passed for the benefit of bookmakers in the sense in which it was said of a Factory Act that it was passed in favour of the workmen in factories. I agree with Somervell L. J. that where an Act regulates the way in which a place of amusement is to be managed, the interests of the public who resort to it may be expected to be the primary consideration of the legislature. If from the work of regulation any class of persons derives an advantage, that does not spring from the primary purpose and intention of the Act."

8. In the same case, Lord Du Parcq observed at page 410 as follows :-

" I agree with those who say, as was said by Stephen J. in Vallance v. Falle, (1884) 13 QBD 109, that "the best way of finding out the meaning of statute is to read it and see what it means", and I do not regret, any more than I understand Lord Greene M. R. to regret, the fact that, as he said in the present case, so-called rules of construction "have fallen into some disfavour". It must be recognized, however, that the Courts have laid down, not indeed rigid rules, but principles which have been found to afford some guidance when it is sought to ascertain the intention of Parliament. In Philips v. Britannia Hygienic Laundry Co. Ltd., ((1923) 2 KB 832) Bankers L. J. cited a well-known passage from the speech of Lord Macnaghten in Pasmore v. Oswaldtwistle Urban District Council, in which that noble and learned Lord, referred to the statement of Lord Tenterden in Doe v. Bridges, spoke of the "general rule" that "where an Act creates an obligation, and enforces the performance in a specified manner.........that performance cannot be enforced in any other manner." "Whether the general rule is to prevail," (said Lord Macnaghten) "or an exception to the general rule is to be admitted, must depend on the scope and language of the Act which creates the obligation and on considerations of policy and convenience."

Lord Reid observed at page 417 :-

"I see no reason to infer from the Act read as a whole or from the circumstances founded on by the appellant that the enjoyment of these facilities required or was intended to have any further protection than that afforded by the track occupier's liability to prosecution if he failed to comply with the statutory provisions. But I think that the clearest indication of the intention of the legislature is to be found in the terms of Section 11, sub-s. (2), itself. I find it extremely difficult to reconcile the nature of the provisions of this sub-section with an intention to confer on individual bookmakers rights which each could enforce by civil action." The passage in Halsbury's Laws of England was further based on a decision in Biddle v. Truvox Engineering Co. Ltd.; Greenwood and Batley Ld., (1952) 1 KB 101. This was under the Factories Act. By Section 17 (2) of the Factories Act, 1937, the vendor of a machine, inadequately guarded within the meaning of Section 17 (1), is guilty of an offence, and is liable to a penalty not exceeding £ 100. The plaintiff recovered damages from the defendants, occupiers of a factory, for injuries sustained by him by reason of a certain machine used in the factory not being encased as required by Section 17 (1) of the Act. The defendants claimed contribution from the sellers of the machine under Section 5 (1) (c) of the Law Reform (Married Women and Tortfeasors) Act, 1935, alleging that if they had been sued by the plaintiff, they would have been liable in respect of the same damage by reason of their breach of the provisions of Section 17 (2). It was held by Funemore that on its true construction subsection (2) of Section 17 was a penal provision only, and accordingly the injured workman had no right of action against the vendors for a breach of its provisions, and the claim of the defendants against them under Section 6 (1) (c) of the Act of 1935, therefore, failed.

9. It, thus, becomes clear that the question as to whether the Market Committee could file a suit having regard to the provisions of the penalty under Section 20 of the Bombay Agricultural Produce Markets Act, 1939, will depend on a proper construction of the said Act.

10. The act, with which we are concerned in the present case is the Bombay Agricultural Produce Markets Act, 1939, which was in force till the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (Maharashtra Act No. XX of 1964) came into force on May 25, 1967 (Vide Notification dated May 19, 1967). It is, therefore, not necessary for us to refer to the later Act. The Bombay Agricultural Produce Markets Act, 1939, was an Act to provide for the better regulation of buying and selling and the establishment of markets for agricultural produce in the Province of Bombay, as it then existed, and which included Sholapur.

11. Under Section 3 of the said Act power was given to the Commissioner to inform the intention of exercising control over the purchase and sale of agricultural produce in specified area. Under Section 4, after the expiry of the period specified in the notification issued under S. 3 and after considering such objections and suggestions, as may be received before such expiry and after holding such inquiry as may be necessary

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the Commissioner by notification in the official gazette declared the area specified in the notification as market area for the purposes of the Act in respect of all or any of the kinds of agricultural produce specified in the said notification. Sub-section (2) of section 4 laid down that on and after the date on which any area is declared to be a market area under sub-section (1), no place in the said area shall, subject to the provisions of Sec. 5-A, be used for the purchase or sale of any agricultural produce specified in the notification issued thereunder, except under a licence issued by the Commissioner pending the establishment of a market in such area under Section 5. Section 5 confers powers on the State Government to establish market committee for every market area. Section 5A of the Act empowers the Market Committee to issue licence in accordance with the rules to traders, commission agents, brokers, weighmen, measurers, surveyors, warehousemen and other persons to operate in the market. Section 6 provides for the constitution of Market Committees, the details of which are not relevant for our purpose.

12. Chapter III of the Act deals with the Incorporation of Market Committee, and its powers and duties. Section 7 in that Chapter lays down that every market committee shall be a body corporate by such name as the State Government may specify by notification in the Official Gazette, and further it shall have perpetual succession and a common seal, may sue and be sued in its corporate name and shall be competent to acquire and hold, lease, sell or otherwise transfer any property and to contract and to do all other things necessary for the purposes for which it is established. Section 9 speaks about the appointment and salaries of servants of the Market Committee, and Section 10 deals with the execution of contracts by the Market Committee. Section 11 empowers the Market Committee to levy fees on the agricultural produce bought and sold by licencees in the Market area. Section 13 lays down that all money received by a Market Committee shall be paid into a fund to be called "The Market Committee Fund" and all expenditure incurred by the Market Committee under or for the purpose of this Act shall be defrayed out of the said fund. Section 14 lays down the purpose for which the fund shall be expended. It is not necessary to refer to other sections or Chapter IV which deals with Trade Allowances, and Chapter V which deals with miscellaneous provisions, including Section 26 (2) (f), which empowered the State Government to frame rules, to regulate the issue of licences to traders, commission agents, brokers, weighmen, measures, surveyors, warehousemen and other persons operating in the market in the form in which and the conditions subject to which such licences shall be issued or renewed, and the fees to be charged therefor. Section 20 of the Act runs as follows : -

"Whoever contravenes the provisions of Section 4 shall, on conviction, be punishable with fine which may extend to five hundred rupees, and in the case of a continuing contravention with a further fine which may extend to one hundred rupees for every day during which the contravention is continued after first conviction."

In exercise of the powers conferred on State Government, under S. 26 of the Act, the Bombay Agricultural Produce Markets Rules, 1941 were framed. It is sufficient for the purposes of these revision applications to quote R. 65 of those Rules. Rule 65 runs as follows : -

"Licensed traders and general commission agents. - (1) No person shall do business as a trader or a general commission agent in agricultural produce in any market except under a licence granted by the market committee under this rule.

(2) Any person desiring to hold such lincence shall make a written application for a licence to the market committee and shall pay a fee of one hundred rupees.

(3) On receipt of such application together with the proper amount of the fee, the market committee may, after making such enquiries, as may be considered necessary for the efficient conduct of the market grant him the licence applied for. On the grant of such licence the applicant shall execute an agreement in such form as the market committee may determine, agreeing to conform with these rules and the bye-laws and such other conditions as may be laid down by the market committee for holding the licence.

(4) Notwithstanding anything contained in sub-rule (3), the market committee may refuse to grant a licence to any person, who in its opinion, is not solvent or whose operations, in the market area are not likely to further efficient working of the market under the control of the market committee.

(5) The licence shall be granted for a period of one year, after which it may be renewed on a written application and after such enquiries as are referred to in sub-rule (3) as may be considered necessary, and on payment of the fee provided in sub-r. (2).

(6) The names of all such traders and general commission agents shall be entered in a register to be maintained for the purpose.

(7) Whoever does business as a trader or a general commission agent in agricultural produce in any market without a licence granted under this rule or otherwise contravenes any of the provisions of this rule shall on conviction be punishable with fine, which may extend to Rs. 200 and in the case of a continued contravention with a further fine which may extend to Rs. 50 for every day during which the contravention continues after the date of the first conviction, subject to the maximum of Rs. 200/-.

13. The Market Committee, Sholapur, had also framed bye-laws under

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Rule 53 (2) of the Bombay Agricultural Produce Markets Rules, 1941.

14. Bye-law 33 runs as follows :- "Licence-fees : (1) All traders, general commission agents, weighmen, measurers, surveyors and warehousemen operating in the market shall pay full fees for each market year or any part thereof as per Schedule I given in Appendix No. 2 for obtaining licences, required to be taken by them under Rules Nos. 65 and 67." Schedule No. I in Appendix 2, provided that every trader has to pay licence fee for the market year at the rate of Rs. 100/-, the market year being the year beginning from September 1, till August 31 following under Bye-law 32.

15. It is clear from the perusal of this Act, Rules and Bye-laws that penalty is provided only for trading without a licence. It is not a penalty for non-payment of licence fees.

16. The principle stated in Halsbury in the aforesaid passage, relying on the above cases, therefore, is entirely irrelevant so far as the recovery of the licence fees is concerned. It is clear from the provisions of the Act and the Rules framed thereunder, that the Agricultural Produce Market Committee is vested with powers to issue licence on payment of licence fees. The funds are meant for its services under the Act for carrying out its purpose under the law.

17. The only question, however, which arises in these revision applications is whether merely because fees are to be paid on the applications made by the traders, or because the traders are liable to be prosecuted for trading without a licence, a suit for recovery of the fees from traders, who are trading without a licence, is not maintainable at the instance of the Market Committee. It is well settled that under the legal system in this Country an exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless certain conditions are fulfilled, viz. (1) Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. (2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant, but is not decisive to sustain the jurisdiction of the civil Court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil Courts are prescribed by the said statute or not. (3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals. (4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund of the claim if clearly within the time prescribed by the Limitation Act, but it is not a compulsory remedy to replace a suit. (5) Where the particular Act contains no machinery for refund if tax collected in excess of constitutional limits or illegally collected, a suit lies. (6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined, because it is a relevant enquiry. (See : Dhulabhai etc. v. State of Madhya Pradesh, AIR 1969 SC 78).

18. Section 9 of the Code of Civil Procedure lays down that the Civil Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. We must, therefore, see if there is express or implied bar in the Bombay Agricultural Produce Markets Act, 1939, to the suits filed by the Market Committee in these cases to recover licence fees. There is no express bar. The learned District Judge has held that there is implied bar, because the act provides a remedy by way of filing a prosecution against the dealers for trading without licence. In my judgment, the view taken by the learned District Judge is patently erroneous as it cannot be said on reading the provisions referred to above and the entire Act and the Rules made thereunder that the Act has provided any remedy for the recovery of licence fees. The prosecution is launched not for recovering the licence fees, which the trader is bound to pay in order to trade in the market area, but for trading without a licence. It cannot be said that non-payment of fees is a public wrong done to the Market Committee, which is a person in the eye of law. It may be that the trading without a licence is a public wrong, and therefore, the trader is liable to be prosecuted. But the non-payment of fees is

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also a wrong to the Corporate body, and I do not see how the passage cited from Halsbury's Laws of England or any of the cases referred above, bar a suit or how the general principle of implied exclusion of civil Court's jurisdiction can bar a suit of the nature filed by the Market Committee against dealers in the present case for the recovery of fees.

19. Mr. Abhyankar, supporting the reasoning of the learned District Judge, submitted that such a view cannot be taken in view of the decision of Bavdekar, J. in 58 Bom LR 636 : (AIR 1957 Bom 34). The facts of that case are, however, distinguishable. That was a case where the Municipality had filed a criminal complaint against the respondent under Section 123 (7) of the Bombay Municipal Boroughs Act, 1925, for unauthorised construction of a building in the municipal area. During the pendency of this complaint, the municipality filed a suit against the respondent under Section 204 of the Act for an injunction restraining the respondent from occupying the said building either by himself or his tenant and for a direction to the respondent to demolish the unauthorised construction. It was in these circumstances that Bavdekar, J. felt that the subject-matter of the complaint and the suit were one and the same, viz., unauthorised construction, and as the statute had provided a remedy to the Municipality, a suit for injunction was not maintainable.

20. That case can have no application to the present case where the suit is for the recovery of licence-fees or damages. The suit is not for damages or for an injunction regarding trading without a licence which is a public wrong. The suit is for the recovery of licence-fees, which the Market Committee would have recovered legally. There was a duty cast on the traders to obtain a licence corresponding to that duty. The Committee had a right to grant licence on payment of licence-fees. That right could not be enforced by prosecuting the traders for trading without licence. In my judgment, the right of the Market Committee to recover licence-fees corresponds to the duty of the traders to obtain a licence before trading in the Market area. As the Act has not provided for any remedy regarding that right, the general principle ubi jus ibi remedium, will apply and he Market Committee is entitled to file a suit to recover the licence-fees as damages for the breach of the duty imposed by the Bombay Agricultural Produce Markets Act, 1939, on the traders.

21. Where there exists a right recognized by law, there exists also a remedy for the infringement of such right. It cannot be contended that the right of the Market Committee to recover licence-fees or damages in lieu of licence-fees for breach of the duty imposed on the traders, is remedied by prosecuting them for trading without a licence. The prosecution for trading without a licence is intended by the Legislature for the benefit of the public. The right to recover the licence-fees is conferred on the Market Committee under the Act, Rules and Bye-laws, for its own benefit. The amount would go into the funds of the Market Committee, which is necessary for the Market Committee to function. I am, therefore, of the opinion that the learned District Judge erred in dismissing the plaintiff's suit on the ground that the suit was not maintainable merely because the defendants were prosecuted or are liable to be prosecuted under the Act.

22. There is no dispute that if the suit is maintainable, the Market Committee is entitled to recover licence-fees as damages.

23. The revision applications are, therefore, allowed, the judgment and decree passed by the learned District Judge are set aside and the decrees passed by the trial Court in all the five cases are restored for the reasons stated hereinabove. The defendants in each of the suits to pay the costs in respect of the respective suits and appeals to the petitioners. The defendants to pay costs of the Market Committee in also this Court. Rule made absolute in each of the matters.

Rule made absolute.

AIR 1968 BOMBAY 336 (Vol. 55, C. 57) "Wamanrao v. Amrutlal"

BOMBAY HIGH COURT

(AT NAGPUR)

Coram : 2 ABHYANKAR AND PADHYE, JJ. ( Division Bench )

Wamanrao Motiramji Masodkar, Complainant, Appellant v. Amrutlal Gulabchand, Accused and another, Respondents.

Criminal Appeal No. 46 of 1967, D/- 18 -10 -1967.

(A) C.P. and Berar Agricultural Produce Market Act (29 of 1935) Rules under, R.33(1), R.33(2) - AGRICULTURAL PRODUCE - LICENSE - Person trading through broker in respect of agricultural produce - Must take trader's licence.

Though Rule 33(1) and (2) permits the same person to be a trader and take a trader's licence and also to be a broker if he takes a broker's licence, it does not mean and cannot possibly be intended to mean that whenever transactions are effected through the agency of broker, the trader who puts such transactions through the agency of the broker need not take a licence. What is intended to be regulated is a trading activity in agricultural produce and that

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must mean regulating the activities of both purchasers and sellers provided they are traders within the market area. (Para 8)

(B) C.P. and Berar Agricultural Produce Market Act (29 of 1935), S.19 - AGRICULTURAL PRODUCE - Inspector can initiate prosecution for contravention of provisions of Act, if authorised by Market Committee.

Section 19 makes a special provision for initiation of prosecution by any person which may include the Chairman, Vice Chairman, or any officer or servant of the Market Committee, the only condition being that such person shall be duly authorised by the Market Committee in this behalf. When the Inspector was duly authorised by the Market Committee he must be held to be fully competent to institute proceeding for the committee. (Para 11)

J. N. Chandurkar, for Appellant; R. N. Deshpande, for Respondent No. 1; P. G. Palsikar, Honorary Asst. Govt. Pleader, for Respondent No. 2 (State).

Judgement

ABHYANKAR, J. :- This appeal raises an interesting question regarding interpretation of Rule 33 of the rules framed under the C.P. and Berar Agricultural Produce Market Act. 1935 (Act No. XXIX of 1935).

2. The appellant is an Inspector in the employment of. the Grain Market Committee, Amravati, which has been duly constituted under the provisions of the C.P. and Berar Agricultural Produce Market Act, 1935. Section 3 of this Act enables the provincial Government to declare by a notification any place or market as a market for sale or purchase of agricultural produce. Every such notification has to define the limits of the market. Accordingly, a notification was issued on 27th October 1956 for defining the limits of the market under Agricultural Produce Market Act at Amravati. The market yard is the area included within the defined limits stated in this notification and the second paragraph of the notification says that the market proper shall include market yard and land and buildings within a radius of one mile from the market yard.

3. The appellant was authorised by the market Committee under Section 19 of the Act to institute the present proceedings by way of a complaint against respondent no. 1. The complaint is that respondent no 1 is a dealer or trader in agricultural produce in Amravati, that every trader or dealer in agricultural produce in Amravati is required to obtain 3 licence for such trade from the Committee and that respondent no 1 has not obtained such a licence. It was further alleged that the accused purchased through the Adat of one Harinarayan Bhagirath, a grain broker. 120 bags of groundnut on 14-11-1964. A copy of the bill relating to this transaction is on record as Ex 14. It shows that the respondent is a purchaser of this quantity of groundnut that one Harikisan Mundada of Udkhed was the seller, and the transaction was brought about through the brokerage or agency of Messrs Harinaryan Bhagirath, grain and pulse broker. Inasmuch as respondent no. 1 has not obtained licence as a licensed trader entitled to make purchase or sale in the market area, he was prosecuted under a complaint dated 3-1-1966. The respondent on appearing in obedience to the notice admitted that Harinarayan Kalantri firm had purchased groundnuts on 14-11-1964 and sold the same to him at Amravati under bill no. 16, and that the firm of brokers had collected Adat, i.e. commission in respect of the transaction from him In a further answer respondent no. 1 stated that he had purchased the above bags from the commission agent and that he was not required to hold a licence for making such purchase. The reason given was that his commission agent was holding the necessary licence and therefore he was not required on a proper construction of the rules, to hold the licence. This contention has found favour with the learned Magistrate who has acquitted the first respondent. Against this acquittal the complainant asked for leave to appeal and leave having been granted the matter is now before us in appeal against acquittal.

4. In this appeal the appellant challenged the interpretation of the rules and especially the effect of sub-rule (4) of R. 33 of the rules on the finding of the Magistrate recorded as follows :-

"It is an admitted fact that M/s Harinarayan Bhagirath made alleged purchases as commission agent acting for and on behalf of the accused. In other words it may be said that the accused did not directly make alleged purchases on the Market yard, but such purchases were made for and on his behalf by his commission agent who was already a registered trader and holding necessary licence ........."

The appellant challenges the correctness of this view.

5. In order to understand the nature of the controversy certain provisions of the C. P and Berar Agricultural Produce Market Act and the rules framed thereunder are required to be examined. The preamble of the Act shows that the legislation is out on the statute book to provide for the establishment and better regulating of recognised open markets for the sale and purchase of agricultural produce other than cotton in this region. Section 3 provides for establishment of market and Section 4 for a Market Committee Under Section 5 power is given to the Government to make rules and, among other matters, rules can be made under sub-clause (vii) of Sub-Section (2) of Section 5 for grant of licence by a market committee to traders, brokers, weighmen measures surveyors, warehousemen and other persons using the market, and fixing the fees leviable by them, the

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form in which and the conditions under which such licences should be granted and the fees to be charged for such licences. Under Section 19 of the Act provision is made for institution of prosecutions and under that section prosecutions under the Act may be instituted by any person duly authorised in writing by the Market Committee in this behalf. Under Sub-Section (3) of Section 5 which gives the rule-making power to the Government it is further provided that any such rule may, when necessary provide that contravention thereof or of any of the conditions of the licence issued thereunder shall be punishable on conviction by a competent Magistrate, with fine which may extend to five hundred rupees.

6. Rules have been framed by the Government under Section 5 of the Agricultural Produce Market Act. Rule 5(1) provider that all persons engaged in purchasing or selling agricultural produce in the market, including adatyas, who have been registered as traders under Rule 33, shall form the traders electorate and shall be qualified to be elected as representatives of the traders on the committee. The rule does not apparently define as to who can be called 'a trader'. Provision for taking licence is made in Rules 33, 38 and 46 for licence to traders broker's weighmen etc Rule 33 is as follows :-

" 33(1).(i) Any trader m agricultural produce shall, on application at the office of the committee be Entitled to have his name registered as a trader on his executing an agreement in such form as the Committee may prescribe agreeing to conform to the Market rules, and on his paying such fee as the Committee, subject to the provision of clause (ii). with sanction of the Collector may fix in that behalf, according to the class of the Market as determined under Rule 61.

11. The fee to be levied by Committee under Clause (1) shall, (a) in the case of retail traders, be not less than Rs. 15/- and not more than Rupees 45/- per annum :

(b) in the case of wholesale traders, be not less than Rs. 50/- and not more than Rs. 200/- per annum.

(iii) Any Adatya as defined in the Explanation to Rule 5(1) shall on application at the office of the Committee be entitled to have his name registered as a trade on his executing an agreement in such form as the Committee may prescribe, agreeing to conform to the market rules, and on his paying such fee not less than Rs. 15/- and not more than Rs. 45/- per annum, if he is a retail trader and not less than Rs. 50/- and not more than Rs. 200/- per annum. If he is a whole sale trader, as the Committee with previous sanction of the Collector, may from time to rime prescribe :

Provided that the Committee may refuse to register an adatya as a trader for any reasonable cause to be recorded by it in writing.

(iv) For the purposes of Clause;, (ii) and (iii) :

(a) a retail trader means a trader who sells or purchases agricultural produce in quantities not exceeding 15 Bengali Maunds per day.

(b) a wholesale trader means a trader who is not a retail trader.

(2) Every person registered as a trader shall be granted a licence in such form as the committee may prescribe without payment of an additional fee.

(3) Every registration shall remain in force from the date on which it takes place until the 30th of September following and may be renewed for each succeeding year on payment of the prescribed fee.

(4) No person shall buy or sell agricultural produce within the market proper unless he is registered as a trader provided that an agriculturist may sell his own agricultural produce without such registration.

(5) An appeal shall lie to the Collector against the committee's orders under this rule, if it is presented within fifteen days from the date of such order."

7. It will be seen that the literal interpretation of sub-rule (4) of Rule 33 would mean that no person can buy or sell agricultural produce within the market proper unless he is registered as a trader, though under the proviso to this sub-rule itself an agriculturist may sell his own agricultural produce without registration. The first question therefore that falls for determination is which kind of sale or purchase transactions within the market proper are intended to be regulated by requiring licence to be taken for such purchase or sale. It is difficult to hold that the rules intend every person or any person who wants to purchase any quantity of agricultural produce or sell is required to take a licence simply because the transaction of sale or purchase takes place within the market proper. What is intended to be regulated under the licence and the rules is trading activity in agricultural produce in the market area. It is therefore difficult to hold that the sale or purchase by individuals for their own consumption and which is not part of a trading activity of such person, is required to be protected by a trading licence. The licence that is required for purchase and sale is to act as a trader It is thus clear that even in respect of sale or purchase, only that person who trades in the agricultural produce concerned whether by way of purchase or sale. is alone required to obtain a licence and such a licence is called trader's licence. It is also clear that a broker or an adatya is also entitled to have his name registered as a trader, and on payment of requisite fee to obtain a trader's licence required to be taken by a trader. Such a licence obtained by an adatya is not to be confused with the licence required to be taken by a person

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who wants to practise as a broker in the market. Under Rule 38 no person shall practise as a broker without obtaining a licence from the committee. Even though, therefore, a broker may be entitled to have himself registered as a trader, if he intends to make purchase in his own name the necessity of traders to be armed with licences is not obviated because their transactions are carried through brokers. The argument that has found favour with the Magistrate is that because a broker is entitled to make purchases for his constituent, the rules apparently do not require such constituents themselves to take licences as traders. In our opinion, rules do not yield such a construction. What is intended to be regulated by Rule 33(1) is the trading activity of a person with respect to agricultural produce within the market. Whether or not the trading activity is carried on by a person by making purchases and sales through the agency of adatya, that cannot possibly relieve such a person as a trader from the obligation to take licence and to be registered as a trader with the Market Committee. Thus, the crucial question that falls for decision, whenever it is alleged that a person has made a purchase or sale without a licence in the market, area, is whether such person is a 'trader'. In the instant case on the material on record we do not find a clear finding recorded by the Magistrate whether or not respondent no. 1 was a trader trading in agricultural produce within the market area concerned.

8. The learned counsel appearing for the respondent no. 1 has suggested that so to construe Rule 33(1) and (2) would create difficulties in respect of large class of up-country sellers who may place orders for purchases or sales of agricultural produce with their agents operating in the market area. The fact that such brokers effect sales or purchases on behalf of their principals within the market area will entail an obligation on such principals to take licences as traders from the Market Committee having jurisdiction over the market area. We do not see any difficulty in implementation of such rules and the scheme of the Act. The scheme of the Act and the rules is to regulate the trading activity of every transaction in respect of sale or purchase of agricultural produce taking place within the market area proper. In respect of each such transaction different persons may play different roles. If the transaction is brought about through the agency of a broker or an adatya, such persons must be armed with e broker's licence. If the transaction is on behalf of a trader, whether as purchaser or seller, then such person again must obtain a licence under which he can trade in that commodity in the market area. Similarly, weighmen who may be employed with actual measurement of produce are also required to take licences under the rules. It is difficult to accept the contention that the transaction having been put through a licenced broker, other persons concerned in the transaction such as purchasers and sellers, should not be required to obtain licence. The function of a broker is different front that of a trader. Though the rules permit the same person to be a trader and to take a trader's licence and also to be a broker ii he takes a broker's licence, it does not mean and cannot possibly be intended to mean that whenever transactions are effected through the agency of broker, the trader who puts such transaction through the agency of the broker need not take licence what is intended to be regulated is a trading activity and that must mean regulating the activities both of purchasers and seller provided they are traders within the market area. The reason for this regulation is obvious The learned counsel for the appellant hap produced before us forms of agreement required to be executed by a trader and also by a broker. The obligations of a trader are different from those of a broker. Though the object of regulating the activities of each of these classes operating in the market is to secure a fair deal and clean transactions and to see that proper rates are obtained and proper prices are paid as agreed to ensure that weighmen are faithful, and no kind of unlawful deductions are made, the obligations of each person playing his part in respect of a transaction taking place in the market or in respect of agricultural produce are different from each other. A trader is required to keep his own record and show the names of persons entering into transactions, their addresses, the name of the weighman, the name of the broker the name of the person to whom payment was made, the date of the payment, details of deduction, if any, to be properly made, and he is bound to conform to the regulations of the market under the supervision of the Market Committee. The obligations of brokers are different. We are therefore unable to understand how it can be said that merely because a transaction is put through on behalf of a trader through the agency of a broker, such a trader, if he is trading in the market, is not required to take a licence. It was also argued that the brokers themselves being entitled to be registered as traders, and obtain licence as traders, are not bound to disclose the name of principal if they are pakka adatyas. We fail to see what turns upon some of the transactions being of this nature. Even if the names of purchasers and sellers as the case may be, may not be required to be disclosed by a pakka adatya, the moment the name is disclosed as a purchaser or seller, ordinarily that person will have to answer whether he is a trader within the market or not. The necessity of disclosing the name of the purchaser is that all purchases and sales have to conform to the regulation of the market. If the broker enters into a transaction of sale or purchase in his own

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name, then he does not act as a broker but acts as a trader, and for this activity he has to be properly armed with a trader's licence. But we fail to see how the fact that same person can have two kinds of licences can possibly lead to the conclusion that the employment of such a broker will relieve a trader from obtaining a licence in his own name merely because he prefers to trade through a broker.

9. The crucial question therefore is whether a person is a trader in the market area. If he is found to be a trader in the market area, then there is no doubt that he is bound to take a licence as provided in sub-rule (1) of Rule 33 and cannot effect sales and purchases in contravention of sub-rule (4) of Rule 33. On the other hand, if the person is not shown to be a trader within the market area in respect of agricultural produce then we do not think that an act of purchase or sale of agricultural produce within the market area will involve an obligation to be armed with a trader's licence. What is required under the rule is 'trader's licence' and not merely a licence for sale or purchase in the market area. The activity which is intended to be regulated is trading activity in respect of agricultural produce within the market area and not sales and purchases for individual consumption, which are not of trading nature and for which there may be no necessity of taking licences for such person. On the other hand, if the activity is of a trading nature even though the transactions are effected through the agency of a broker or adatya. in our opinion, rules require such a trader to take out a trader's licence if he operates within the market area.

10. Applying these principles to the facts of this case, it will be found that there is no finding recorded whether the first respondent if a trader in the market area. As this finding is essential for any enquiry whether licence is required to be taken out by him under Rule 33, we must hold that proper enquiry should be held and a finding recorded in this connection. Inasmuch as, however the learned Magistrate has acquitted the first respondent on his view that the transaction having been put through a broker the principal was not required to take out a licence, we are unable to sustain the finding of acquittal. It is accordingly set aside and the case is remanded to the trial Court for a fresh trial and a decision in the tight of the observations made above.

11. It was also contended on behalf of the first respondent that the complaint is not properly initiated. The learned counsel urged that the complainant in such a case must be the Market Committee itself and not the complainant Wamanrao who is an Inspector of the Market Committee. In support of this argument the learned counsel relied on Section 12 of the Act which provides for incorporation of the Market Committee. Under that section every Market Committee shall have a body corporate and shall have perpetual succession and a common seal and may sue and be sued in its corporate name and shall be competent to acquire and hold property. Basing the argument on this provision, it is urged that the right to sue and be sued having been vested in the Market Committee as an incorporate body or entity, a prosecution in the name of its Inspector was not proper. The short answer to this question is that Section 19 makes a special provision for initiation of prosecution by any person which may include the Chairman, Vice Chairman, or any officer or servant of the Committee, the only condition being that such person shall be duly authorised by the Market Committee in this behalf. It is this special provision which must govern the solution of the question whether the complaint in this case has been properly made. There is no doubt that Wamanrao, who was Inspector, was duly authorised by the Market Committee. Once that condition is satisfied, there is no doubt that Wamanrao was fully competent to institute the proceedings for the Committee. The objection on this ground therefore must fail.

12. The result is that the appeal is allowed, the acquittal of the first respondent is set aside and the case is remanded to the Court of the Magistrate for a fresh decision after giving opportunity to both sides to lead evidence they desire

Appeal allowed.

AIR 1991 CALCUTTA 371 "Bethuadahari Regulated Market Committee v. Tapan Kumar Saha"

CALCUTTA HIGH COURT

Coram : 2 N. P. SINGH, C.J. AND U. C. BANERJEE, J. ( Division Bench )

Bethuadahari Regulated Market Committee, Appellant v. Tapan Kumar Saha and others, Respondents.

F. M. A. No.1401 of 1990, D/- 26 -4 -1991.

(A) W.B. Agricultural Produce Marketing (Regulation) Act (35 of 1972), S.13(1) - AGRICULTURAL PRODUCE - Licence - Trade or business within market area - Taking out licence for - Cannot be refused by trader on ground that facilities as provided under Act were not available within market area. (Para 8)

(B) W.B. Agricultural Produce Marketing (Regulation) Act (35 of 1972), S.17(1) - AGRICULTURAL PRODUCE - Market fee - Collection of - All facilities as provided by Act not provided by Market Committee - Collection of market fee by Committee - Ban against, cannot however, be imposed by Court.

Market fee - Facilities to traders - Not provided by Market Committee - Court cannot impose ban against collecting fees.

Decision of Calcutta High Court, Reversed.

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Fee is not a tax and as such whenever the right to realise the fee is questioned the authority charging such fee is required to satisfy the Court on the basis of the material produced before it that there is a quid pro quo. In the words, if the fee is being realised by the authority concerned different facilities are also being provided to persons from whom such fees are being realised. However it, is difficult for the Court to impose a ban that unless all the facilities conceived are provided by the Market Committee, it is not entitled to collect the market fee. If in every case such a ban is imposed by the Court then the Market Committee may not have sufficient source of income for implementing the schemes for the benefit of the traders and agriculturists within the market area except by way of taking loans from the Banks and State Government as provided by Section 18 of the Act.

Case law discussed. (Paras 10, 20)

In such a case to hold that first Market Committees should raise independent funds from the Banks or the State Government, develop the market area fully by providing all facilities to the traders, agriculturists, buyers and sellers within the market, area and only thereafter such Market Committee should start collecting the market fee, may be a more legalistic view in respect of realisation of market fee but that may not be a practical or workable interpretation of the different provisions of the Act. The levy of the market fee is linked with the sale of the agricultural produce within the market area and as such the Market Committee becomes entitled to realise the market fee no sooner the transaction of sale and purchase starts in respect of the agricultural produce within the market area. At the same time the law enjoins every Market Committee to perform its duty by providing different facilities within the market area to justify the realisation of the market fee within such market area. As such, whenever any dispute is raised before the Court that a particular Market Committee is realising market fee, as a tax, in as much as no facility is being provided, the Court should find out as to by the time the Market Committee starts, realising the market fee at least basic facilities have been provided within the market area. Some such basic facilities may be, the establishment of principal market yard, construction and repair of approach roads, shops and shelter for traders and agriculturist, facilities for drinking water, facility for maintenance of standard weights and measures. Every Market Committee is expected to provided such basic facilities within the market area, before such market area starts functioning as the exclusive market area for sale and purchase of agricultural produce. But to defer the realisation of market fee, which right has been vested in the Market Committee by statutes, till all facilities are provided by such Market Committee, will not be justified. (Para 21)

Where the Market Committee had already provided facilities like well built principal market yard, godowns and sheds, internal roads, arrangements for drinking water and weighing facilities, and it was also agreed that much more was to be provided but there was delay because the constitutional validity of the Act itself was challenged in High Court in different writ applications which remained pending for years, the Market Committee would be at liberty to realise the market fees in accordance with the provisions of the Act and the rules framed, over the sale and purchase of the agricultural produce. But the court directed that they should take immediate steps for completion of the scheme within the market area providing not only the basic facilities but other facilities which they were enjoined bylaw to provide so that the market fee would not become a tax in the eye of law. In such a case if a total ban was imposed against the Market Committee from realising the market fee till all the facilities conceived were provided, it would paralyse the market area itself.

Decision of Calcutta High Court, Reversed. (Para 26)

Cases Referred : Chronological Paras

AIR 1983 SC 1246 17, 22, 24

AIR 1980 SC 1008 16

AIR 1975 SC 846 : 1975 Tax LR 1455 15

AIR 1971 SC 344 13

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AIR 1971 SC 1182 14

AIR 1961 SC 459 12

AIR 1954 SC 282 11

Arun Prakash Sarkar, Rabindra Nath Dutta and S.Sanyal, for Appellant; Kashi Kanta Maitra, C.C.Dey (Private), S.C.Ukil, Govt. Pleader and Mrs. Chhabi Das (for Nos.8 to 10), for Respondents.

Judgement

N. P. SINGH, C. J. :- The appellant has filed this appeal against the judgment of a learned Judge of this Court, directing the respondents of the writ application not to realise the market fee within the market area in question till the respondents fully perform their duties and obligations as enjoined by the provisions of the West Bengal Agricultural Produce Marketing (Regulation) Act of 1972 (hereinafter referred to as "the Act").

2. It is the case of the petitioners of the writ application (hereinafter referred to as "the petitioners") that they are traders and agriculturists residing within the "Market Area" comprising Nakasipara, Kaligunj, Krishnanagar II and Tehatta II in the District of Nadia. It has been alleged that although a notification has been issued declaring several villages as "Market Area" in accordance with the provisions of Section 3 of the Act but no infrastructural arrangements have been made by the Market Committee for providing any service to the agriculturists or traders who sell or purchase the agricultural produce within the said market area. It has been stated that only the principal market yard has been established at Bethuadahari and no sale area or yard have been established anywhere within such market area extending over a distance of over 70 kms. According to the petitioners unless the Market Committee provides the different facilities, to the traders and agriculturists within the market area, there is no justification for the Market Committee to insist the traders to take licence in accordance with the provisions of the Act or to demand market fees on the sale and purchase of the agricultural produce.

3. An affidavit-in-opposition on behalf of the Market Committee has been filed. It has been pointed out that no sooner the market area was established, writ applications were filed challenging the validity of the provisions of the Act and the constitution of the Market Committee. Because of the pendency of such applications for about ten years "the Market Committee could not take adequate measures for the improvement of the market area or to implement the provisions of the said Act providing facilities and amenities to the traders or to establish the sub-market yards in accordance with the scheme laid out for the purpose". It has been further stated on behalf of the Market Committee that "the Market Committee has the scheme to establish sub-market yards, to provide for checking of standard weights and measures and other facilities to the Market Functionaries as envisaged in the said Act. But at present the Market Committee is not in possession of such fund as to provide all such facilities instantly because of continuance of the order of injunction as stated hereinbefore". It has been asserted that "the Market Committee has already provided facilities to the Market Functionaries by setting up a well built principal market yard, by constructing godowns and sheds, internal roads in the market area, drinking water arrangements to different places, weighing facilities etc.". Thereafter it has been then stated "as the other Market Functionaries were not interested to use the godowns, the same were let out to the Jute Corporation of India, one of the market functionaries". Giving the details of such godowns and other constructions, it was stated as follows :

" (i) Bail Jute godown - One

(ii) Loose Jute godown - One

(iii) Various crops godown - One

(iv) Assortment-cum-boiling of Jute shed - One

(v) Auction Platform - One

(vi) Rural godown - One

(vii) Cattle but shed - One

(viii) Community Latrine - Ten

(ix) Drinking water - Three

arrangements at tube

different places wells

(x) Market Committee Building

(xi) Boundary walls

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(xii) Internal Roads in the market area

(xiii) Electrical arrangements."

4. The learned Judge, on consideration of the materials on record, has come to the conclusion that the Market Committee was not discharging its statutory duties and as such not entitled to realise the market fees. On that finding he has issued a writ of mandamus restraining the appellants from realising any market fee till they have discharged their statutory obligations.

5. Section 3 of the Act vests power in the State Government to declare any area as a market area within which purchase and sale of agricultural produce as may be specified in the notification, shall be regulated.

6. Under Section 5 of the Act a Market Committee for every market area has to be constituted in accordance with the provisions of the Act.

7. In view of Section 13(1) of the Act after six months from the declaration of any area as the market area no person can carry on business or act as a trader for sale or purchase of agricultural produce within the market area except under and in accordance with the prescribed terms and conditions of a licence issued in this behalf by the Market Committee.

8. Because of sub-sec. (1) of Section 13 there is not much scope for controversy as to whether any person carrying on business or acting as a trader for sale and purchase of agricultural produce, has to take licence. Section 13(1) says in clear and unambiguous words that any person who carries on business as a trader, commission agent or in any other capacity in the sale and purchase of agricultural produce within the market area has to take licence with the prescribed terms and conditions. As such the question of taking the, licence for carrying on trade and business within the market area is concerned there is no scope for linking that question with the facilities available to traders within the market area.

9. So far power to realise market fee is concerned, Section 17(1) vests power in the Market Committee to levy fees on the agricultural produce sold in the market area, the relevant part whereof is as follows :

"17(1) Notwithstanding anything contained in the Bengal Finance (Sales Tax) Act, 1941 or any other law relating to taxation of agricultural produce in force, the market committee shall levy fees on any agricultural produce sold in the market area, at a rate which shall not be more than two rupees per one hundred rupees of the amount for which the agricultural produce is sold, whether for cash or for deferred payment or for other valuable consideration, irrespective of the fact that the buyer of the produce is the Central Government or the State Government or an agent or undertaking of either of them or a Corporation constituted under any law for time being in force.

Provided that no fee shall be levied in the same market area, more than once, in relation to the same agricultural produce irrespective of the number of transactions."

10. Whether the Market Committee can realise the market fees over the sale and purchase of agricultural produce within the market area without providing facilities to the traders, sellers and purchasers within the market area has been examined by different Courts including Supreme Court on several occasions. It is almost established by a series of judgments of the Supreme Court that fee is not a tax and as such whenever the right to realise the fee is questioned the authority charging such fee is required to satisfy the Court on the basis of the materials produced before it that there is a quid pro quo. In other words, if the fee is being realised by the authority concerned different facilities are, also being provided to persons from whom such fees are being realised.

11. This question was considered in one of the earliest judgments of the Supreme Court in the case of Commr., Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282, where it was pointed out (at p. 295)

"As the object of a tax is not to confer any

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special benefit upon any particular individual, there is, as it is said, no element of quid pro quo between the taxpayer and the public authority ........."

"a 'fee' is generally defined to be charge for a special service rendered to individuals by some governmental agency."

"The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden, while a fee is a payment for a special benefit or privilege.

12. In the case of Hingir-Rampur Coal Co. Ltd. v. State of Orissa, AIR 1961 SC 459 it was reiterated that a fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it. But at the same time it was pointed out (at pp. 467-468 of AIR)

"Thus the scheme of the Act shows that the cess is levied against the class of persons owning mines in the notified area and it is levied to enable the State Government to render specific services to the said class by developing the notified mineral area. There is an element of quid pro quo in the scheme, the cess collected is constituted into a specific fund and it has not become a part of the consolidated fund, its application is regulated by a statute and is confined to its purposes, and there is a definite correlation between the impost and the purpose of the Act which is to render service to the notified area."

13. In Delhi Cloth and General Mills Co. Ltd. v. Chief Commissioner, Delhi, AIR 1971 SC 344 after a finding that 60% of the amount of licence fees charged from the mills where actually spent on services rendered to the factory owners, the validity of the licence fee was upheld by the Supreme Court.

14. Again in the case of Indian Mica and Micanite Industries Ltd. v. State of Bihar, AIR 1971 SC 1182 it was impressed (at p. 1186 of AIR)

"Before any levy can be upheld as a fee, it must be shown that the levy has reasonable correlationship with the services rendered by the Government. In other words, the levy must be proved to be a quid pro quo for the services rendered. But in these matters it will be impossible to have an exact correlationship. The correlationship expected is one of a general character and not as of arithmetical exactitude."

15. In the case of State of Maharashtra v. Salvation Army, Western India Territory, AIR 1975 SC 846 the fee charged under the Bombay Public Trusts Act, 1950 was upheld saying that Public Trusts exercise control and supervision with a view to preserve the trust properties from being wasted or misappropriated by trustees and as such certainly special services are being rendered for the benefit of the trust.

16. A Constitution Bench of the Supreme Court in the case of Kewal Kristian v. State of Punjab, AIR 1980 SC 1008 while examining provisions of the Punjab Agricultural Markets Act pointed out (at pp. 1015-1016 of AIR):

"The authorities, more often than not, almost invariably, will not be able to know the individual or individuals on whom partly or wholly the ultimate burden of the fee will fall. They are not concerned to investigate and find out the position of the ultimate burden. It is axiomatic that the special service rendered must be to the payer of the fee. The element of quid pro quo must be established between the payer of the fee and the authority charging it. It may not be the exact equivalent of the fee by a mathematical precision, yet, by and large, or predominantly, the authority collecting the fee must show that the service which they are rendering in lieu of fee is for some special benefit of the payer of the fee. It may be so intimately connected or interwoven with the service rendered to others that it may not be possible to do a complete dichotomy and analysis as to what amount of special service was rendered to the payer of the fee and what proportion went to others."

17. The same question came up for consideration in the case of Sreenivasa General Traders v. State of Andhra Pradesh, AIR 1983 SC 1246. It was said (at pp. 1261-62 of AIR) :-

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"The traditional view that there must be actual quid pro quo for a fee has undergone a sea of change in the subsequent decisions . ..... The power of any legislature to levy a fee is conditioned by the fact that it must be 'by and large' a quid pro quo for the services rendered, However, correlationship between the levy and the services rendered expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a reasonable relationship' between the levy of the fee and the services rendered."

18. Section 19 of the Act says "All moneys received by a market committee shall be paid into a fund to be called the market committee fund and all expenditure incurred by the market committee under or for the purposes of this Act shall be defrayed out of the said fund". The expression "all moneys received" shall also include the market fee collected by the Market Committee.

19. Section 20 of the present Act enumerates some of the heads over which the Market Committee can spend its fund. That section speaks apart from other things about maintenance and improvement of the market; construction and repair of buildings and installation and repair of equipments which are necessary for the purposes of the market and for the health, convenience and safety of the persons using it; provision for and maintenance of standard weights and measures, providing facilities, such as shelter, parking accommodation and water for the persons, draught cattle, vehicles and pack animals coming or being brought to the market and construction and repair of approach roads, culverts and bridges. As such it can be said that the market fee collected has to be spend for maintenance and improvement of the market, maintenance of standard weights and measures, providing shelter, parking accommodation and water for the persons, cattle, vehicles and pack animals, construction and repair of approach roads, culverts and bridges and for proper functioning of the market area where agricultural produce are brought or sold. Neither it is possible for the Legislature nor for the Courts to make an exhaustive list of the facilities which every Market Committee is expected to provide by way of quid pro quo for the market fee realised by it within the market area. It has been pointed out repeatedly by Courts that there is no question of correlating the collection of market fees with the expenses over facilities with mathematical exactitude. But "henever the realisation of such market fee is challenged before the Court, the Market Committee has to satisfy on the materials to be produced that the market fee is not being realised as tax over tire transactions in the market area.

20. A time limit of six months from the date of declaration of any area as a market area has been fixed in S.13(1) after which no person can carry on business or act as trader within such market area without a licence granted by the concerned Market Committee. But no such time limit has been provided under S.17 of the Act. The Market Committee is entitled to realise market fee on the agricultural produce sold in the market area at the rate prescribed. In this background, in my view, it is difficult for the Court to impose a ban that unless all the facilities conceived are provided by the Market Committee, it is not entitled to collect the market fee. It in every case such a ban is imposed by the Court then the Market Committee may not have sufficient source of income for implementing the schemes for the benefit of the traders and agriculturists within the market area except, by way of taking loans from the Banks and State Government as provided by S.18 of the Act.

21. According to me to hold that first Market Committees should raise independent funds from the Banks or the State Government, develop the market area fully by providing all facilities to the traders, agriculturists, buyers and sellers within the market area and only thereafter such Market Committee should start collecting the market fee, may be a more legalistic view in respect of realisation of market fee but that may not be a practical or workable interpretation of the, different provisions of the Act. It need not be

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pointed out that the levy of the market fee is ,linked with the sale of the agricultural produce within the market area and as such the Market Committee becomes entitled to realise the market fee no sooner the transaction of sale and purchase starts in respect of the agricultural produce within the market area. At the same time the law enjoins every Market Committee to perform its duty by providing different facilities within the market area to justify the realisation of the market fee within such market area. As such, according to me, whenever any dispute is raised before the Court that a particular Market Committee is realising market fee as a tax, inasmuch as no facility is being provided, the Court should find out as to by the time the Market Committee starts, realising the market fee at least basic facilities have been provided within the market area. Some such basic facilities may be, the establishment of principal market yard, construction and repair of approach roads, shops and shelter for traders and agriculturists, facilities for drinking water, facility for maintenance of standard weights and measures. Every Market Committee is expected to provide such basic facilities within the market area, before such market area starts functioning as the exclusive market area for sale and purchase of agricultural produce. But to defer the realisation of market fee, which right has been vested in the Market Committee by statutes, till all facilities are provided by such Market Committee, in my view, will not be justified. It is very difficult to enumerate as to what shall be the 'all facilities' in context of different market areas some of which may be within the interior parts of the State.

22. 1n the case of Sreenivasa General Traders v. State of Andhra Pradesh, AIR 1983 SC 1246 (supra) it was observed by the Supreme Court (at p. 1264 of AIR) :

"It will be noticed that these facilities are to be provided by the market committees in course of time 'as and when funds permit'. It is needless to stress that the question of providing these facilities would depend on the financial capacity of each market committee.

That would depend on whether there are sufficient funds available at its disposal with the Market Committee. We are not impressed by the submission that if a market committee does not have sufficient funds to provide the special amenities it should borrow loans from the State Government under sub-section (1) of Section 18 of the Act or the State Government should provide grant-in-aid to such market committee under sub-section (2) (iii) of Section 16 of the Act. If any particular market committee persistently makes default in not performing the duties imposed on it by or under the Act, or neglects or refuses to carry out any general or special direction issued by the State Government under subsection (3) of S.4 as regards providing facilities or abuses its powers, the petitioners have the remedy to take up the matter with the State Government. The State Government has ample power under Sec.22 of the Act to direct the supersession of such a market committee."

23. In the present Act, sub-section (1A) of S.20 vests power in the West Bengal State Marketing Board (hereinafter referred to as "the Board") to review the requirements of persons using the market area from time to time and to direct the Market Committee to provide such facilities as the Board may consider necessary. The said sub-section (l A) of S.20 is as follows :

"(1A) Every market committee shall, with the previous approval of the Board, spend every year fifty per cent of the fees referred to in sub-section (1) of Section 17 for providing facilities with a view to ensuring smooth marketing of agricultural produce or for servicing loans taken on that account. If any market committee fails to spend the amount or portion of it for the aforesaid purposes, the same amount of the unspent portion shall be utilised for other purposes referred to in subsection (1) :

Provided that the Board may from time to time review the requirements of the persons using the market area and direct the market committee to provide such facilities as the Board may consider necessary and any such direction by the Board shall be binding on the

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market committee."

24. Section 22 of the Act vests power in the State Government to supersede any Market Committee and to appoint a person to perform the functions of the Market Committee till it is so reconstituted. Even in the present Act provisions have been made as was the position in the case of Sreenivasa General Traders v. State of Andhra Pradesh (AIR 1983 SC 1246) (supra) to control and supervise the working of the different market committees by the Board and the State Government. They are expected to see that the market fees realised are properly spent for providing different facilities to the traders, agriculturists and others who sell and buy agricultural produce within the market area.

25. As already mentioned above it has been stated in the affidavit-in-opposition filed on behalf of the Market Committee that although the Market Committee is not in possession of sufficient fund to provide all facilities conceived by the framers of the Act but the Market Committee has already provided facilities like well built principal market yard, godowns and sheds, internal roads, arrangements for drinking water and weighing facilities. It has been asserted that the godowns have been constructed which have been let out to the Jute Corporation of India because other market functionaries were not interested to use such godowns. The respondents to the writ application took a fair stand by saying that much more is to be provided but there has been delay because the constitutional validity of the Act itself was challenged in this Court in different writ applications which remained pending for years.

26. Taking all the facts and circumstances into consideration in my view, if a total ban is imposed against the Market Committee from realising the market fee till all the facilities conceived are provided, details whereof have not been mentioned in the judgment of the learned Judge, it may paralyse the market area itself. Accordingly, I direct that the Market Committee shall be at liberty to realise the market fees in accordance with the provisions of the Act and the Rules framed, over the sale and purchase of the agricultural produce. But they should take immediate steps for completion of the scheme within the market area providing not only the basic facilities but other facilities which they are enjoined by law to provide so that the market fee does not become a tax in the eye of law. Such facilities, which have been indicated in the provisions of the Act, as well as in the different judicial pronouncements of the Supreme Court, should be made available in the market area within a period of one year from today. I further direct the Board as well as the State Government to supervise the functioning of the Market Committee and to see that the market fees realised over the transactions within the market area in question, are spent over the development of the market area. If there is any default or delay on the part of the Market Committee it need not be said that the Board or the State Government should exercise the power vested in them, by taking actions against the Market Committee aforesaid.

27. This appeal is accordingly allowed in part to the extent that the total ban imposed against the Market Committee from realising the market fees over the transactions within the market area in accordance with the provisions of the Act is set aside. The appeal is disposed of in terms of the direction given above. In the facts and in the circumstances of the case there will be no order as to costs.

28. U. C. BANERJEE, J. :- I agree.

Order accordingly.

AIR 1999 DELHI 374 "O. M. Wholesale Traders Welfare Association v. A. P. M. Committee"

DELHI HIGH COURT

Coram : 1 C. M. NAYAR, J. ( Single Bench )

Okhla Mandi Wholesale Traders Welfare Association and others, Petitioners v. Agricultural Produce Marketing Committee and another, Respondents.

C.W.P. No. 2830 of 1995, D/- 13 -7 -1999.

Delhi Agricultural Produce Marketing (Regulation) Act (87 of 1976), S.36 - AGRICULTURAL PRODUCE - HIGH COURT - Show cause notice - Market Committee issuing said notice relating to grant of licences to petitioners whole sale and Commission agents - Alleged non-compliance with directions given by High Court in earlier writ petition - However, it was not made clear by petitioners as to how each individual petitioner will be affected by said show cause notices - High Court directing petitioners to seek remedy of right of appeal under S. 36 of the Act or any other remedy as permissible in law.

Constitution of India, Art.226. (Para 5)

Cases Referred : Chronological Paras

M/s. Fruit and Vegetable Commission Agents Whole-sale Traders Assocn. v. Agricultural Produce Marketing Committee C.W.P. No. 72 of 1994, D/- 16-3-1995 (Delhi) 1

B. K. Sood, for Petitioners; Ms. Pinki Anand, Mukul Rohtagi, Sr. Advocate and Ravi Gupta, for Respondents.

Judgement

ORDER :- The present petition has been filed to impugn the show cause notices dated 19th July, 1995 and 10th July, 1995 which are filed as annexures P-7 and P-8 respectively. The said notices relate to the grant of licence under the provisions of the Delhi Agricultural Produce Marketing (Regulation) Act, 1976 (hereinafter referred to as 'the Act') and Rules framed thereunder known as Delhi Agricultural Produce Marketing (Regulation) (General) Rules, 1978 (hereinafter referred to as 'the Rules'). The reading of the show cause notices will indicate that the same were issued in pursuance to the directions as contained in the judgment rendered in C.W.P. No. 72/94 (M/s Fruit and Vegetable Commission Agents Wholesale Traders Association (Regn.) v. Agricultural Produce Marketing Committee) decided on March 16, 1995. Copy of the judgment has been placed on record as Annexure-P4 to the writ petition. The dispute arises between the parties with the issuance of licence under the relevant provisions of the Act for doing business in the market by the wholesalers as well as by the commission agents and such categories as permitted by law. The main contention which has been raised in this petition is that the impugned show cause notice dated 19th July, 1995 does not comply with the directions as contained in the judgment of the Division Bench in C.W.P. No. 72/94 as well as in terms of the provisions of the Act and the Rules. Rule was issued on 4th January, 1996 by the Division Bench and interim directions were granted in the miscellaneous application, C.M. No. 4707/95 which reads as follows :-

"C.M. 4707/95

Petitioners seek stay of proceedings pursuant to show cause notice dated 4th July, 1995. Having regard to the facts and circumstances of the case we feel that respondent No. 1 shall be left free to adjudicate the matter on the basis of the show cause notice. Respondent No. 1 may thus decide the matter but the decision shall not be implemented without leave of the Court. We grant liberty to Respondent No. 1 to move appropriate application seeking directions after taking a decision pursuant to the show cause notice. Pending further orders the parties are directed to maintain status quo. CM is disposed of accordingly."

2. Respondent No. 1, Agricultural Produce Marketing Committee acted in pursuance to the directions of this Court as referred to above and filed application under S. 151, CPC, C.M. No. 4888/96, wherein it is stated that compliance has been made and the matter has been decided in accordance with the orders of this Court made on 4th January, 1996. The relevant portion of this application which will give full particulars of the decision now taken by the Committee is stated in paragraph 6 which may be reproduced as follows :-

"6. That respondent No. 1 is statutory body created under the Delhi Agricultural Produce Marketing (Regulation) Act, 1976 and 'B' category licences are issued to the commission agents for carrying on business of commission agents and the same have to be renewed in

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accordance with the Act and the rules and it is essential for the smooth administration of the market yard that the decision of the APMC may be implemented forthwith. That for smooth and efficient discharge of the work of commission agents and taking into account the limited facilities and the volume of trade picked-up so far by the licences in the sub-yard Okhla space available on the auction Platforms, it has been decided that :-

(i) The small shop holders, who are having 'B' category licences but who had not made applications for renewal, their licences shall not be renewed.

(ii) Office of the APMC, Azadpur had issued show cause notices to all small shops holders having 'B' category licences. Some of them had not made replies to the show cause notices issued by this office. The party who had not submitted the replies, their licences of 'B' category shall not be renewed.

(iii) 'B' category licence is meant for a commission agent and if the 'B' category licence holder (on small shops) had not worked as commission agent and has deposited NIL market fee during the years 1992-93, 1993-94 and 1994-95, their licences shall not be renewed.

(iv) Even if the 'B' category licence holder has paid some market fee during the aforesaid 3 years, but had discontinued to work in 1995-96 and has paid no market fee w.e.f. 1-4-95 to 31-3-96, their licences shall not be renewed.

It may further be mentioned that in respect of those small shop owners who had picked-up business as commission agents as they were earlier granted 'B' category licence meant for commission agents, the committee does not intend to disturb their livelihood at this juncture and accordingly the defendant committee has decided to renew 'B' category licences of only 55 small shop owners (highest market fee payers) on the basis of market fee paid by them keeping in view the limited space available for marketing operations in the mandi. The remaining 'B' category licences issued on small shops are also not to be renewed and no fresh licence of 'B' category on small shops is to be issued as per policy.

Auction sites may be made available to the 'B' category licence holders depending upon the volume of trade conducted by them during the last 2-3 financial years.

In view of the above, it is respectfully prayed that this Hon'ble Court may be pleased to permit answering respondent to implement the above noted decision regarding renewal/refusal to renewal of 'B' category licences issued on small shops in Okhla Sub-yard."

3. Respondent No. 2 has filed reply to the aforesaid application wherein averments are made that the orders passed by this Court on 4th January, 1996 have not been fully complied with as will be indicated from para 6 of the reply which reads as under :-

"6. In reply it is not denied that Category 'B' licenses are issued to the Commission Agents for carrying on the business of Commission Agents in the Mandi. These licences are further entitled to be renewed year to year in accordance with the Rules and the A.P.M.C. Act. The answering respondent humbly submits that vide this process, the respondent No. 1 is issuing and granting the category 'B' Licences in favour of Mashakhors also who are in fact not entitled for the licences of the Commission Agents. They are not even permitted to act as agents in the mandi since Mashakhors are the "Petty Venders". There is a clear demarcation in between the Mashakhors and the Commission Agents/Whole-sellers. For example the size of the shops of the two categories are different and distinct, and the auction platform is also for the benefit and business of Commission Agents/Whole-sellers only. Said Mashakhors are not entitled for the same. In other words it can be said that the persons who are carrying on their business in the mandi from the bigger shops i.e. 2-1/2 storied structures are entitled for the auction platform while the other persons carrying on their business from the small 4 Mts. X 4 Mtr. shop/Thalas are not entitled for the same. A copy of the plan is annexed hereto and marked as Annexure-I.

In view of the detailed facts, it is humbly submitted that the decision as taken by the respondent No. 1 and mentioned in the application under reply is neither valid nor legal. It is stated that the small and petty vendors are not to the granted category B License irrespective of the Market Fee deposited by them. Payment of the market fee does not determine the status of the person sitting and carrying on the business from the said mandi. Small shop keepers are not

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entitled for the category B licences at all. The respondent No. 1 has further wrongly decided to make the auction site available to category B License holders on the basis of the volume of trade for the last 2 to 3 financial years. This decision on the part of the respondent No. 1 is absolutely illegal, mala fide, arbitrary and ultra vires the Act and the Rules framed thereunder. As per the rules and the policy of the DDA the auction platforms are for the benefit and to be used by the 50 shop keepers running their business from bearing Nos. 1 to 50. These auction platforms are to be used by the commission agents/whole-sellers for the purposes of running of their business. Petty Venders/Mashakhors are to run their business from the small shops allotted to them. Even a perusal of the show cause notice issued by the respondent No. 1 clearly provides that a Mashakhors is a functionary in the market who makes purchases from the commission agents and makes further sale to the retailers. The small shops (measuring 4 Mtrs x 4 Mtrs) are also to be utilised by them and they are called Mashakhors Shops.

In terms of the aforesaid it is stated that the Mashakhors/small shop owners are not at all entitled for the category B license and any decision taken by the respondent No. 1 to renew their licences or grant them any license of category B is absolutely illegal and ultra vires the Act. In view of the facts as stated hereinabove, the decision alleged to have been taken by the respondent No. 1 is liable to be set aside and not given any effect to. As a matter of fact, the decision alleged to have been taken by the respondent is just an eye wash. Pertinently, it has specifically been admitted by them that the issuance of category B Licences to Mashakhors/Small Shop Owners was a mistake on their part. On the basis of their own admission this Hon'ble Court was pleased to direct them to rectify their mistake. Vide the impugned decision they have raised a policy and are alleging that the directions of this Hon'ble Court have been complied with. The respondent No. 1 has not cared to consider the case of the applicants on the basis of the Rules and the Act as to whether they are entitled for the category B Licences or not, instead they are deciding the show cause notices on the basis of the deposit of the market fee which is no ground for the grant of any licence in the mandi".

4. The learned counsel for the petitioner has referred me to portions of the judgment of the Division Bench to reiterate the proposition that the directions contained therein have not been complied with and particular reference is made to the following paragraphs which read as follows :-

"...... It is specifically stated in paragraph (7) of the counter-affidavit that some mashakhores having 'A' category licence are also holding 'B' category licence and that the said 'B' category licences had been issued under a mistake of law/fact in certain circumstances. It is also stated in paragraph (9) of the counter-affidavit that the auction platforms were meant for auction work for commission agents. The auction platforms were meant only for 50 commission agent shops for auction purposes and that the mashakhores are entitled to function from their shops measuring area 4 x 4 meters on a 4 feet high raised platform. The earlier mentioned judgment dated 7th February, 1992 of the Division Bench in Civil Writ Petition No. 4107/91 is also relevant in this context. However, individual mashakhores who are holding category 'B' licence are not before us, and, therefore, we don't propose to decide in this writ petition whether those persons are entitled to hold category 'B' licence and to function as commission agents. Since the first respondent has categorically admitted that category 'B' licences were issued by mistake, the first respondent has a duty to correct such mistakes in accordance with law either by cancelling the licences wrongly issued or by refusing to renew such licences.

The second limb of the argument of the petitioners is that Rule 16 of the Rules prohibits a person from holding licences for more than one category at the same time. But it has to be noted that as per the proviso to Rule 16 a licensee falling in category 'A'; may have another licence of category 'B' or 'D' and vice-versa. Since the mashakhores are holding category 'A' licence there is no statutory prohibition against their holding category 'B' licence also. Whether they are entitled to category 'B' licence will depend on whether they are commission agents carrying on business in the principal market or subsidiary market. This is a matter to be considered by the first respondent while issuing/renewing licences.

In the light of the above discussions the

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writ petition is disposed of directing the first respondent to take necessary action in accordance with law for rectifying the admitted mistake in granting category 'B' licences to some of the mashakhores. Such action should be taken expeditiously and at any rate before taking a decision on the application for renewal of such licences. There will be no order as to costs."

5. Further it is contended that there is clear violation of the directions of S. 35 of the Act and Regulation 18 of the Rules and respondent No. 1 has not followed these provisions and have arrived at conclusions which cannot be sustained in law. This argument is even highlighted by learned counsel for respondent No. 2. However, it has not been pointed out the impact of the findings of respondent No. 1 and how each individual party will be affected by the same. There is a possibility, as is not denied by learned counsel for both the parties, that some of the petitioners may benefit by the order which has been passed in pursuance to the issuance of show cause notice dated 19th July, 1995 and directions of the Court as made on 4th January, 1996. Therefore, it will be appropriate that the individuals or persons aggrieved by the Order of the Committee, respondent No. 1, challenge the same in an appropriate proceedings such as taking recourse to the right of appeal as provided under S. 36 of the Act or any other remedy as may be permitted in law. It is ordered accordingly. The present petition is, therefore, disposed of in the above terms. The respondent committee shall be at liberty to pursue further course of action in terms of the findings which have been recorded and are stated in the application C.M. No. 4888/96. There will be no order as to costs.

Order accordingly.

AIR 2001 GAUHATI 145 "F. Lalthanzuala v. State of Mizoram"

GAUHATI HIGH COURT

(AIZAWL-BENCH)

Coram : 1 D. BISWAS, J. ( Single Bench )

F. Lalthanzuala, Petitioner v. State of Mizoram and others. Respondents.

Writ Petn. (C) No.122 of 2000, and C.M. Appl. No.70 of 2000. D/- 27 -4 -2001.

Assam Agricultural Produce Market Act (23 of 1974), S.13 - AGRICULTURAL PRODUCE - DOCTRINES - Chairman of Agricultural Marketing Corporation - Removal of - Doctrine of pleasure - Applicability -Appointment on such post being purely on political considerations - Govt. can exercise its absolute discretion for removal of person from such post - Doctrine of pleasure applies - Plea that opportunity of being heard must have been given to Chairman before his removal, not tenable - Especially when such removal did not fix any stigma on him. (Para 10)

Cases Referred : Chronological Paras

Punjab Communications Ltd. v. Union of India, AIR 1999 SC 1801 : (1999) 4 SCC 727: 1999 AIR SCW 1394 7

Anil Kumar Singh Yadav v. Union of India, AIR 1995 All 13 9

State of U.P. v. U.P. State Law Officer Association; AIR 1994 SC 1654 : 1994 AIR SCW 1389 9

Om Narain Agarwal v. Nagar Palika Shahjahanpur, AIR 1993 SC 1440 : (1993) 2 SCC 242 : 1993 AIR SCW 1254 : 1993All LJ 536 8

C. Lalramzauva, A.R. Malhotra, and Miss. Helen Dawngllanl. for Petitioner. T. Valphel, A.A.G. Mizoram, for Respondents.

Judgement

ORDER :- The short question involved

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in this petition is whether the nominated Chairman of the Mizoram Agricultural Marketing Corporation Limited could be removed from office without notice at any time applying the "Doctrine of Pleasure."

2. I have heard Mr. C. Lalramzauva, learned counsel for the writ petitioner and also Mr. T. Valphei, learned A.A.G.

3. The petitioner is an elected member of the Mizoram State Assembly. By an order issued on 16th February, 1999, he was appointed as a Director in the Board of Directors and also as Chairman of the Mizoram Agricultural marketing corporation Limited with immediate effect and until further orders. Thereafter, in supersession of this notification, another notification was issued on 2nd December, 99 appointing the writ petitioner and others as Directors of the concerned Board with the petitioner as the Chairman. The petitioner continued in office as such till 20th July, 2000 when another notification was issued by the Governor replacing the writ petitioner by the private respondent. Being aggrieved, the petitioner has challenged the notification dated 20th July, 2000 on the ground that the petitioner could not be removed from office without an opportunity to show cause against the proposed removal.

4. Article 98 of the Memorandum of Association in so far it relates to the case at hand is quoted below:

"98. (a) The Directors shall be appointed by Government and shall be paid such salary and/or allowances as the Government may, from time to time, determine.

(b) The following shall be the first Directors of the Company :-

.........................................................................................................................................................

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(d) Government may, from time to time, appoint from amongst the Directors, a Chairman, a Managing Director, a whole time Director, or any Additional Managing Director, and determine the period for which they or any of them will hold their respective offices

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.........................................................................................................................................................

(g) Government shall have the power to remove any Director including the Chairman, the Managing Director or the whole time Director from office at any time in their absolute discretion."

5. It would appear from the clause (d) above that a Director of the Board is eligible for appointment as Chairman for a period to be determined by the Government. Clause (g) for removal of any Director including the Chairman from office at any time in the absolute discretion of the Government.

6. There is no dispute that the petitioner was appointed as Chairman in the absolute discretion of the Government on political consideration. He is not the elected Head of the Board having mandate of the people behind him. The post of Chairman of a Board of a State Corporation is also not a post within the meaning of Article 309 of the Constitution of India. Therefore, the appointment to the post of chairman and removal therefrom are matters of pleasure of the governor. Hence, his replacement by the private respondent obviously has been made by applying the doctrine of Pleasure.

7. The learned counsel for the petitioner argued at length to drive home his contention that even in a case of this nature the petitioner having legitimate expectation was entitled to an opportunity to show cause. In this connection he has relied upon a Judgment of the Apex Court delivered in Punjab Communications Ltd. v. Union of India, reported in (1999) 4 SCC 727: (AIR 1999 SC 1801). This Judgment was delivered on a different context. The ratio therein cannot be the panacea in this case.

8. Mr. Valphei, learned A.A.G. pointed out that though the Doctrine of Legitimate Expectation has become a part of our law, in the given facts and circumstances of the case the said Doctrine cannot be invoked in the instant case since the petitioner was nominated by the State Govt. to hold the post of Chairman in exercise of the Doctrine of Pleasure. According to learned counsel, it is not a service within the meaning of Article 309 and, as such, removal without notice cannot be treated as violative of the provisions of the Constitution. In support of this contention, he has placed reliance on a decision of the Supreme Court in Om Narain Agarwal v. Nagar Palika, Shahjahanpur (1993)2 SCC 242 : (AIR 1993 SC 1440). In the said Judgment, in para 11 and 12. the Apex Court observed as follows :-

"11.....................................................................................................................................................................................................The nominated members do not have the will or authority of any residents of the Municipal Board behind them as may be present in the case of an elected member. In case of an elected member, the legislature has provided the grounds in S.40 of the Act under which the members could be removed. But so far as the nominated members are concerned, the legisiature

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in its wisdom has provided that they shall hold office during the pleasure of the Government. It has not been argued from the side of the respondents that the legislature had no such power to legislate the fourth proviso. The attack is based on Articles 14 and 15 of the Constitution.

12. In our view, such provision neither offends any Article of the Constitution nor the same is against any "public policy or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to S.9 of the Act puts any stigma on the performance or character of the nominated members. 'It is done purely on political consideration."

9. In addition, Mr. Valphei also referred to a Division Bench judgment of the Allahabad High Court in Anil Kumar Singh Yadav v. Union of India, AIR 1995 All 13. It is considered relevant to quote herein below the following extract from the aforesaid judgment ;-

"19. In a recent pronouncement in State of U.P. v. U.P. State Law Officer Association (AIR 1994 SC 1654 at p. 1662) (supra) (sic) vide para 19 of the Judgment. Their Lordships of the Apex Court held that:

"In the absence of guidelines, the appointments may be made purely on personal or political considerations, and be arbitrary. This being so, those who came to be appointed by such arbitrary procedure, can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the backdoor have to go by the same door."

20. The aforesaid observations of the Apex Court remind us the doctrine of "Pleasure", Latin phrase "Pithly Durante Bene Placiato." Connotes the principles of "Pleasure", No doubt, where the appointment is statutory, the Statute governs or regulates the appointment, and the application of the doctrine of pleasure is subject to the restriction imposed by Article 310(2) and 311(1)(2) of the constitution of India, and therefore before termination order of a civil servant procedure must be complied with as laid down in Article 311 of the Constitution and the Rules framed under Article 309 of the Constitution of India. So that field that is covered by Article 311 of the Constitution, would be excluded from the operation of the absolute doctrine of "Pleasure."

21. But in the present era of expanding horizon where administratively variety of appointments are made and "Pleasure" is not controlled by any statutory rule or by any guidelines, but the appointment is purely on personal or political consideration certainly such appointments may be done away by applying the doctrine of "Pleasure". Thus, in such termination the field is covered by the operation of the absolute doctrine of "Pleasure".

10. The above decisions make it clear that when an appointment is made purely on political consideration, it shall be deemed to have been made in exercise of the absolute discretion of the Government. There is no dispute in the instant case that the appointment of the writ petitioner as Chairman was made on political consideration only. This otherwise means that the appointment was made in the absolute discretion of the Government and the petitioner was holding office at the pleasure of the Government, The provisions of Clause (g) of Article 98 carries with it the element of pleasure as it provides for removal in the absolute discretion of the Government. The petitioner has no reason to feel aggrieved, specially when such removal/ replacement does not attach any stigma,

11. In the result, the writ petition is dismissed. No costs.

Petition dismissed.

AIR 2007 GUJARAT 181 "Rajendra Dalichand Koticha v. State of Gujarat"

GUJARAT HIGH COURT

Coram : 2 M. S. SHAH AND H. B. ANTANI, JJ. ( Division Bench )

Rajendra Dalichand Koticha and Ors. v. State of Gujarat and Ors.

Spl. C.A. No. 12401 of 2007, D/- 8 -5 -2007.

Gujarat Agricultural Produce Markets Act (20 of 1964), S.11 - AGRICULTURAL PRODUCE - ELECTION - Constitution of market committee - Election in constituency of traders - Nomination form - Petitioner's name figured in final list of voters and he was also holding traders licence - In nomination form name of trading firm as well as name of proprietor/partnership firm was clearly mentioned along with address - He becomes eligible to contest election from constituency of traders - Rejection of nomination form - Illegal. (Paras 9, 13)

Cases Referred : Chronological Paras

2005 AIHC 809 (Guj) 7, 10

(2005) 11 SCC 523 7

AIR 2000 SC 2979 : 2000 AIR SCW 3274 5-6, 10, 11

N. K. Pahwa for M/s. Thakkar Assoc. for Petitioner; Mihir Joshi, Ld. Addl. Adv. General with Ms. Trushapatel Ld. Addl. Govt. Pleader, Bharat T. Rao, for Respondents.

Judgement

M. S. SHAH, J, :- Rule. Ms. Trusha Patel learned AGP waives service of rule on behalf of respondents Nos. 1, 2 and 3, Mr. B.T.Rao learned advocate waives service on behalf of respondents Nos. 5 and 6 on caveat. As far as respondent No. 4 APMC, Upleta is concerned, it is formal party and its presence is not required.

2. In the facts and circumstances of the case, particularly, considering the urgency involved in the election matter, with the consent of the learned Advocates, the petition is taken up for final disposal and is accordingly being disposed of by this judgment.

3. The Director of Agricultural Produce Market Committee declared the programme for election of APMC, Upleta, District Rajkot on 19-2-2007. As per the said programme, the relevant dates are as under :

Publication of final list of voters 3-4-2007.

Date for submitting nomination forms

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3-5-2007.

Publication of nomination forms 3-5-2007.

Scrutiny of nomination forms, 4-5-2007.

Date for withdrawal of nomination forms 8-5-2007.

Final publication of list of candidates : 8-5-2007.

Date of polling 19-5-2007.

Date of counting 20-5-2007.

Declaration of the result soon after completion of counting.

4. The subject-matter of this petition is the challenge to the decision dated 4-5-2007 (Annexure-B) of the Election Officer rejecting the nomination forms of the petitioners, six, in number.

Section 11 of the Gujarat Agricultural Produce markets Act, 1963 (hereinafter referred to as 'the Act') provides for constitution of market committee. In all, 14 members of the market committee are to be elected from out of following three constituencies;

(i) eight agriculturists who shall be elected by members of managing committees of co-operative societies (other than co-operative marketing societies and milk produce co-operative societies) dispensing agricultural credit in the market;

(ii) four members to be elected in the prescribed manner from amongst themselves by the traders holding general licences;

(iii) two representatives of the Co-operative marketing societies situate in the market area and holding general licenses, to be elected from amongst the members (other than nominal, associate or sympathiser members) of such societies by the members of the managing committees of such societies

The present petition is concerned with the rejection of nomination forms of 6 candidates for the second constituency of traders holding general licence.

5-6. Mr. Pahwa learned advocate for the petitioners has submitted as under :

6-1 Once the petitioners' names figured in the final list of voters published on 3-5-2007, the petitioners became eligible to contest the election from the constituency of traders holding general licences. In fact, petitioner No. 5 is the present Chairman of the APMC, Upleta for the current term 2003-2007 and the petitioners Nos. 2 and 3 are also the members of the present managing committee after having been elected as members of the APMC from the traders constituency. It is stated that all these petitioners are traders holding general licences and are engaged in the trading business activities in the market area for the last several years. Copies of the licences issued by the APMC in favour of the petitioners for the licensing year 2006-07 are annexed to the petition at Annexure-E collectively. Reliance is also placed on the certificate issued by the APMC that the petitioners are holding general licence for the last three years. It is submitted that the petitioners are engaged as traders and, therefore, once included in the final list of the voters, it is not open to the election officer to reject their nomination forms. It is submitted that the petitioners have mentioned in the nomination forms not only their personal name but also their business name and name of the trading company or firm, and that, even the business name is sufficient to indicate the nature of the trading activity carried on by the petitioners. It is submitted that in any view of the matter, trading itself is an occupation and, therefore, nothing more is required to be indicated in the column 'occupation and address'.

6-2. 13 candidates has submitted their nomination forms for 4 seats in the traders constituency. By eliminating seven candidates including the present six petitioners, the election officer has permitted only the remaining six candidates to contest. The nomination forms of the petitioners have been rejected without any justification or jurisdiction and thereby leaving only 6 candidates in the fray for 4 seats.

6-3. Respondents Nos. 5 and 6 were given inspection to the nomination forms before the scrutiny commenced and respondents Nos. 5 and 6 got their objections raised by way of a typed letter. This indicated that the election officer had pre-determined to favour respondents Nos. 5 and 6 in order to remove the petitioners from contest on non-existent and non-justifiable grounds.

6-4. Strong reliance is placed on the decision of the Apex Court in the case of Election Commission of India v. Ashok Kumar, reported in (2000) 8 SCC 216 : (AIR 2000 SC 2979).

7. Mr. B. T. Rao learned advocate appearing for respondents Nos. 5 and 6 on caveat has vehemently opposed the petition

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and submitted that this Court would not interfere in the election matter, that as per the settled legal position, the petitioners ought to be relegated to the alternative remedy of challenging the decision of the election officer by way of election petition to be filed after the results are declared. Strong reliance is placed on the decision of the Apex Court and this Court including the decisions reported in (2005) 11 SCC 623 in Vadodara District Co-operative Sugarcane Producers' Ltd. v. Chandrakantbhai Thakorebhai Patel and Kanubhai Chhaganbhai Patel v. Director of Agricultural Marketing and Rural Finance, reported in 2005 (1) GLH 27 : (2005 AIHC 809). It is submitted that the nomination forms specifically required following details to be mentioned in the column No.7.

'Occupation and address'

It is submitted that the nomination form prescribed under the statutory rules carries an obligation on the part of the candidate to give complete information as required in the prescribed nomination form and that the election officer has not committed any illegality in rejecting the nomination form of the petitioners.

8. Mr. Mihir Joshi, learned Additional Advocate General with Ms. Trusha Patel learned AGP fairly submitted that they would leave the matter to the decision of this Court.

9. Having heard the learned Advocates for the parties, we find considerable force in the submissions made on behalf of the petitioners that Section 11 of the Act provides for three constituencies for electing 14 members to the APMC. Apart from the other members to be nominated, 8 agriculturists are to be elected from the constituency of members of the managing committees of co-operative societies dispensing agricultural credit in the market area. Four members are to be elected from amongst themselves by the traders holding general licences. Two representatives of the Co-operative marketing societies situate in the market area and holding general licenses are to be elected from amongst the members of such societies, by the members of the managing committees of such societies. It is, thus, clear that since there are only three separate constituencies, the significance of Item No. 7 in nomination form being Form-I prescribed under Rule 11 of the APMC Rules, is that the candidate must indicate whether he is an agriculturist or trader holding general licence or a member of the managing committee of a co-operative marketing society. It is required to be specifically noted that the same format for nomination form is prescribed for candidates of all the three constituencies. An agriculturist cannot be permitted to contest from the constituency of traders holding general licences. In the facts of the case, it was not the case of respondents Nos. 5 and 6 before us that petitioners are not holding traders' general licence or that their names do not figure in the final voters list. In fact, the final voters list is already produced at Annexure-F and the names of the petitioners figure therein at Sr. Nos. 39, 43, 50, 58, 68 and 207. The list of traders itself provides four columns, namely, (1) Sr. No., (2) Name of the licence holder/trading firm, (3) Complete address, and (4) the trader entitled to vote at the election. The petitioners herein mentioned in Col. No. 7 'occupation and address' the information which was already in the voters list. Accordingly, the name of the trading firm as well as name of the proprietor/partnership firm was clearly mentioned along with the address. There is no dispute or confusion about the identity of the petitioners or about their right to vote at the election. The occupation and address was shown as per the list of voters for traders' constituency and no doubt or dispute was ever raised regarding entitlement of candidate to contest for 4 seats in the constituency of traders holding general licences. The impugned decision dated 4-5-2007 of the election officer is, therefore, not only clearly contrary to law but the said reasons are inconsistent with the relevant provisions of APMC Act, 1963 and the Rules thereunder.

10. Coming to the objection raised by Mr. Rao for the contesting respondents that even in the matter of election, this Court would not interfere, similar objection was upheld in cases where intervention of this Court would have resulted into delay in the election process. As observed by another Division Bench of this Court in Kanubhai Chhaganbhai Patel v. Director of Agricultural Marketing and Rural Finance (2005 AIHC 809) the scrutiny of nominations and withdrawal of candidature are strictly time-bound under the statutory rules. If the High Court interferes with the outcome of the scrutiny of nominations, it will have direct effect of disturbing the time schedule statutorily

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contemplated as aforesaid. The statutory rules prescribes the period of not less than 7 days between the date of declaring the final list of voters and the date of voting. If the Court enters into the controversy of the validity of nomination papers, by the very nature of the time schedule having been already announced under the statutory rules, there would be every likelihood of interfering with the process of election. The Division Bench even after considering the decision of the Apex Court in the case of Election Commission of India v. Ashok Kumar (AIR 2000 SC 2979) (supra) declined to interfere with the decision of the election officer rejecting the nomination forms on the ground that such interference after scrutiny of nomination would create a real possibility of the election process being interrupted, obstructed or delayed.

In the facts of the present case, it is clear that the polling is scheduled on 19-5-2007, therefore, the final list of candidates would be required to be published latest by 12-5-2007 or in any case, not before 11-5-2007.

11. In the case of Election Commission of India v. Ashok Kumar, reported in (2000) 8 SCC 216 : (AIR 2000 SC 2979) the Apex Court has made the following observations in paras 28 and 32 :-

"28. Election disputes are not just private civil disputes between two parties. Though there is an individual or a few individuals arrayed as parties before the Court but the stakes of the constituency as a whole are on trial. Whichever way the lis terminates it affects the fate of the constituency and the citizen generally. A conscientious approach with overriding consideration for welfare of the constituency and strengthening the democracy is called for. Neither turning a blind eye to the controversies which have arisen nor assuming a role of overenthusiastic activist would do. The two extremes have to be avoided in dealing with election disputes.

32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove : If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

Any decision sought and rendered will not amount to 'calling in question an election' if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(e) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the Courts indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material'.

(Emphasis supplied)

In the facts and circumstances of the case indicated earlier, we are satisfied that intervention of this Court, at this stage, is necessary for the welfare of the constituency.

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12. Mr. Rao has placed reliance on the decision of the Full Bench of this Court in support of his contention that the remedy of filing election petition under Rule 28 of APMC Rules, 1965 is the only remedy available to the petitioners. Apart from the fact that Full Bench decision was for inclusion or exclusion in the list of voters, the Full Bench itself has recognised that in exceptional circumstances, the judicial intervention is permissible.

13. For the reasons aforesaid, this petition is allowed. The decision dated 4-5-2007 of the Election Officer (Annexure-B) rejecting the nomination forms is quashed and set aside, as illegal. The Election Officer shall publish, by 11-5-2007, the revised final list of candidates including the petitioners herein for the Constituency of Traders holding general licences under clause (ii) of sub-clause (1) of Section 11 of the Gujarat Agricultural Market Committee Act, 1963. The polling shall be held on 19-5-2007 as scheduled.

Rule is accordingly made absolute in the above terms.

14. This order is pronounced in the presence of Mr. N. K. Pahwa for the petitioners, Ms Trusha Patel learned AGP for respondents Nos. 1 to 3 and Mr B T Rao for respondents No. 5 and 6.

15. At this stage, Mr. B T Rao requests for stay of this order. The request is rejected.

Petition allowed.

AIR 2007 GUJARAT 185 "Bharatbhai Dhulabhai Patel v. Director"

GUJARAT HIGH COURT

Coram : 2 M. S. SHAH AND K. A. PUJ, JJ. ( Division Bench )

Bharatbhai Dhulabhai Patel and Anr. v. Director and Ors.

Spl. Civil A. No. 15474 of 2007, D/- 27 -7 -2007.

Gujarat Agricultural Produce Markets Act (20 of 1964), S.11 - Gujarat Agricultural Produce Markets Rules (1965), R.7 - AGRICULTURAL PRODUCE - ELECTION - CO-OPERATIVE SOCIETIES - Election to Market Committee - Eligibility to vote - Society should be registered and should have obtained traders licence prior to declaration of elections - Respondent societies, though registered under Co-operative Societies Act had not obtained from APMC general license for traders till declaration of elections - Members of managing committees of said societies cannot be said to be eligible for participating in elections. (Para 7)

Cases Referred : Chronological Paras

Spl. Civil App. No. 11995/2007 D/- 16-7-2007 (Guj) 4, 5

B. S. Patel and Mrs. Ranjan Patel for Petitioners; V. S. Pathak, A.G.P. Tushar Mehta and Harin Raval, for Respondents.

Judgement

M. S. SHAH, J. :- Rule. Mrs. V. S. Pathak, learned AGP for respondent Nos. 1 to 3, Mr. Tushar Mehta, learned counsel for respondent Nos. 4, 5 and 6 and Mr. Harin Raval, learned counsel for respondent No. 7 waive service of Rule.

In the facts and circumstances of the case and considering the urgency in the election matters, we have taken up the petition for final disposal today.

2. The Director of Agricultural Marketing and Rural Finance issued order dated 11-5-2007 fixing the date of election to APMC, Himmatnagar. The detailed election program was thereafter issued on 15-5-2007 with the following dates for various stages of election :-

1. Date of announcement of elections 14-05-2007

2. Date on which the Authorised Officer shall issue instructions for preparation of the voters' list 14-05-2007

2A. Date of communicating the names of voters to the Authorised Officer (Rule 7(1)) 22-05-2007

3. Preparation of the provisional list of voters (Rule 7(2)) 29-05-2007

4. The last date for submitting objections/applications for amendment/addition to the provisional list of voters (Rule 8(1)) 12-06-2007

4A. The date for republication of the preliminary list with the notice prepared after the amendment, addition, suggestion/objections in the preliminary list are submitted. 16-06-2007

4B. The last date for submitting objections to/applications for amendment to the revised list of voters (Rule 8(1A)) 22-06-2007

5. The date of publication of the final list of voters 26-06-2007

6. The date of filing nomination forms (Rule 10(2)) 26-07-2007

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7. The date of publication of the preliminary list of candidates (Rule 14) 26-07-2007

8. Date of scrutiny of nomination forms (Rule 15) 27-07-2007

9. Date of withdrawing nomination forms (Rule 17(1) 30-7-2007

10. Date of publication of the final list of candidates (Rule 17(2)) 30-7-2007

11. Date of polling 07-08-2007

12. Date of counting 08-08-2007

13. Date of declaration of the result of elections As soon as counting is over

Sd/- MD Chauhan,

Director of Agricultural Marketing and

Rural Finance.

3. 14-5-2007 was the date on which the Authorized Officer issued instructions to the APMC as well as the co-operative societies in the market area to communicate by 22-5-2007 the names of traders holding general licenses falling under Section 11 (1) (ii) and the names of members of managing committees of the co-operative societies falling under Clauses (i) and (iii) of Section 11 (1). Following the above election program, the names were so communicated by 22-5-2007. Thereafter, the provisional list of voters was published on 29-5-2007 and the objections were invited by 12-6-2007. The petitioners objected to the inclusion of names of members of managing committees of respondent Nos. 4 to 6 (hereinafter referred to as "the respondent societies"). On 15-6-2007, the Authorized Officer - Deputy Director, Agriculture Marketing and Rural Finance and District Registrar, Sabarkantha passed the impugned order (Annexure 'A') rejecting the objections.

4. The present petition challenges the above decision dated 15-6-2007 on the ground that the respondent societies, though registered on 30-4-2007 under the Gujarat Co-operative Societies Act, 1961, obtained general licenses from the APMC under Section 27 of the Gujarat APMC Act, 1963 only on 21-5-2007, that is, after the date of declaration of election. Strong reliance is placed by Mr. Patel on our judgment dated 16-7-2007 in Special Civil Application No. 11995 of 2007 in relation to elections to APMC, Junagadh.

5. On the other hand, Mr. Harin Raval, learned counsel for the APMC, Himmatnagar and Mr. Tushar Mehta, learned counsel appearing for the respondent societies have opposed the petition and submitted that all the three respondent societies were registered under the Co-operative Societies Act on 27th/30th April 2007 i.e. prior to the date of declaration of the election by the director AMRF.

It is further submitted that the respondent societies had also applied for general license from the APMC on 5th/6th May 2007 which was also prior to the date of declaration of the election by the Director, AMRF. It is, therefore, submitted by the learned counsel for respondent Nos. 4 to 7 that subsequent declaration of the election program cannot take away the right of the members of managing committees of the respondent societies to participate in the elections. It is also submitted on behalf of respondent Nos. 4 to 7 that the applications made by the respondent societies for general license from the APMC were made bona fide and that the APMC cannot be said to have granted the licenses with any oblique motive or mala fides, more particularly when the notification for covering the concerned agricultural commodities under the APMC was issued on 9-5-2007 and, therefore, there was no occasion for the respondent societies to apply for licenses prior to May, 2007.

6. Having heard the learned counsel for the parties, we find considerable substance in the submission of Mr. Patel for the petitioners that the controversy involved in this petition is squarely covered by the principles enunciated in our judgment dated 16-7-2007 in Special Civil Application No. 11995 of 2007 (APMC, Junagadh matter). In the aforesaid judgment, we have examined the scheme of the APMC Act and the APMC Rules, particularly the Rules relating to elections to APMC and we have held as under:-

"35. To sum up then, our conclusions are as under :-

I. "The relevant date" for determining the eligibility of a person for inclusion in the voters' list for elections to APMC is the date on which the Authorized Officer is to be communicated the names as indicated in sub-rule (1) of Rule 7 of the APMC Rules, 1965, that is to say, before that date -

(i) a co-operative society must have been

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registered under the Co-operative Societies Act as a co-operative society for dispensing agricultural credit and must also have commenced the activity of dispensing agricultural credit.

(ii) a trader who has been granted license by the APMC to carry on business as a trader in the market area must have commenced business as a trader.

(iii) a co-operative marketing society registered as such under the Co-operative Societies Act and having obtained a general licence from APMC must also have commenced its business of marketing.

II. The only exception to the above general rule is to be found in Rule 6. Hence, if a person, whose name was entered in the list of voters, has ceased to hold the capacity in which his name was entered in such list, such person shall not be qualified to vote at the election to which the list of voters relates.

III. To be eligible for inclusion in the list of voters for elections to APMC,-

(i) A co-operative society must have obtained registration under the Co-operative Societies Act for dispensing agricultural credit before the date on which the Director has fixed the date of elections to APMC (i.e. the date of declaration of elections).

(ii) A person must have obtained from APMC a general license for trader before the date of declaration of elections.

(iii) A co-operative marketing society must have obtained its registration under the Co-operative Societies Act and a general license from APMC before the date of declaration of elections.

IV. Challenge to the legality and validity of registration of a society under the Co-operative Societies Act can only be entertained by the forum under Sections 153 and 155 of the Gujarat Co-operative Societies Act, 1961, and not by the Election Tribunal constituted under Rule 28 of the APMC Rules, 1965.

V. Challenge to the legality and validity of a license issued by APMC can only be entertained by the concerned forum under Section 27 of the Gujarat APMC Act, 1963.

VI The question whether a co-operative society commenced the activity of dispensing agricultural credit before the relevant date, whether a trader possessing general license from APMC commenced the business of trading before the relevant date or whether a co-operative marketing society possessing general license from APMC commenced its business of marketing before the relevant date are questions of fact which the Authorized Officer has jurisdiction to decide under Rules 7 (2) and 8 of the APMC Rules, 1965 and the Election Tribunal under Rule 28 also has the jurisdiction to examine these questions."

7. Thus, in view of the above principles, it is clear that since the respondent societies, though registered under the Co-operative Societies Act on 30-4-2007, had not obtained from APMC general license for traders till the declaration of elections made on 11-5-2007, the members of managing committees of the said respondent societies cannot be said to be eligible for participating in the elections.

8. At this stage, we may deal with the submission on behalf of respondent Nos. 4 to 7 that the Director for the first time issued notification dated 9-5-2007 for covering certain agricultural commodities under the APMC, Himmatnagar and, therefore, there was no occasion to apply for general license earlier.

On the other hand, Mr. Patel for the petitioners has pointed out that the other co-operative marketing societies, whose managing committee members are included in the list of voters, were holding general license for a long period, much prior to the declaration of the date of election.

9. In our judgment dated 16-7-2007 in the matter of elections to APMC, Junagadh, we have indicated the underlying rationale for laying down the principle that the registration of the co-operative society and the license must have been obtained prior to the date of declaration of elections. Looking to the provisions of Section 26 of the APMC Act providing for duties of Market Committee, it is obvious that the voters in all the three constituencies must have had some experience of operating within the market area of APMC, either dispensing agricultural credit trading/marketing and therefore, registration under the Co-operative Societies Act/license from the APMC must have been obtained before the date of declaration of elections, only then it can be said that by the relevant date (that is the date on which the names are to be communicated by the APMC/co-operative societies to the Authorized Officer under sub-rule (1) of Rule 7) such persons would be having some experience in the concerned area so as to enable them to elect the members of the APMC for the purpose of discharging duties referred

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to in Section 26 of the Act.

10. For the reasons aforesaid, the petition is allowed. The impugned order dated 15-6-2007 at Annexure 'A' to the petition is quashed and set aside in so far as it rejects the objections of the petitioners against the names of members of managing committees of respondent Nos. 4, 5 and 6 societies. In other words, respondent Nos. 1, 2, 3 and 7 shall not permit the members of managing committees of respondent Nos. 4, 5 and 6 societies to participate in the ensuing elections to APMC, Himmatnagar either as voters or as contesting candidates.

Rule is made absolute in the above terms.

Petition allowed.

AIR 2006 GUJARAT 237 "Noormohmed Ismailbhai Vohra v. Agriculture Produce Market Committee"

GUJARAT HIGH COURT

Coram : 1 Ms. H. N. DEVANI, J. ( Single Bench )

Noormohmed Ismailbhai Vohra and Ors. v. Agriculture Produce Market Committee and Ors.

Spl. Civil Appln. No. 377 of 1995, D/- 28 -4 -2006

(A) Gujarat Agricultural Produce Markets Act (20 of 1964), S.27,S.36 - Gujarat Agricultural Produce Markets Rules (1965), R.48 - AGRICULTURAL PRODUCE - LICENSE - Traders' Licence - Obtaining of - Is sine qua non for dealing in specified agricultural produce within market area - Failure to obtain such licence renders person liable to be visited with penalty. (Para 19)

(B) Gujarat Agricultural Produce Markets Act (20 of 1964), S.27 - Gujarat Agricultural Produce Markets Rules (1965), R.48 -

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AGRICULTURAL PRODUCE - Market fee - Levy of - Petitioners were engaged in business of agricultural produce within market area under control of respondent/Market Committee - Plea by petitioners that recovery of market fee by respondent/committee contemplates elements of quid pro quo but they were not receiving any kind of service or benefit - It was not case of petitioners that no services or facilities were provided in market area - Respondent was utilising funds for specified purpose - Merely because petitioners in particular were not directly provided with any services, it cannot be said that levy and recovery of Market-fees was unjustified. (Paras 25, 27)

Cases Referred : Chronological Paras

AIR 2003 SC 1742 23

AIR 2001 SC 1363 16

(1995) 1 SCC 655 12, 21

AIR 1983 SC 1246 12, 21

AIR 1980 SC 1008 9, 20, 21

Shivang Shukla for D. C. Dave, for Petitioners; S. R. Patel for A. J. Patel, Advocate (for No. 1); Siraj Gori, A.G.P. (for Nos. 2-3), for Respondents.

Judgement

ORDER :- By this petition under Article 226 of the Constitution of India, the petitioners seek a direction against the respondent, Agricultural Produce Market Committee, Anand not to insist that the petitioners should secure licences under the provisions of the Gujarat Agricultural Produce Market Committee Act, 1963 (the Act) and the Rules framed thereunder as a sine qua non for dealing in the business of agricultural produce. The petitioners also seek a direction against the respondents not to insist on payment of market fees from the petitioners in respect of agricultural produce, being mango, imported by the petitioners within the market area falling under the jurisdiction of the respondent.

2. The petitioners are engaged in the business of dealing in apples and mangoes, as vendors thereof, within the territorial limits of Anand Municipality. The subject-matter of the present petition is confined to the business of dealing in mangoes. The petitioners purchase mangoes from the southern States of India and import the same within the market area falling within the purview of the respondent Market Committee for the purpose of effecting sale thereof. As the petitioners are traders within the meaning of "trader" as defined under the Act, the petitioners had secured licences under the provisions of the Act and the Rules framed thereunder from the respondent Market Committee in or about the year 1975, and thereafter, regularly got their licences renewed from year to year till 1993. In the year 1994, except for the petitioner No. 3, none of the petitioners got their respective licence renewed.

3. It is the case of the petitioners that they had been paying market fees to the respondent Market Committee since 1975 under a misconception of the provisions of the Act and under the bona fide belief that, as assured by the respondent Market Committee, they would be provided some benefit or service by the respondent, which would, ultimately, facilitate their business. It is the case of the petitioners that, till the date of filing of this petition, the petitioners had not received any kind of benefit or service from the respondent, which would have the slightest effect of facilitating their business activities as vendors of mangoes; that they have not been provided with any kind of place, much less a shop; either in the principal market yard or in the market proper constructed by the respondent Market Committee, and that the said respondent has been collecting the market fees from them on the solitary footing that the petitioners carry on business activities within the Market area falling under the control of the respondent-Market Committee. It is the case of the petitioners that the only premise on which market fees have been collected from the petitioners is that the petitioners hold the licences under the Act and carry on the business of dealing in mangoes within the market area.

4. It is the case of the petitioners that, the petitioners have refused to pay market fees to the respondent-Market Committee in respect of the mangoes imported by them within the market area on the ground that they had not been receiving any kind of benefit or service from the respondent-Market Committee in relation to the business carried on by them as well as on the ground that the petitioners were simply marketing mangoes procured from the southern States of India and hence, were not required to pay

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any market fees under the provisions of the Act. However, as the respondent-Market Committee has not accepted the aforesaid contentions of the petitioners, the petitioners have approached this Court by way of the present petition, raising the following issues for consideration and determination by this Court :

"(A) Can a person, who, inter alia, deals in the business of agricultural produce, to which the provisions of the Gujarat Agricultural Produce Markets Act, 1963 and the Rules framed thereunder stand attracted, be compelled to secure a licence under the provisions of the aforesaid Act and the Rules framed thereunder as a sine qua non for dealing in the business of agricultural produce within the specified market area despite the fact that such person, as opposed to other persons, holding such licence, is not receiving any kind of service or benefit from the Market Committee, which would facilitate his business in the agricultural produce within the specified market area ?

(B) In the alternative, if such a person can legitimately be compelled to secure a licence as a sine qua non for dealing in the business of agricultural produce within the specified market area, can such a person be compelled to pay market fees in respect of agricultural produce, which he imports within the market area for the purpose of effecting a sale thereof, particularly when such person is required to pay the market fees under the provisions of the Gujarat Agricultural Produce Markets Act, 1963 and the Rules framed thereunder ?

(C) Do the provisions embodied in the Gujarat Agricultural Produce Markets Act, 1963 and the Rules framed thereunder lead to the construction that the market fees envisaged by the provisions of the said Act and the Rules framed thereunder have an element of quid pro quo and, therefore, the market fees would be required to be paid by a person provided such a person is receiving some service or benefit from the Market Committee in lieu of the Market Fees, which he is required to pay ?

(D) In any view of the matter, can it not be said that the action of the Market Committee is discriminatory, inasmuch as it has the effect of putting at par the persons, who are not receiving any kind of service or benefit from the Market Committee, but required to pay the market fees, with the persons who are being provided with the services, and, thereupon, required to pay the market fees in lieu thereof ?

(E) Can a person be compelled to pay market fees under the provisions of the Gujarat Agricultural Produce Markets Act, 1963 and the Rules framed thereunder on the footing that such person has imported agricultural produce within the market area situated in the State of Gujarat, particularly when such person has imported such agricultural produce from the southern States of India and the preamble to the aforesaid Act clearly states that the aforesaid Act has been, inter alia enacted for the purpose of regulating the buying and selling of agricultural produce in the State of Gujarat ?"

5. Heard Mr. Shivang Shukla, learned Advocate appearing for Mr. D. C. Dave on behalf of the petitioners, Mr. S. R. Patel, learned Advocate appearing for Mr. A. J. Patel for the respondent-Market Committee and Mr. Siraj Gori, learned Assistant Government Pleader appearing for the respondents No. 2 and 3.

6. The learned Advocate for the petitioners submitted that the respondent-Market Committee was not justified in insisting that the petitioners should secure licences under the provisions of the Act as a sine qua non for dealing in the business of specified agricultural produce within the market area, falling within the jurisdiction of the respondent. It was submitted that the petitioners are not receiving any kind of service or benefit from the respondent which would have the effect of facilitating their dealings in the business of agricultural produce within the market area. It was submitted that the respondents have not even been provided a place, much less a shop either in the principal market yard or in the market proper constructed by the respondents. That, under the circumstances, if the respondent-Market Committee is permitted to compel the petitioners to secure licences under the provisions of the Act, it would lead to the construction that the petitioners are simply required to secure licences under the provisions of the Act on the solitary premise that they deal in the business of notified agricultural produce within the market area.

7. It was further submitted that assuming without admitting that it was legitimate on the part of the respondent-Market

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Committee to insist that the petitioners should secure licences as a condition precedent for dealing in the business of agricultural produce within the market area, it was highly unjust on the part of the respondent-Market Committee to compel the petitioners to pay market fees in respect of the agricultural produce imported by them within the market area.

8. The main thrust of the arguments of the learned Advocate for the petitioners was that the market fees contemplated under the provisions of the Act have an element of quid pro quo, in the sense that they are required to be paid by the concerned person dealing in the business of agricultural produce in lieu of the service such person receives from the respondent as a Market Committee. That the petitioners cannot be compelled to pay market fees, inasmuch as they are not receiving any kind of service or benefit from the respondent Market Committee which would facilities their dealings in the business of agricultural produce within the market area falling under the jurisdiction of the said respondent. It was submitted that if an element of quid pro quo is not read into the expression 'market fees' under the Act, it would amount to permitting the respondent-Market Committee to levy a tax under the provisions of the Act in respect of agricultural produce, which is akin to sales tax, which is not contemplated under the provisions of the Act. That, reading the expression "market fees" without an element of quid pro quo would tantamount to acting dehors the Scheme of the Act.

9. The learned Advocate for the petitioners has placed strong reliance upon the decision of the Apex Court in the case of Kewal Krishan Puri v. State of Punjab, AIR 1980 SC 1008, for the proposition that the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude, but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom the burden of the fee falls. Accordingly, it was submitted that the respondents were not rendering any services to the petitioners in respect of the business of mango carried on by them and hence, the respondent-Market Committee was not entitled to recover market fees from the petitioners.

10. The learned Advocate for the petitioners urged that discriminatory treatment has been meted out to them at the hands of the Market Committee, inasmuch as, all other persons holding licences under the Act, have been provided with a place of business within the principal market yard or in the market proper, whereas the petitioners have not been provided any kind of place by the respondent. That such persons, as opposed to the petitioners, receive service and benefit from the respondent in lieu of the market fees they pay to the respondent.

11. The learned Advocate for the petitioners also submitted that the petitioners are importing an agricultural produce viz. Mango, within the market area situated in the State of Gujarat from the southern States of India and such agricultural produce is neither cultivated nor processed in the State of Gujarat. It was contended that the preamble to the Act states that the Act has been enacted inter alia, for the purpose of regulating, buying and selling agricultural produce in the State of Gujarat; that the market fees are sought to be recovered from the petitioners on the sole ground that the petitioners import agricultural produce within the market area, which means that it is the buying activity of the petitioners on which market fees are sought to be imposed. It was vehemently urged that it was only if the activity of buying agricultural produce had taken place within the State of Gujarat that the said activity would be amenable to the provisions of the Act, hence, the business activities of the petitioners which involved the purchase of agricultural produce from States other than the State of Gujarat would not fall within the purview of the Act and as such, no market fees are payable in respect of the same. It was submitted that, considering the facts and circumstances of the case, the action of the respondents of insisting upon the petitioners to secure licences under the Act and to pay market fees in respect of their business in dealing with mangoes is illegal, unjust and contrary to the provisions of the Act and as such, is required to be struck down by this Court.

12. Mr. Shital Patel, learned Advocate, for the respondent Market Committee has submitted that, in view of the ratio of the decisions of the Hon'ble Apex Court in the case of Krishi Upaj Mandi Samiti v. Orient Paper and Industries Ltd., (1955) 1 SCC 655 :

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1994 (7) JT (SC) 414 as well as in the case of Sreenivasa General Traders v. State of Andhra Pradesh (AIR 1983 SC 1246), the petition was required to be rejected inasmuch as it has been held in the aforesaid decisions that a person selling agricultural produce within the market area notified under the Act is liable to pay market fees.

13. It was submitted that the services rendered by the Market Committee had to be seen in the general context, namely, on the one hand, it affords protection to the purchasers against exploitation and victimization and eliminates the middle men, and on the other hand, it facilitates an easy and regulated market for the purchase or sale at a centralized place, which is itself a service rendered to the persons in the business of purchase or sale of the notified agricultural produce. It was submitted that the Hon'ble Apex Court has held that rendering of service to an individual is not a quid pro quo for charging market fees. It was submitted that Rule 48 of Agricultural Produce Market Rules, 1965 (the Rules) empowers the Market Committee to levy and collect fees on agricultural produce bought and sold in the market area as may be specified in the bye-laws, subject to the prescribed minima and maxima rates. That the petitioners were carrying on the business of dealing in mangoes as vendors thereof, and as such, were required to pay market fees in respect of agricultural produce sold in the market area.

14. Attention was drawn to the provisions of Section 8 of the Act, which provide that no person shall operate in the market area or any part thereof except under and in accordance with the conditions of a licence granted under the Act. It was submitted that, in view of the aforesaid provisions, it was obviously on all persons dealing in notified agricultural produce to secure a licence under the Act. That initially, the petitioners had obtained licences under the Act, however, from the year 1995, the petitioners have stopped taking licences, and as such, have committed offence punishable under Section 36 of the Act. It was submitted that it is incumbent upon a person operating in the market area to obtain a licence, and that the same has got no connection with the principle of quid pro quo, as sought to be contended by the petitioners. It was contended that the petitioners may not be direct beneficiaries of any one or some of the facilities provided by the Market Committee, however, that would not absolve them from payment of market fees. It was pointed out that the Market Committee at the relevant time was attempting to acquire land for establishment of a separate market yard for dealing in fruits and for that purpose, the process of acquisition of land was going on and the establishment of a separate market yard for fruits was under active consideration of the respondent. It was submitted that, from April, 2003, a separate market yard for fruits has been established. It was submitted that the benefits and services contemplated under the Act cannot be simultaneously provided and that, for the purpose of providing such facilities and benefits, some time would be necessary; however, that would not mean that the liability to pay fees or contribution would not be operative till then. It was submitted that all amounts collected by way of market fees have been spent only in accordance with Section 32 of the Act for the purposes for which it is permissible for the Market Committee to spend the market fees. In conclusion, it was submitted that the petition is totally bereft of any merit and is required to be rejected.

15. Mr. Gopi, learned Assistant Government Pleader has supported the case of the respondent-Market Committee and submitted that, in view of the statutory provisions, it was incumbent upon the petitioners to secure licences under the Act and to pay market fees in respect of the business in the notified agricultural produce carried out by them within the limits of the market area.

16. Section 2(xxiii) of the Act defines "trader" to mean any person, who carries on the business of buying or selling of agricultural produce or of processing of agricultural produce for sale and includes a co-operative society, joint family or an association of persons, whether incorporated or not, which carries on such business. As can be seen from the facts of the case, the petitioners are admittedly carrying on the business of dealing in mangoes, as vendors, within the market area so as to fall within the purview of "trader" as defined under the Act. The Apex Court in the case of G. Giridhar Prabhu v. Agricultural Produce Market Committee, AIR 2001 SC 1363 has held that the definition of the term "trader" is not a restrictive definition. It is not restricted to a person who only buys. The term "trader" embraces not just the purchase transaction but the entire transaction of purchase, processing, manufacturing and selling. In the circumstances, the petitioners though they purchase mangoes from the southern States of India are carrying on the business of selling them within the market area and are,

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hence, amenable to the provisions of the Act, as they fall within the definition of "trader" as defined under the Act. Issue (E) stands answered accordingly.

17. Section 2(i) of the Act defines "agricultural produce" to mean all produce, whether processed or not, of agriculture, horticulture and animal husbandry, specified in the Schedule. Mango, falls within the heading "Fruits under Part VII of the Schedule", and as such, is undisputedly a specified agricultural produce within the meaning of the Act.

18. The term "market area" is defined under Section 2(xiii) of the Act, to mean any area declared or deemed to be declared to be a market area under the Act. It is an admitted position, as stated in the petition, that the Director, in exercise of powers under Section 5 read with Section 6 of the Act, has declared the area, inter alia, falling within the territorial limits of Anand Municipality to be the "market area" for the purposes of the Act. It is also an admitted position that the petitioners are carrying on their business of dealing in notified agricultural produce viz. Mango, within the limits of the market area.

19. Section 8 of the Act, which deals with "Operation in market under licence", provides that no person shall operate in the market area or any part thereof except under and in accordance with the conditions of a licence granted under the Act. Thus, there is an express prohibition under the Act from operating in the market area except in accordance with the conditions of the licence granted under the Act. Section 27 of the Act, deals with the licences, their issue, renewal, suspension or cancellation etc. and appeals against refusal, suspension etc. of licence. Sub-section (1) of Section 27 thereof, which could be relevant for the purpose of this petition, reads as under :

"27(1) On the establishment of a market, the Market Committee may, subject to rules made in that behalf, grant or renew a general licence or a special licence for the purpose of any specific transaction or transactions to a trader, general commission agent, broker, weighman, surveyor, warehouseman or any person to operate in the market area or part thereof, or after recording its reasons therefor, refuse to grant or renew any such licence."

In view of the aforesaid provisions of the Act, it is apparent that it is mandatory for traders carrying on business in specified agricultural produce within the market area to obtain licences under the provisions of the Act. Obtaining a licence under the Act is a sine qua non for dealing in specified agricultural produce within the market area and contravention of the provisions of Section 8 of the Act renders such person liable to be visited with penalty under Section 36 of the Act. Issue (A) is answered accordingly.

20. As regards the principal contention raised by the petitioners namely, that recovery of market fees contemplates an element of quid pro quo, it would be pertinent to refer to the various decisions of the Apex Court in this regard. In the case of Kewal Krishan Puri (AIR 1980 SC 1008) (supra), on which heavy reliance has been placed on behalf of the petitioner, the Apex Court has, inter alia, laid down the following principle for satisfying the tests for valid levy of market fees on the agricultural produce bought or sold by licences in a notified market area :

"(6) That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee."

21. In Sreenivasa General Traders (AIR 1983 SC 1246) (supra), it was held as under :

"22. There is a fallacy underlying the argument that since the services are rendered by the market committees within the market proper, there is no liability to pay a market fee on purchase or sale taking place in the notified market area but outside the market. The contention does not take note of the fact that establishment of a regulated market for the purchase or sale of notified agricultural produce, livestock or products of livestock is itself a service rendered to persons engaged in the business of purchase or sale of such commodities. ..................."

"30. .............. However, correlationship between the levy and the services rendered expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the services rendered. ............."

"31. ............. A levy is the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the

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authority to each individual who obtains the benefit of the service. It is now increasingly realised that merely because the collections for the services rendered or grant of a privilege or licence are taken to the consolidated fund of the State and not separately appropriate towards the expenditure for rendering the service is not by itself decisive. .................."

The Court found that there are certain observations to be found in the judgement of Kewal Krishan Puri (AIR 1980 SC 1008) (supra), which were really not necessary for the purposes of the decision and go beyond the occasion and therefore, they have no binding authority though they may have persuasive value. The Court was of the view that the observation made therein seeking to quantify the extent of correlation between the amount of fee collected and the cost of rendition of service, namely : "At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services in the market to the payer of fee", appears to be an obiter.

22. In Krishi Upaj Mandi Samiti v. Orient Paper and Industries Ltd. (supra), it was held as follows :

"28. It will be obvious from the above purposes for which the market fee is to be utilised that the said purposes are in furtherance of the object of the Act., viz., to regulate the buying and selling of agricultural produce and the establishment and proper administration of market for agricultural produce for the benefit of the agriculturists who are the primary producers of the said produce. The machinery and the facilities for which the market fees are being expended are all necessary to provide the necessary infrastructure to further the object of the Act. But for such infrastructure, the objects of the Act cannot be properly and adequately implemented. The fact that the respondent-Mills may not be the direct beneficiary of anyone or some of the said facilities or does not make use of them does not absolve it from payment of the market fees. The said machinery and the facilities are meant for the benefit of all the buyers and sellers of all the agricultural produce within the market area and it cannot be denied that they are so."

23. In Agriculture Market Committee, Rajam v. Rajam Jute and Oil Millers Association, (2003) 4 SCC 187 : (AIR 2003 SC 1742) the Apex Court endorsed the view taken in Sreenivasa Traders (supra). The Court noted that most of the relevant statutes have provision for creation of Market Committee Funds. All market fee which is collected goes into the fund. The statutes also contain provisions as to how the fund is to be utilized. The powers of market committees to utilize the funds are thus circumscribed by the statutes. The funds are utilized only for the facilities in the markets and for the benefit of the members, producers, growers and traders. When the funds are in any case to be utilized for specified purposes, the observation in Puri case to the effect that a good and substantial portion of it must be shown to be expended, does not have much significance. In the facts of the said case, the Court noted from the evidence on record that the Market Committee had made provision for certain services and facilities in the notified market area and efforts were being made for extending those services; the Market Committee had recently come into existence and completion of all the intended services and facilities takes time. The Court held that the law is well settled that though quid pro quo is required in relation to a fee which is charged and collected by a market committee, the quid pro quo cannot be in exact proportion to the fee levied and that mathematical proportions are not possible in such matters. The Court had accepted that some services and amenities were already provided for in the notified market area which fully justified the levy of market fees.

24. Thus, what emerges from a conspectus of the aforesaid decisions is as follows :

\*While quid pro quo between levy of fee and facilities provided in the notified market area is necessary, exactitude in such matters is neither required nor possible. The traditional view about actual quid pro quo has undergone a sea change. The extent of service/amenities cannot have correlation with the fee levied.

\*A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service.

\*The establishment of regulated market for the purchase and sale of notified agricultural produce is itself a service rendered to persons engaged in the business of purchase and sale of such commodities.

\*The Market Committee can continue their efforts for providing the amenities depending on availability of funds with them.

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It is not that all the required services must be in place before a fee can be levied.

25. In the facts of the present case, it is the grievance of the petitioners that they have not received any kind of benefit or service from the respondent Market Committee which would have the effect of facilitating their dealing in the business of mango as vendors thereof. That, the petitioners have not been provided a place in the principal market yard or the market proper constructed by the Market Committee, and that the place of business of each of the petitioners is located at a distant place from the principal market yard and the market proper and as such, the petitioners are not in a position to avail of any kind of service or benefit from the respondent Market Committee. However, it is not the case of the petitioners that no services or facilities as contemplated under the Act are provided in the market area or that the funds are not utilized for the purposes provided for under the statute. In fact, in its rejoinder to the counter-affidavit filed by the respondent Market Committee, the petitioners have categorically averred that, at no point of time, it has been disputed by the petitioners that the respondent is not utilizing the market fees in the manner contemplated by the provisions embodied in the Act and the Rules framed thereunder, and that the grievance of the petitioners is that they are not receiving any kind of service or benefit from the respondent since long and that, therefore, the petitioners are not liable to pay market fees to the respondent.

26. In the counter-affidavit filed on behalf of the respondent Market Committee, the details of the expenditure incurred by the Market Committee for the year 1988-89 have been set out. The balance sheets for the year 1989-90, 1990-91, 1992-93 and 1993-94 have been annexed to show that all amounts expended by the Market Committee are for the purposes provided under Section 33 of the Act. Moreover, it has been stated that the respondent Market Committee is contemplating a separate market yard and is actively trying to acquire appropriate land within a short and reasonable time for establishing a separate market yard for fruits. It is averred that, merely because an individual is not getting any particular benefit from the Market Committee as he is operating from his own premises, it cannot be said that he is not in a position to avail of the general benefits provided by the Market Committee, as operating within the Market area itself, is also one of the benefits envisaged under the Act. As on today, as stated by the learned Advocate on behalf of the respondent Market Committee, a separate market yard for fruits has already been established, hence, the grievance of the petitioners as regards non-availability of any facilities in respect of the business carried on by them may not survive.

27. In the light of the aforesaid facts, it is clear that the funds of the Market Committee are being utilized for the purposes provided under Section 33 of the Act; and that, a market yard had already been established to regulate the purchase and sale of notified products even at the relevant time when the petition was filed. It may be that the petitioners in particular were not directly provided with any services, but it is not even the case of the petitioners that no services as contemplated under the Act were being provided in the market area. Hence, applying the principles laid down in the decisions cited above, it cannot, in any manner, be said that the Market Committee was not justified in levying and collecting the market fees from those operating within the market area, including the petitioners. Issues (B), (C) and (D) stand answered accordingly.

28. For the reasons stated above, the petition fails and is accordingly, rejected. Rule is discharged. Interim relief, if any, stands vacated.

Petition dismissed.

AIR 2004 GUJARAT 266 "N. H. Vansiya v. Authorised Officer and Co-op. Officer (Mktg.)"

GUJARAT HIGH COURT

Coram : 2 J. N. BHATT AND D. N. PATEL, JJ. ( Division Bench )

Narpatsinh Harisinh Vansiya and others, Petitioners v. Authorised Officer and Co-op. Officer (Marketing) and others, Respondents.

Spl. Civil Appln. No. 1634 of 2004, D/- 22 -4 -2004.

Gujarat Agricultural Produce Markets Act (20 of 1964), S.11, S.59 - Gujarat Agricultural Produce Markets Rules (1965), R.8 - AGRICULTURAL PRODUCE - ELECTION - Election of Market Committee - Voters's list - Direct inclusion of names of Societies in final voters' list without any scrutiny or inclusion in preliminary or revised list of voters - Is violative of prescribed procedure under Rules - Members of managing committee of such societies are not entitled to participate in election as voters. (Paras 10, 11, 13)

Cases Referred : Chronological Paras

Prahladbhai Shivram Patel v. Director of Agricultural Marketing and Rural Finance, 1998 AIHC 3445 : 1998 (1) Guj LH 95 12

Mehsana Dist. Co-operative Purchase and Sales Union Ltd. v. Dhadhusan Beej Utpadak Rupantar and Vechan Karnari Sahakari Mandli Ltd., 1998 (1) Guj LH 170 12

Desai Dharamsinhbhai Taljabhai v. Babulal Jethalal Patel, AIR 1990 Guj 161 : 1989 (3) Guj LR 1195 12

P. K. Jani, for Petitioner Nos. 1 to 3, Govt. Pleader, for Respondent No. 1, Notice served for Respondent Nos. 1, 4-3, H. L. Patel, for Respondent Nos. 2 and 3.

Judgement

J. N. BHATT, J. :- The only short question which falls for our consideration and adjudication in this petition under Article 226 of the Constitution is as to whether the inclusion of names of electorals in the final list of voters without their names being in the preliminary list or revised list pursuant to Gujarat Agriculture Produce Market Rules, 1965 (for short "Rules") could be said to be legal and valid and permissible or not.

2. The petitioners have inter alia contended that the Director, Agriculture Marketing and Rural Finance, Gandhinagar by a notification published the election programme of Agricultural Produce Market Committee, Mandvi, Dist. Surat,for which the respondent No. 1 claimed to be appointed Authorised Officer for the purpose of holding the election, who, in turn, published the preliminary list of voters, on 28th December, 2003, and after observing necessary procedure, published the revised list of voters and in both the lists, the names of the respondent Nos. 2 and 3 were not included. Notwithstanding that, when the final list of voters came to be published, on 25th January, 2004, surprisingly, the names of respondent Nos. 2 and 3 societies came to be included. Therefore, the petitioners made a representation to the Authorised Officer indicating that the inclusion of names of members of the Managing Committee of the respondent Nos. 2 and 3 is contrary to the provisions of law and therefore, their names should be deleted from the final list of voters and since no decision has been taken, the petitioners were left with no alternative but to knock the doors of justice by invocation of the provisions of Article 226 of the Constitution of India.

3. The respondent authority has remained conspicuously silent. No affidavit-in-reply is filed. Nothing has been stated or indicated as to why the representation of the petitioner has not been dealt with and decided. We have heard the learned advocates appearing for the parties and taken into consideration the factual profile, as well as, relevant legal settings.

4. It becomes very clear from the record which has not been controverted or countered by the respondent authorities that the action of respondent No. 1 in including the names of respondent Nos. 2 and 3 in the list of voters of agricultural constituencies of agricultural Produce Market Committee, Mandvi without following requisite procedure prescribed in the Rules. The Rules provide statutory mechanism, as to how, and when the names of electorates for a particular constituency could be included in the

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authorised list of voters. Any deviation resulting into the breach of the Rules for inclusion or deletion of the names in the voters list will be invalid and unauthorised.

5. Part-II in the Rules is for publication of notification. Rule 3 provides for publication of notification, whereas Rule 4 provides for fixation of the date of election. Different lists of voters are required to be prepared pursuant to Rule 5 for the purpose of election for various constituencies. A person whose name is entered in a list of voters shall be qualified to vote in election to which the list of voters relates. Rule 7 whereas provides for preparation of list of voters in the general election.

6. Pursuant to the provisions contained in Rule 8, provisional and final publication of list of voters, procedure is statutorily prescribed. As soon as the list of voters is prepared under rule 5, it is to be published by the Authorised Officer, in the manner provided in the Rules. It is required to be published by the Authorised Officer at the office of the Market Committee, as well as, at some conspicuous place in the market yard in the market area along with the notice stating that any person whose name is not entered in the list of voters and who claims that his name ought to be entered therein, or any person who is desirous that his name should be entered therein or any person who thinks that the names of other persons came to be wrongly entered therein, or have not been correctly included, has to apply to the Authorised Officer within a period of 14 days from the date of publication with a request for amendment of the list of voters provisionally shown.

7. The Authorised Officer, upon receipt of such applications, has to examine and publish a revised draft list of voters affixing a copy thereof on the notice board of Agricultural Produce Market Committee and some other conspicuous place in the principal market yard of the market area along with notice inviting objections against the inclusion of new names within a period of seven days from the date of publication of the revised list of voters for the purpose of amendment in the revised draft list of voters. The authorised Officer has to decide the claims made in the applications received by him, as an Authorised Officer and after taking decision, is obliged to prepare and publish a final list of voters after making such amendments as may be necessary pursuant to the decision given by him on the applications, but final list has to be prepared, at least 30 days, before the date fixed for nomination of the candidates for the proposed election.

8. It could very well be visualised from the statutory mechanism provided under Rule 8 that the Authorised Officer appointed for the purpose in relation to a Market Committee before he publishes final list of voters has to follow the procedure prescribed in Rule 8. The conjoint reading of sub-rules (1) and (2) makes it quite evident that for the purpose of preparation of the final list of voters for the election of Agricultural Produce Market Committee, has to publish provisional list of voters followed by a revised draft list of voters upon considering and resolving the claims that may be received by him by the applicants and thereafter, he is obliged to publish a final list at least 30 days prior to the date fixed for nomination of candidates for the proposed election for Agricultural Produce Market Committee. The statutory checks and balances incorporated in the Rules are aimed and designed to see that the rightful persons entitled to vote are included and then who are not entitled to vote are deleted. It is a very important exercise of powers by the Authorised Officer and the duty of the Authorised Officer is provided in Rule 7. If a rightful voter is excluded or not included in the voters' list can approach the Authorised Officer for the inclusion during the process of publication of preliminary, as well as, revised draft list of voters. Again in the event of any name which has been included unauthorisedly, can be pointed out to the Authorised Officer and if he is satisfied, he has power to delete the names of such persons from the list of voters. A person whose name is entered in the list of voters finally, obviously, shall be qualified to vote at an election to which the list of voters relates unless he is seized to hold the capacity in which the name came to be included in the voters' list.

9. After a minor digression from the factual profile of the petition let us see the main grievance voiced in this petition under Article 226 of the Constitution. The following aspects have emerged unquestionably from the record.

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(1) The date of publication of notification 12th December, 2003.

(2) The date of publication of preliminary list of voters under Rule 7(ii) of the Rules was fixed 28th December, 2003.

(3) The date of publication of revised list of voters was fixed 13th January, 2004.

(4) The date of publication of final list of voters was on 25th January, 2004.

10. The petitioners have mainly contended and have challenged the inclusion of respondent Nos. 2 and 3 in the final list of voters though these societies were not included in the preliminary list of voters, as also in the revised list of voters. After having given anxious thoughts and consideration to the statutory mechanism provided for the inclusion of the names in the final list of voters and the settled proposition of law, we are of the opinion that the challenge is quite justified. The inclusion of names of respondent Nos. 2 and 3 co-operative societies in the final voters' list published by the Authorised Officer for the purpose of holding an election from the agriculturists constituencies is violative of the Rule provisions as their names came to be included only in the final list without there being inclusion in the preliminary list of voters, as well, as in the revised list of voters.

11. We are of the clear view that direct inclusion of the names in the final voters' list without there being any scrutiny or consideration either in the preliminary list or in the revised draft list of voters to be prepared by the Authorised Officer is without any authority and not legal. Therefore, the inclusion of the respondent Nos. 2 and 3 co-operative societies in the final voters' list directly is in violation of the prescribed procedure under the Rules and, therefore, wrongful inclusion in the final voters' list the names of respondent Nos. 2 and 3 co-operative societies has to be declared invalid and unauthorised. It be noted that on behalf of the respondent Nos. 2 and 3, there is no any contest or any affidavit-in-reply. We have no hesitation in finding that the inclusion of the names of respondent Nos. 2 and 3 co-operative societies in the final voters' list for the election of Agricultural Produce Market Committee, Mandvi from the agriculturists constituencies, is unauthorised and without jurisdiction and their names are wrongly included and the decision of the Authorised Officer in including their names is unauthorised, invalid and without any legal sanction.

12. The view which we are inclined to take at this juncture is very much reinforced and supported by the following decision of this Court.

(i) In Desai Dharamsinhbhai Taljabhai v. Babulal Jethalal Patel, 1989 (3) Guj LR 1195 : (AIR 1990 Guj 161) wherein the same proposition is highlighted in para 11.

(2) Similarly, this Court in Prahladbhai Shivram Patel v. Director of Agricultural Marketing and Rural Finance, 1998 (1) Guj LH 95 : (1998 AIHC 3445) has also propounded and followed the same principle and it is further held that if an order which is being challenged is without jurisdiction or in violation of the statutory provisions alternative remedy is no bar for entertaining the petition under Article 226.

(3) This Court in Division Bench decision "in Mehsana Dist. Co-operative Purchase and Sales Union Ltd. v. Dhadhusan Beej Utpadak Rupantar and Vechan Karnari Sahakari Mandli Ltd., 1998 (1) Guj LH 170" upheld the view enunciated and propounded in Prahladbhai Patel's case (supra) by dismissing the LPA.

13. In the result, the challenge against the inclusion of names of respondent Nos. 2 and 3 co-operative societies in the final list of voters, without there being any scrutiny or inclusion in the preliminary or revised list of voters under the statutory mechanism of the Rules for the purpose of election of Agricultural Produce Market Committee, Mandvi, Ta : Mandvi, Dist. Surat, from the agriculturists constituencies is required to be upheld holding that the action of the Authorised Officer is without authority and invalid and ultra vires of his powers, and obviously, therefore, the names of the members of the Managing Committee of respondent Nos. 2 and 3 societies shall not be entitled and eligible to participate in the election as voters. Their names shall stand deleted. The petition shall stand allowed. Rule made absolute with costs.

Petition allowed.

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AIR 2002 GUJARAT 156 "Rajeshkumar B. Khamar v. Agrl. Produce Market Committee"

GUJARAT HIGH COURT

Coram : 1 M. S. SHAH, J. ( Single Bench )

Rajeshkumar Bansilal Khamar, Petitioner v. Agriculture Produce Market Committee, Ahmedabad and others, Respondents.

Spl. Civil Appln. No. 7413 of 2000, D/- 31 -7 -2001.

Gujarat Agricultural Produce Markets Act (20 of 1964), S.27 - AGRICULTURAL PRODUCE - LICENSE - Rules under, R. 56 - Licence to trade in market area - Non-renewal - Show cause notice to Licensor by Committee - Licensor filing reply - Controversy was whether licensor was carrying on business in stall with assistance of family members or employees or whether there was transfer of stall to another - Decision not to renew licence cannot be taken without giving licence-holder reasonable opportunity of being heard. (Para 8)

B. G. Jani, for Petitioner; K. G. Vakharia with Tushar Mehta, (for No. 1) and P. R. Abichandani A.G.P. (for Nos. 2-3), for Respondents.

Judgement

ORDER :- Rule. Service of rule is waived by Mr. Tushar Mehta for the respondent No. 1 and Mr. P. R. Abichandani, Ld. AGP for respondent Nos. 2 and 3.

2. In this petition under Article 226 of the Constitution, the petitioner who was earlier granted a licence for carrying on business as a general commission agent and as a trader in Stall No. 11-A the Sardar Patel Market Yard under the Agricultural Produce Market Committee (hereinafter referred to as the "APMC") w.e.f. 17-8-96 on annual basis has challenged the non-renewal of the licence by the impugned resolution dated 29-4-2000 (Annexure H) passed by the APMC which was thereafter confirmed by the Director of Agricultural Market and Rural Finance on 23-6-2000 (Annexure I).

3. After the licence was given to the petitioner on 17-8-96 as per Annexure A, the licence was renewed every year w.e.f. 1st October of the subsequent years. However, when the petitioner submitted his application

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for renewal for the year 1999-2000 commencing from 1st October, 1999, the APMC issued a show cause notice dated 13-3-2000 (Annexure B) calling upon the petitioner to show cause as to why the petitioner's application for renewal of the licence should not be rejected and why the petitioner should not be required to hand over possession of stall No. 11-A. The show cause notice was issued on the ground that the petitioner had transferred the stall to another party and the petitioner was employed with Ismailbhai having another stall in the same market yard, and, therefore, the licence was not required to be renewed in favour of the petitioner. The show cause notice was replied by the petitioner on 18-3-2000 as per the reply at Annexure D. A Sub-Committee of the APMC submitted a report against the petitioner. The Market Committee at its meeting held on 29-6-2000 passed Resolution No. 6 accepting the report and resolving that the licence in favour of the petitioner may not be renewed and the petitioner be required to hand over vacant possession of the stall to the Secretary of the Committee. Aggrieved by the said resolution, the petitioner went in appeal which came to be dismissed by the Director of Agricultural Marketing and Rural Finance vide order dated 23-6-2000 (Annexure I). Hence the petitioner has challenged the said orders before this Court.

4. At the hearing of the petition, Mr. B. G. Jani, Ld. Advocate for the petitioner has raised the following contentions :-

i. The impugned action of the Respondent Committee was in violation of the principles of natural justice as the petitioner was not given a reasonable opportunity of hearing and producing the evidence in support of his case.

ii. The impugned action was arbitrary as the petitioner and the petitioner's father were carrying on the business in the stall in question with the help of the employees and the petitioner had not transferred the stall to any other person. The material on record was such that no reasonable person would arrive at the conclusion which has been arrived at by the Committee and therefore, the findings given by the Committee are perverse. The grounds on the basis of which the Committee has passed the impugned resolution are not sufficent and there is no warrant in law for coming to the conclusion that the licence was not required to be renewed.

iii. The impugned decision was otherwise also vitiated by malafides, as in the past, the petitioner's father had made a complaint against the management of the APMC about the manner of allotting licences which allegations were found by the Registrar and the Director of Agricultural Marketing and Rural Finance to be true and, therefore, although on that occasion the Committee members agreed to allot a stall to the petitioner, subsequently, they settled the score with the petitioner's father by taking the impugned decision.

5. On the other hand, Mr. K. G. Vakharia, Learned Sr. Counsel with Mr. Tushar Mehta, for the respondents and Mr. P. R. Abichandani, Ld. AGP appearing for the State Government and Director of Agricultural Marketing and Rural Finance have opposed the petition and have raised preliminary objections to the effect that the petitioner has an alternative and efficacious remedy by way of a revision application before the State Government and also that the petition deserves to be dismissed for non-joinder of necessary parties as the stall in question has already been allotted to another party and that if the impugned order is set aside, the new allottee will be adversely affected without getting any opportunity to submit his case.

It is further submitted that on merits also, the impugned decision was justified as the petitioner was employed elsewhere and the business in the stall in question was carried on by other persons as per the findings of fact given by the Committee and confirmed by the Director in appeal. Hence, this Court would not disturb those findings.

6. Before dealing with the rival submissions, it is necessary to set out the relevant provisions of the Gujarat Agricultural Produce Market Committee Act, 1965 (hereinafter referred to as the "Act"), the rules framed thereunder and the relevant conditions of the licence.

The provisions of the Act which are relevant for the purposes of this controversy read as under :-

"27. Licences, their issue, renewal, suspension or cancellation etc. and appeals against refusal, suspension etc. of licence. - (1) On the establishment of a market Committee may, subject to rules, made in

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that behalf, grant or renew a general licence or a special licence for the purpose of any specific transaction or transactions to a trader, general commission agent, broker..........., or any person to operate in the market area or part thereof or after recording its reasons therefor, refuse to grant or renew any such licence.

2. ........

3. A market committee may, for reasons to be recorded in writing suspend or cancel a licence,-

(i) if the licence has been obtained through willful mis-representation or fraud, or

(ii) if the holder hereof or his servant or any person actions on his behalf with his express or implied permission, commits a breach of any of the terms, conditions or restrictions imposed by the licence, or

(iii) if the holder of the licence has been adjudged an insolvent and has not obtained his discharge, or

(iv) if the holder of the licence is convicted of any offence under this Act.

Provided that no licence shall be suspended or cancelled unless the holder thereof has been given a reasonable opportunity to show cause against such suspension or cancellation."

Rule 56 in so far as the same is relevant reads out as under :-

"56. Licensed traders and general commission agents.- (1) Any person desiring to obtain a licence to do business as a trader or a general commission agent in agricultural produce in any market area or part thereof shall make a written application in such form as the market committee may determine to the market committee and shall pay such fees as may be determined by the market committee subject to a maximum of Rs. 200; .......

2. On receipt of such application together with the proper amount of the fee, the market committee may, after making such inquiries, as may be considered necessary and on the applicant agreeing to abide by the provisions of the Act; rules and bye-laws and such other conditions as may be laid down by the market committee for holding such licence grant to him the licence applied for.

3. Notwithstanding contained in sub-rule (2) the market committee may refuse to grant or renew a licence to any person who in its opinion is not solvent or whose operations in the market area are not likely to further efficient working of the market or are likely to impede the smooth working of the market under the control of the market committee.

4. The licence shall be granted for a period of one year after which it may be renewed on a written application in such form as may be determined by the market committee, and after such inquiries as are referred to in sub-rules (2) as may be considered necessary and on payment of full fees as payable for fresh licence;

Provided that all licences shall remain in force from the date of issue till 30th Spetember following unless suspended or cancelled earlier.

5 and 6. ...................

(Emphasis supplied)

Condition Nos. 13, 14 and 15 of the License translated in English reads as under :-

"13. The business can be done only in the name in which the licence has been issued. The licence cannot be transferred in favour of any other person.

14. The trading/business of the produce cannot be entered into with a non-licenser under the rules.

15. You will responsible for the acts of your helper or employees in the business. You will have to intimate about the change in the helper or employees. Except the registered representatives, no other person can work on behalf of the licensor.

7. A perusal of the aforesaid statutory provisions clearly indicates that a licence already granted may be suspended or cancelled if, interalia, the holder thereof or his servant or any person acting on his behalf with his express or implied permission, commits a breach of any of the terms, conditions or restrictions imposed by the licence, these are the parameters for cancelling a licence. The parameters for not renewing the licence cannot ordinarily go beyond the parameters for cancelling the licence. The provisions of sub-Rule (3) of Rule 56 are, therefore, required to be read in light of the provisions of sub-Sections (1) and (3) of Section 27.

The submission of Mr. Vakhariya for respondent APMC is that licence is given to

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an individual to do business as a trader in the market area and hence the licence is to be given to an individual for doing the business and he is not permitted to transfer the business to any person or to transfer the possession of the stall to another person.

The submission is valid in so far as it goes. The licence is to be given to a person for carrying on the business and not for transferring the possession of the stall by way of sub-letting or on licence basis, but the Act and the Rules themselves do not rule out the practice needs of the licence holder in taking assistance of employees and agents. Sub-Section (3) of Section 27 provides that if the holder of the licence or his servant or any person acting on his behalf with his express or implied permission commits a breach of any of the terms, conditions or restrictions imposed by the license, the licence is liable to be cancelled.

8. The controversy in the instant case is whether the petitioner was carrying on the business in Stall No. 11-A with the assistance of any of his family members or employees or whether the petitioner had transferred stall No. 11-A to another party on lease or licence basis, and whether the business was being carried on in the name of the petitioner. Although, this question is a mixed question of law and facts, the decision not to renew the licence cannot be taken without giving the licence holder a reasonable opportunity of being heard. It is true that the Market Committee did issue a show cause notice pointing out the allegation against the petitioner. However, after the petitioner submitted his reply, the APMC or its Sub-Committee did not give the petitioner any personal hearing where the doubts raised by the Committee about the defence pleaded by the petitioner could be tested or where the petitioner could have been permitted to produce the evidence in support of his case that he was himself carrying on his business but with the assistance of employees and/or family members. The Court, therefore, accepts the contention raised on behalf of the petitioner that he was not afforded a reasonable opportunity of being heard.

9. In the above view of the matter, it is not necessary to give any finding on any other contentions raised on behalf of the petitioner which contentions are kept open. Hence the impugned orders are required to be set aside and the matter is required to be remanded to the APMC to hold a fresh inquiry wherein the petitioner shall be given an adequate opportunity of being heard and leading evidence including documentary and oral evidence in support of his defence.

10. The petitioner is therefore allowed in terms of the following :-

i. The impugned resolution/report and orders dated 29-4-2000 and 23-6-2000 at Annexures G and H respectively are hereby quashed and set aside.

ii. If the petitioner submits further statement/representation alongwith the documents, if any, to the APMC within one month from today, the Sub-Committee of the APMC shall give a personal hearing to the petitioner with an opportunity to clear such doubts as may be raised in connection with the documents produced by the petitioner and any further clarifications which the Sub-Committee may seek.

iii. At the personal hearing, the petitioner shall also be permitted to produce the Account Books and other material in support of his case not he was carrying on business at the relevant time with the help of his employees/agents and/or family members.

After giving such personal hearing, the Sub-Committee shall submit its report to the APMC and the APMC shall take a final decision in the matter without being influenced by its previous decision which is being set aside by this order. The APMC and also the Sub-Committee shall keep in mind the observations made in Para 7 of this judgment.

11. Since the allotment of the stall was made in favour of another party, as far back as on 29-4-2000 and since the Court has not gone into the merits of the dispute, the Court does not propose to disturb the allotment in favour of the third party which is not a party to this petition. In case, the petitioner succeeds and the Committee decides to renew the petitioner's licence for the year 1999-2000 and subsequent years, the petitioner shall be allotted the next available shall in the same market yard.

12. The petition is accordingly partly allowed in the aforesaid terms. Rule is made absolute with no order as to costs.

Petition partly allowed.

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AIR 2002 GUJARAT 186 "Atmarambhai Maganlal Patel v. State of Gujarat"

GUJARAT HIGH COURT

Coram : 1 Miss. R. M. DOSHIT, J. ( Single Bench )

Atmarambhai Maganlal Patel and others, Petitioners v. State of Gujarat and others, Respondents.

Spl. C. A. No. 2547 of 2001, D/- 11 -10 -2001.

Gujarat Agricultural Produce Markets Act (20 of 1964), S.11 - Gujarat Agricultural Produce Markets Rules (1965), R.31 - AGRICULTURAL PRODUCE - ELECTION - Election of Chairman and Vice- Chairman of Market Committee - Right of voting - Vests in nominated members also.

The constitution of the Market Committee provided under S.11(1) includes the nominated members also. Thus, wherever the word "market committee" is used, the same should mean, unless repugnant to the context thereof, the Market Committee constituted in accordance with S. 11(1) which should include the nominated members as well. Thus plea that categories of members who can contest the election of Chairman or Vice-Chairman can alone vote at the election of the Chairman or Vice-Chairman is not tenable. The reference to the members of the class specified in Cls. (i), (ii) and (iii) of S. 11 (1) is confined to the nomination as Chairman or Vice-Chairman. In other words, it is only those members who belong to the class specified in Cls. (i), (ii) and (iii) of S. 11 (1) can offer the candidature for being elected as Chairman or Vice-Chairman of the Market Committee. The said sub-section neither expressly nor by implication applies to the voting right also.

Further there is nothing in the R. 31(1) and (5) which should indicate that the voting right is restricted to the members of the class specified in Cls. (i), (ii) and (iii) of S. 11(1). The provision being clear and unambiguous is required to be given its simple meaning and no external aid is required. Thus in election of Chairman or Vice-Chairman of a Market Committee even the nominated members of the Market Committee specified under Cls. (iv) and (v) of sub-section (1) of S. 11 shall have right to vote. (Paras 4, 5, 6)

Cases Referred : Chronological Paras

Kantilal Chandulal Shah v. C. J. Jose, AIR 1987 Guj 284 : 1987 (1) Guj LR 602 3, 4

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Tushar Mehta, for Petitioners; A. D. Oza, Govt. Pleader, (for Nos. 1 to 4, 9, 10), K. S. Jhaveri (for Nos. 5, 7, 8, 11), R. S. Sanjanwala (for No. 6), for Respondents.

Judgement

ORDER :- Heard the learned Advocates.

2. The petitioners are some of the members of the Agricultural Produce Market Committee, Vijapur (hereinafter referred to as 'the said Committee). The petitioners seek declaration that the respondent Nos. 8 and 10, the members of the said Committee nominated under Clauses (iv) and (v) of sub-section (1) of Section 11 of the Agricultural Produce Markets Act, 1963 (hereinafter referred to as 'the Act'), do not have a right to vote at the election of the Chairman and the Vice-Chairman, the respondent Nos. 7 and 11 respectively, of the said Committee.

3. Mr. Mehta has submitted that at the election of the Chairman and the Vice-Chairman of the said Committee, the nominated members of the said Committee had cast their votes which has tilted the balance. He has submitted that the nominated members of the said Committee had no right to cast their votes at the election of the Chairman and the Vice-Chairman. He has submitted that, it is the elected members alone who have right to contest at the election of the Chairman and the Vice-Chairman of the Agricultural Produce Market Committee and the voting rights at such election shall also be restricted to such elected members alone. In other words, the nominated members shall have no right to vote at the election of the Chairman and the Vice-Chairman of the Agricultural Produce Market Committee. In support of his contention, he has relied upon Sections 11, 17 and 25 of the Act and Rule 31 of the Gujarat Agricultural Produce Markets Rules, 1965 (hereinafter referred to as 'the Rules'). He has also relied upon Section 80(2) of the Gujarat Co-operative Societies Act, 1961 and the judgment of this Court in the matter of Kantilal Chandulal Shah v. C. J. Jose, 1987 (1) Guj LR 602 : (AIR 1987 Guj 284).

4. Sub-section (1) of Section 11 of the Act provides for constitution of a Market Committee. Clause (i) thereof provides for election of eight agriculturists as members of the Market Committee, clause (ii) thereof provides for election of four traders holding general licence; Clause (iii) thereof provides for election of two representatives of the Co-operative Societies; Clause (iv) thereof provides for nomination of one Councillor by the Local Authority; and Clause (v) thereof provides for nomination of two members by the State Government. Sub-section (1) of Section 13 of the Act provides, inter alia, for removal from office of any member of the Market Committee. Sub-section (1) of Section 17 of the Act provides for election of the Chairman and the Vice-Chairman of the Market Committee. The same reads as under :-

"(1) Every Market Committee shall elect one of its members from the members of the class specified in clauses (i), (ii) and (iii) of sub-section (1) of Section 11 to be its Chairman and another member to be its Vice-Chairman in such manner as may be prescribed."

Thus, Section 17(1) provides, inter alia, that a member elected under clause (i), (ii) or (iii) of sub-section (1) of Section 11 alone can contest election either as an election for Chairman or Vice-Chairman. Rule 31 of the Rules provides for the procedure to be followed for the election of the Chairman or the Vice-Chairman by a Market Committee. Mr. Mehta has submitted that categories of members who can contest the election of Chairman or Vice-Chairman can alone vote at the election of the Chairman or the Vice-Chairman. The legislative intention in this regard can well be ascertained by referring to sub-section (1) of Section 13 of the Act. In sub-section (1) of Section 13 of the Act, the words used are "whole number of members". Thus, wherever necessary, the legislature has used the words "whole number of members", which should indicate inclusion of the nominated members also. While, in sub-section (1) of Section 17 of the Act, the statute has not referred to the nominated members at all. The nominated members, therefore, cannot have a right to vote at the election of the Chairman or the Vice-chairman of a Market Committee. He has further submitted that assistance can be had from the language used in Section 80 of the Gujarat Co-operative Societies Act, 1961. Section 80 of the said Act empowers the Government to nominate its representatives in the Committee of a Society. It expressly provides that, "the members so nominated shall hold office during the pleasure of the State Government, or for such period as may

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be specified in the order by which they are appointed, and any such member on assuming office shall have all rights, duties, responsibilities and liabilities as if he were a member of the Committee duly elected". He has strenuously urged that such express provision has not been incorporated in the Act. Hence, in absence of express provision, the nominated members cannot have a right to vote at the election of the Chairman or the Vice-Chairman of a Market Committee. In the matter of Kantilal Chandulal Shah v. C. J. Jose (supra), while considering the scope and ambit of Section 76(B)(2) of the Gujarat Co-operative Societies Act, this Court has relied upon the provisions contained in Section 49(2) of the Gujarat Panchayats Act, 1961. Similarly, while interpreting the scope and ambit of Section 17 of the Act, reliance can safely be placed on Section 80 of the Gujarat Co-operative Societies Act, 1963, both being the statutes enacted by the same legislature.

5. I am unable to agree with the contentions raised by Mr. Mehta. The words "whole number of members" used in Section 13(1) of the Act is in context with the removal of a member of the Committee. What is intended is that, at least 2/3rd of the whole number of members shall support the recommendation for removal of any member of the Market Committee. The said words have thus been used in juxtaposition of the total number of members as against the number of members present at the concerned meeting. Whereas, sub-section (1) of Section 17 of the Act begins with the words "the Market Committee"; it shall necessarily mean the Market Committee constituted under Section 11 of the Act. The constitution of the Market Committee provided under Section 11(1) of the Act includes the nominated members also. Thus, in my view, wherever the word "Market Committee" is used, the same should mean, unless repugnant to the context thereof, the Market Committee constituted in accordance with Section 11(1) of the Act which should include the nominated members as well. The reference to the members of the class specified in clauses (i), (ii) and (iii) of sub-section (1) of Section 11 of the Act is confined to the nomination as Chairman or Vice-Chairman. In other words, it is only those members who belong to the class specified in clauses (i), (ii) and (iii) of sub-section (1) of Section 11 of the Act, can offer the candidature for being elected as Chairman or Vice-Chairman of the Market Committee. The said sub-section neither expressly nor by implication applies to the voting right also. The language of Section 17(1) of the Act is clear and unambiguous. There is no possibility of giving it any meaning other than one referred to hereinabove. Even, under Section 25 of the Act, the words used are "the Market Committee". Mr. Mehta has contended that the words "the Market Committee" used in Section 25 of the Act should necessarily mean as the Market Committee constituted in consonance with Section 11(1) of the Act and should also include the nominated members. Mr. Mehta has also relied upon sub-rules (1) and (5) of Rule 31 of the Rules. He has submitted that the words "every member wishing to vote" occurring in sub-rule (5) shall take its meaning from the words "to elect its Chairman and Vice-Chairman from amongst its member of the class specified in sub-clauses (i), (ii) and (iii) of sub-section (1) of Section 11 of the Act" and should mean that the members of the said classes alone should have a right to vote at the election of the Chairman and the Vice-Chairman.

6. I fail to read the said rule in the manner Mr. Mehta intends it to be read. There is nothing in the said Rule which should indicate that even the voting right is restricted to the members of the class specified in clauses (i), (ii) and (iii) of sub-section (1) of Section 11 of the Act. The provision under consideration being clear and unambiguous is required to be given its simple meaning and no external aid is required as is made out by Mr. Mehta. I, therefore, hold that in election of Chairman or Vice-Chairman of a Market Committee even the nominated members of the Market Committee specified under clauses (iv) and (v) of sub-section (1) of Section 11 of the Act shall have right to vote.

7. For the reasons recorded hereinabove, the petition is dismissed. Rule is discharged. Parties shall bear their own costs.

Petition dismissed.

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AIR 2002 GUJARAT 245 "Agricultural Produce Market Committee v. P.J. Purshottamdas"

GUJARAT HIGH COURT

Coram : 2 D. M. DHARMADHIKARI, C. J. AND RAVI R. TRIPATHI, J. ( Division Bench )

Agricultural Produce Market Committee, Unjha, Appellant v. Patel Jayantilal Purshottamdas and others, Respondents.

Letters Patent Appeal No. 1157 in SCA No. 1353 of 2001, D/- 24 -10 -2001.

Gujarat Agricultural Produce Markets Act (20 of 1964), S.11 and S.14 - AGRICULTURAL PRODUCE - MUNICIPALITIES - APPOINTMENT - Nomination of member of Municipal Committee on Market Committee - Continuation of - Appointment of administrator on Municipal Council - Nominee ceases to be member of Committee - Nominee elected to Municipal Council in subsequent election - Immaterial - Nomination does not revive.

Where a member of Municipal Council was nominated by Council on Agricultural Market Committee and an administrator was appointed the nominee would cease to be nominee on Committee. In such cases the fact that in re-election to Municipal Council, on expiry of term of Council, nominee in question was re-elected to Municipal Council would not make any difference. His nomination would not revive when he was not nominated after fresh election to Market Committee. (Para 10)

Cases Referred : Chronological Paras

Jehangir Bhikaji Panthaki v. Corporation of City of Nagpur, (1960) 62 Bom LR 450 : 1960 Nag LJ 99 7

Kanta Devi v. Rajasthan State, AIR 1957 Raj 134 7

Gaurang H. Bhatt and P. K. Jani, for Appellant; D. C. Dove, for Respondents.

Judgement

D. M. DHARMADHIKARI, C. J.:- Learned single Judge by the impugned order has dismissed the petition by taking the view that once the petitioner's term as a nominee of the Municipal Council, Unjha to the Market Committee, Unjha came to an end, today, in his status as a Councillor, he cannot continue as ex-officio nominee on the Market Committee.

2. The relevant facts to be mentioned are that the petitioner who is the appellant in LPA No. 1143, as a Councillor of Municipal Council, Unjha, was nominated by the Council as a member of the Market Committee, Unjha. The term of the Municipal Council, Unjha came to an end on expiry of four years. Thereafter, fresh elections were held for Constitution of Municipal Council and the appellant again came to be elected as a Councillor.

3. A short question of law has arisen before the learned single Judge and in appeal before us, whether on the above statutory events, the appellant can still continue as a member on the Market Committee as a Councillor of the Municipal Council.

4. A few relevant dates alone are required to be noted for deciding a purely legal question raised. The appellant was elected as Councillor of Unjha Municipal Council and was nominated as a Member of the Marketing Committee by Resolution of Municipal Council dated 16-1-1999. The term of Market Committee is four years. The newly constituted Market Committee met in its first meeting on 16-1-1999 and the claim of the appellant as Councillor of Unjha Municipal Council is that he is entitled to continue for the full term of four years of the Market Committee irrespective of constitution of new municipal Council in Unjha. The term of Unjha Municipal Council came to an end on 6-1-2000. The Collector of Meshana District appointed an Administrator, who took charge on 10-1-2000. Fresh elections were held for Unjha Municipal Council and the appellant again contested in the election and was elected as Councillor. The first meeting of the newly constituted Municipal

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Council was held on 20-1-2000. The term of the earlier municipal council expired on 6-1-2000 and from 10-1-2000 to 19-1-2000, an Administrator was in charge of the municipal council. The newly constituted Unjha Municipal Council in its meeting held on 28-2-2000 did not make a fresh recommendation in favour of the appellant, instead respondent No. 4 was recommended as nominee of the municipal council to act as a member of Unjha Market Committee. The legal question raised both at the instance of Martket Committee and the present appellants in these two Letters Patent Appeals is that irrespective of constitution of a fresh elected body to the Unjha Muncipal Council, the nomination made by the erstwhile elected body of the Unjha Municipal Council to the Market Committee would continue for the full term of the Market Committee and the newly elected body of Unjha Municipal Council could not make a fresh nomination of respondent No. 4 as member of the Market Committee.

5. Learned counsel Mr. P.K. Jani for the appellant very strenuously urged that statut for continuance of the nominated member of the municipal council does not depend on expiry of the term of the Municipal Council and the provisions of the Gujarat Agricultural Produce Market Act, 1963 do not contemplate any bar on the continuance of the nominee councillor. No fresh nomination is required to be made by the newly elected municipal council.

6. The argument advanced is that once a councillor is nominated for a particular term to the market committee, he continues for his full term irrespective of his status as councillor cessing on expiry of term of the municipal council.

7. Alternatively, it is urged that in any case, the appellant having been re-elected as a councillor, his earlier status as nominee of the erstwhile elected municipal council would continue. Reliance has been placed on the decision of the Bombay High Court in Jehangir Bhikaji Panthaki v. Corporation of the City of Nagpur, (1960) 62 Bom LR 450 and decision of the Rajasthan High Court in Kanta Devi v. Rajasthan State, AIR 1950 Raj 134.

8. Having gone through the said decisions, we find that they are clearly distinguishable. In the Bombay case, arising from Nagpur Bench, from the constituency of textile mills, a representative was elected by the Directors of the two cloth Mills at Nagpur to nominate him as councillor to the Corporation of Nagpur. The Court held that merely because the directors had nominated him as councillor, they had no power to recall him on the ground that he had lost their confidence. The Rajasthan case is also distinguishable where, after making nomination to the municipal council, Government wanted to substitute him by another nominee. It was held that Government cannot change its mind and nominate another person without following the required procedure. The subsequent notification issued for the above purpose was held to be beyond their power.

9. In the Gujarat Act, the procedure of nomination is regulated by Section 11(1)(v) and Section 14. The relevant part of these sections reads as under :

"11. Constitution of Market Committee ; (1) Every market committee shall consist of the following members, namely -

(i) to (iii) x x x x x x x

(iv) One member to be mentioned by the local authority (other than the market committee) within whose jurisdiction the principal market yard is situated from amongst its councillors or, as the case may be, members who do not hold any general licence;

Provided that where under the law applicable to the local authority its councillors or members have vacated office and any person or administrator has been appointed to exercise the power and perform the functions of the local authority, such person or as the case may be, administrator shall nominate a member under this paragraph from amongst persons qualified to be councillors or members of the local authority and not holding a general licence;"

"14. Disabilities from continuing member; (1) An elected or nominated member shall cases to hold office as such member if-

(i) x x x x x

(ii) x x x x x x

(iii) he being a member nominated by a local authority, ceased to be councillor, or as the case be, a member, of the local authority, or is granted a general licence under this Act."

10. As the facts stated above, the appellant was nominated by the erstwhile municipal council whose term expired and thereupon the appellant's status as a councillor ceased. An Administrator was thereafter appointed and in the fresh election, the

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appellant has been re-elected but as an effect of Section 14 (1)(iii), on expiry of the term of erstwhile council, the appellants status as a municipal councillor ceased. As an effect of Section 14(1)(iii), his nominated qua councillor ceased. His re-election would not revive his nomination. The newly elected municipal council has not sent him as a nominee to the market committee. The proviso to Section 11(1)(iv) very clearly provides that on the appointment of Administrator, all elected members shall vacate their office.The proviso below Section 11 (5)(iv) reads as under :-

"Provided that where under the law applicable to the local authority its councillors or members have vacated office and any person or administrator has been appointed to exercise the power and perform the functions of the local authority, such person or, as the case may be, administrator shall nominate a member under this paragraph from amongst persons qualified to be councillors or members of the local authority and not holding a general licence;"

11. The provision of sending a nominee of the municipal council to the market committee is with the object that the interest of the council be protected in conducting the affairs of the market committee in co-ordination with municipal council. If the argument advanced by the learned counsel for the appellant is accepted, it would allow continuance to a councillor who has ceased to be a councillor of the council which has nominated him to the market committee. Such interpretation would defeat the very object of sending of nominee from the municipal council as their agent to the market committee. It is to be noted that nomination is ex officio and is attached to continuance of the councillor. If his status as councillor at any time is lost, the nomination would cease. On appointment of administrator, his status as councillor was lost with the outgoing elected body of the council. There is no provision in the Act which revives his position as nominee merely because he happened to be re-elected as councillor to the newly elected body. Neither the administrator who was in control of the council for a brief interrenum period nor the newly elected council has nominated him again to the market committee. His erstwhile status as nominee of the erstwhile council cannot continue after re-election and consequent upon reconstitution of fresh council which has made a nomination in favour of respondent No. 4. The status of a nominee of council survives or expires with the continuance or expiry of the term of the elected body which has nominated him.

12. For the aforesaid reasons, we find no ground to take a different view on the provisions of law as taken by the learned single Judge. The LPAs, therefore, fail and are dimissed. No orders on civil applications.

Applied dismissed.

AIR 2002 GUJARAT 348 "N. B. Posiya v. Director of Agrl. Mktg. & Rural Finance (FB)"

GUJARAT HIGH COURT

(FULL BENCH)

Coram : 3 D. M. DHARMADHIKARI, C. J. J. M. PANCHAL AND N. G. NANDI, JJ. ( Full Bench )

Nandlal Bavanjibhai Posiya and others, Petitioners v. Director of Agriculture Marketing and Rural Finance, Gandhinagar and others, Respondents.

Spl. Civil Appln. Nos. 7278 with 5120 of 2001 with LPA Nos. 1177 of 2001 and 1451 of 1997 with Civil Appln. No. 11524 of 1997, D/- 8 -2 -2002.

(A) Gujarat Agricultural Produce Markets Act (20 of 1964), Pre., S.13 - Gujarat Agricultural Produce Markets Rules (1965), R.33, R.35 - AGRICULTURAL PRODUCE - Office of Chairman or Vice-Chairman - Vacancy - Expression "ceasing to hold the office for any reason" in R.33(2) - Cannot be restricted to reason contained in Second Proviso to R.33(1) - Said expression would include "removal or recall of Chairman or Vice-Chairman by moving and passing of no confidence motion against him" - Thus moving of no confidence motion against Chairman or Vice-Chairman and passing of by simple majority - Is permissible even in absence of provision in Act or Rules providing for the same.

Both in relation to the Chairman and/or Vice-Chairman of Market Committee under the Agricultural Produce Markets Act and the Rules and Chairmen of various Committees of Panchayats under the Panchayats Act and the Rules, it can be said that if a holder of office is elected by simple majority by the body in requisite quorum, he can be removed or recalled by a simple majority, in the absence of any provision prohibiting such a course or prescribing any particular procedure of moving the no confidence motion with a particular majority and passing the same by a particular majority. (Para 66)

The plea that office of Chairman or Vice-Chairman may fall vacant only by death, resignation, or ceasing to hold office by him for reason of loss of his membership of the committee in the circumstances like Ss. 13 and 14 of the Act would not be tenable. What is to be noted from the plain language of sub-rule (2) of R. 33 is that after the words like "dying", "resigning", the expression used is "or ceasing to hold office for any reason before the expiry of his term of office". The above expression "ceasing to hold the office for any reason" cannot be restricted to merely reason contained in second proviso to sub-rule (1) of R. 33. Under the second proviso, the Chairman or Vice-Chairman, as the case may be, shall cease to hold his respective office, if he ceases to be a member of the Market Committee. If the Legislature wanted to restrict the application of sub-rule (2) on matter of filling casual vacancy only to the event contemplated in second proviso to sub-rule (1) of R. 33, i.e. cessation of his office; consequent upon cessation of his membership of the committee, sub-rule (2) of R. 33 would have been worded differently. In that situation, the subordinate legislation under sub-rule (2) of R. 33 could have very easily used the expression "ceasing to hold the membership of the Market Committee in terms of second proviso to R. 33". Instead the use of the wider expression "Ceasing to hold the office for any reason" covers situations and contingencies inclusive of the contingency covered by second proviso to sub-rule (1) of R. 33, namely, cessation of membership of the committee. (Paras 44, 45)

A vacancy in the office of the Chairman and Vice-Chairman may arise by death, resignation, or loss of membership of the committee, but casual vacancy may also arise for many conceivable reasons, like conviction and imprisonment of the holder of elected office, by his physical or mental disability, by his continuous absence and want of whereabouts, and many other similar situations, including his removal by no confidence motion. The language in sub-rule (2) of R. 33 uses a wide expression "ceasing to hold office for any reason" and second proviso under sub-rule (1) of R. 33 is merely one such reason along with death or resignation. In the expression "ceasing to hold

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office or any reason" would be included "removal or recall of Chairman or Vice-Chairman by moving and passing of a no confidence motion against him". This right of members to remove holder of elected office for loss of confidence is to be found in the provisions of the main Act and the Rules, and it is not to be inferred by implication as part of a common law right. Where a statute itself permits passing of a no confidence motion, like any other business transacted in the meetings of the committee by simple majority, it is not necessary to go to the external aid of comparing other legislations in Municipalities and Panchayats Acts, and on that comparison to come to the conclusion that such right in the elected body of its members does not exist under the provisions of the Agricultural Produce Markets Act. (Paras 46, 47)

Thus the election to the office of the Chairman and Vice-Chairman can be made by the members of the Committee with quorum of 1/3rd by simple majority. If the election to the Office can be made by 1/3rd members present as the quorum, by simple majority, a no confidence motion to remove or recall a member elected to the Office of Chairman or Vice-Chairman by simple majority with same 1/3rd quorum is permissible and not expressly prohibited by either the provisions of the Act or the Rules. (Para 48)

Therefore, moving of a no confidence motion and passing the same by simple majority is permissible and not expressly prohibited by either the provisions of the Agricultural Produce Market Act or the Rules. In fact, under R. 33(2) and R. 35 passing of no confidence motion against Chairman and Vice-Chairman is one of the reasons contemplated in the Rules by which vacancy is created in those offices and which are required to be filled by the Director by calling a meeting of the Committee for the purpose. It cannot be said that no procedure is indicated under Act or Rules under which a no confidence motion can be moved and passed. It is true that there is no express provision for a minimum prescribed number for moving a motion by the members and there is also no prescribed majority by which it can be passed, but in the absence of such a provision of a requisite majority for passing and moving it, no confidence motion like any other subject or agenda in a meeting, can be passed by simple majority. If the election in a meeting with requisite quorum can be made by simple majority to the post of Chairman/Vice-Chairman, a no confidence motion can be moved and be passed by simple majority against the holder of the post. (Paras 51, 52)

Not as a common law right, but an inherent statutory right exists in the members of the elected body to remove its leader by no confidence motion in accordance with the same procedure by which he is elected and in the absence of contrary provision in the law governing such elected body, such right has to be read into the Statute. (Paras 62, 68, 72)

(B) Gujarat Agricultural Produce Markets Act (20 of 1964), Pre., S.13 - Gujarat Agricultural Produce Markets Rules (1965), R.33, R.35 - AGRICULTURAL PRODUCE - No confidence motion against Chairman and Vice-Chairman of Market Committee - Does not require statement of any reasons for moving motion - Nor stating of reasons necessary for passing the same - Fact that no Rule or Form is prescribed in Act or Rules for moving and passing the motion - Cannot be a ground to hold that no confidence motion cannot be passed against Chairman or Vice-Chairman.

If a Chairman or Vice-Chairman of the Market Committee has lost confidence of the members of the Committee, action taken by him under R. 32 in discharge of his duties and functions will be criticised or opposed and will not get any support from the members. Thus, loss of confidence in the leader of an elected body would many times hamper smooth working of the elected body, and some times, may make it impossible for him to carry on the functions of the committee due to internal feuds and conflicts. The work culture of a democratic body inheres in it the right of its members to move a no confidence motion against their elected leader, which is a concomitant of the right to elect the leader. No confidence motion can be passed by simple majority against the holder of the elected office, who is elected by simple majority, unless the Rules of business or Bye-laws or Statute indicate a contrary intention or prohibit passing of a no confidence motion. The plea that no confidence motion has to be moved only on reasons to be specified in writing in the notice proposing

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the motion and has to be passed after grant of opportunity on those reasons to the holder of office against whom it is moved, would not be tenable. (Para 59)

No confidence motion does not require statement of any reasons for moving the motion nor does it require passing of motion by stating reasons for passing the same. Confidence in the elected holder of office is the soul of democracy. All democratic institutions function on mutual confidence between the members and their leader. Loss of confidence without anything else, which is based on objective basis, is sufficient to move the motion. The principles of natural justice are not breached where a no confidence motion is moved with due notice to the person against whom it is moved and he gets an opportunity in the meeting for passing the motion to participate and have his say to regain confidence of the elected body. Merely because in the Agricultural Produce Markets Act and the Rules, there is no Rule and Form prescribed for moving the motion with requirement of specification of reasons and grounds for moving and passing it, it cannot be held that a no confidence motion cannot be passed against the Chairman and Vice-Chairman of Market Committee. (Para 60)

(C) INTERPRETATION OF STATUTES - Interpretation of Statutes - External aid - Recourse to comparable legislation - In Statute itself there is sufficient internal aid - Thus, reference or recourse to comparable legislation may not be necessary. (Para 34)

(D) Gujarat Agricultural Produce Markets Act (20 of 1964), Pre., S.13 - Gujarat Agricultural Produce Markets Rules (1965), R.33, R.35 - AGRICULTURAL PRODUCE - Scope - No confidence motion - Passing of by simple majority - Special meeting called by members - Procedure for holding meeting under R.35, would be applicable.

The procedure of holding meeting under R. 35 covers a special meeting called by members for passing a no confidence motion by simple majority. (Para 57)

(E) General Clauses Act (10 of 1897), S.16 - APPLICABILITY OF AN ACT - Applicability - S. 16 cannot be restricted to non elective office.

1960 Nag LJ 99 (Bom) and AIR 1982 Bom 216, Dissented from. (Paras 50, 65)

Cases Referred : Chronological Paras

Narmadaben V. Parmar v. Taluka Development Officer, Kheralu, 1998 AIHC 1318 : 1998 (1) Guj LR 225 2, 4, 5, 28, 29, 60

Mohan Lal Tripathi v. District Magistrate, Rae Bareilly, AIR 1993 SC 2042 : 1993 All LJ 994 27, 31

Jagdev Singh v. Registrar Cooperative Societies, Haryana, AIR 1991 Punj and Har 149 (FB) 4, 27, 28, 63

Chimanbhai R. Patel v. Anand Municipality, AIR 1983 Guj 136 : 1983 (1) 24 Guj LR 67 4, 5, 29,6,7

Hindurao Balwant Patil v. Krishnarao Parshuram Patil, AIR 1982 Bom 216 (Diss. from) 4, 27, 50, 65

Haji Anwar Ahmed Khan v. Punjab Wakf Board, AIR 1980 Punj and Har 306 28

Veeramachanei Venkata Narayana v. Deputy Registrar of Co-operative Societies, Eluru ILR (1975) Andh Pra 242 27, 28, 63

Bar Council of Delhi v. Bar Council of India, AIR 1975 Del 200 30, 61 , 62, 67

Babubhai Muljibhai Patel v. Nandalal Khodidas Barot, AIR 1974 SC 2105 59

N. Venkatratnam Naidu v. District Collector, Nellore, AIR 1972 Andh Pra 349 28, 63

Jehangir Bhikaji Panthaki v. Corporation of the City of Nagpur, 1960 Nag LJ 99 : (1960) 62 Bom LR 450 (Diss. from) 27, 65

Kutoor Vengayil Rayarappan Nayanar v. Kutoor Vengayil Valia Madhai Amma, AIR 1950 FC 140 30, 50

K. S. Zaveri and Anshin, H. Desai, for Petitioners; Tushar Mehta, for Appellants; B. S. Patel, B. M. Mangukiya, A. D. Oza, Govt. Pleader, for Respondents.

Judgement

D. M. DHARMADHIKARI, C. J. :- All these cases have been placed for hearing and decision before this Full Bench of Three Judges, on the order of reference made by the learned single Judge in Special Civil Application Nos. 7278 of 2001 and 5120 of 2001 on 27-9-2001.

2. The Letters Patent Appeal No. 1177 of 2001 arises out of an order of status quo passed by the learned single Judge in Special Civil Application No. 9842 of 2001. Special Civil Application No. 5120 of 2001 and Letters Patent Appeal No. 1177 of 2001 are cognate matters concerning moving and passing of no confidence motion against the

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Chairman of Agricultural Procedure Market Committee, Valsad. Special Civil Application No. 7278 of 2001 is also concerning moving and passing of no confidence motion against the Chairman of Junagadh Agricultural Produce Market Committee. Letters Patent Appeal No. 1451 of 1997 is concerning moving and passing of no confidence motion against the Chairman of Social Justice Committee under Section 123 of the Gujarat Panchayats Act, 1993. It is directed against the order of the learned single Judge passed in Special Civil Application 3484 of 1997 in the case of Narmadaben V. Parmar v. Taluka Development Officer, Kheralu decided on 15-10-1997 and the judgment is reported in 1998 (1) Guj LR 225 : (1998 AIHC 1318).

3. A common question of general importance arises in all these cognate matters. The question raised on behalf of the petitioners/appellants is, whether in the absence of express provisions, for moving and passing of a no confidence motion against the Chairman/Vice Chairman of Agricultural Produce Market Committee under the Gujarat Agricultural Produce Markets Act, 1963 and the Rules framed thereunder and the Chairman of Social Justice Committee under the Gujarat Panchayats Act and the Rules framed thereunder, such a motion can validly be passed.

4. The learned single Judge by separate orders passed in Special Civil Application No. 5120 and 7278 of 2001 concerning Valsad and Junagadh Market Committees respectively found that the decision of the learned Single Judge (M.S. Shah, J) in the case of Narmadaben V. Parmar (1998 AIHC 1318) (supra) in which reliance was placed on the Division Bench decision of this Court in the case of Chimanbhai R. Patel v. Anand Municipality reported in 1983 (1) 24 Guj LR 67 : (AIR 1983 Guj 136) is in conflict with the opinions expressed by other High Courts, i.e. Hindurao Balwant Patil v. Krishnarao Parshuram Patil reported in AIR 1982 Bom 216 and Full Bench of Punjab and Haryana High Court in the matter of Jagdev Singh v. The Registrar, Co-operative Societies, Haryana and others reported in AIR 1991 Punj and Har 149.

5. At the outset, we consider it appropriate to record that as on the question raised before the learned single Judge the earlier single Bench decision of this Court in Narmadaben V. Parmar (1998 AIHC 1318) (supra) was relied on, in which reliance was placed on Division Bench decision of this Court in Chimanbhai R. Patel (AIR 1983 Guj 136) (supra) which was binding precedent on her an order of reference to a Bench larger than of Two Judges was not required, unless the learned single Judge would have expressed a dissenting opinion on the question of law involved in the case. None the less, since both the Letters Patent Appeals and Special Civil Applications raising a question of law of general importance have been placed before us, we proceed to decide the same on merits.

6. Before dealing with the facts of each case in detail, we may take up first for decision the common question of law raised in this batch of petitions and Appeals.

7. A brief survey of the relevant provisions of the Gujarat Agricultural Produce Markets Act, 1963 and the Gujarat Agricultural Produce Market Rules, 1965 is necessary to consider the question raised on the subject of passing of no confidence motion against the holder of elective Office of Chairman and Vice-Chairman of Market Committees. As the Preamble shows, the Act proposes to consolidate and amend the law relating to the regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Gujarat.

8. Section 2 contains the definition of "agricultural produce", "agriculturist", "broker", "market", "market area" and other expressions used in the Act. Clause (xiv) of Section 2 defines "market committee" to mean a market committee established or deemed to be established under this Act.

9. Section 11 of the Act provides that Market Committee shall consist of (i) eight agriculturists to be elected by members of managing committees of co-operative societies dispensing agricultural credit in the market area; (ii) four members to be elected in the prescribed manner from amongst themselves by the traders holding general licences; (iii) two representatives of the cooperative marketing societies situate in the market area and holding general licences to be elected from amongst the members of the managing committees of such societies; (iv) one member to be nominated by the local authority;

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and (v) two members to be nominated by the State Government.

10. A Market Committee constituted under Section 11 has to elect from amongst its members belonging to the class of agriculturists, traders of representatives of cooperative marketing societies, its Chairman and Vice-Chairman.

11. Under Section 18, business of the Market Committee has to be conducted in accordance with the Rules which may also prescribe the quorum at the meetings.

12. Section 19 provides that every contract entered into by the Market Committee shall be in writing and shall be signed on behalf of the Market Committee by the Vice-Chairman and two other members and it is only such contract when so executed shall be binding on the committee.

13. Sections 17 to 19, being relevant for the decision of this batch of cases are quoted below :

"17. (1) Every market committee shall elect one of its members of the class specified in clause i), (ii) and (iii) of sub-section (1) Section 11 to be its Chairman and another member to be its Vice-Chairman in such manner as may be prescribed.

(2) The Chairman or Vice-Chairman may resign from office by tendering his resignation in writing to the market committee but it shall not take effect until it is accepted by the Director or on the expiry of sixty days from the date of tendering the resignation whichever event occurs earlier.

(3) A temporary vacancy in the office of the Chairman or Vice-Chairman shall be filled in such manner as may be prescribed.

(4) The Chairman and Vice-Chairman shall exercise such powers and perform such duties and hold office for such terms as may be prescribed.

18. Save as otherwise provided in this Act, the business of a market committee (including the holding of its meeting) shall be conducted in accordance with the rules, which may also prescribe the quorum at meetings.

19. Every contract entered into by a market committee shall be in writing and shall be signed on behalf of the market committee by its Chairman and two other members, and no contract not so executed shall be binding on it."

14. A reference has also been made on behalf of the petitioners to the provisions of Section 13 which provides for removal of members of Market Committee by the Director on recommendations supported by 2/3rd of the members of the committee on the ground of neglect or misconduct in discharge of duties or disgraceful conduct or incapacity to perform duties as member. Section 13 having been relied upon, the same is reproduced as under :

"13(1). The Director may, on the recommendation of the Market Committee supported by at least two thirds of the whole number of members by an order remove any member of the market committee elected or nominated under this Act, if after holding such inquiry as he may deem fit, the Director is of the opinion that such member has been guilty of neglect or misconduct in the discharge of his duties or of any disgraceful conduct or has become incapable of performing his duties as a member :

Provided that no resolution recommending the removal of any member shall be passed by the market committee unless the member to whom it relates has been given a reasonable opportunity of showing cause why such recommendation should not be made;

Provided further no order for removal of the member shall be passed by the Director unless the member has been given a reasonable opportunity of being heard.

(2) A member so removed may, within 30 days of the date of communication thereof to him, make an appeal to the State Government.

(3) The decision of the State Government on appeal made under sub-section (2) and, subject thereto, the decision of the Director under sub-section (1), shall be final".

15. Section 59 confers Rule making power on the State Government for the purpose of carrying out the provisions of the Act. In exercise of the Rule making power under Section 59, the State of Gujarat framed Gujarat Agricultural Produce Markets Rules, 1965. Procedure for election to the Market Committee is contained in Rules under Part III. The procedure for election to Chairman, Vice-Chairman to Market Committee and appointment of Secretary, Officers and servants are contained under Part IV in Rules 31 to 41.

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16. Under Rule 31, soon after constitution of Market Committee, the Director himself of through his delegate may call a meeting of Market Committee to elect its Chairman and Vice-Chairman from amongst members specified in Clauses (i) to (iii) of sub-section (1) of Section 11. Sub-rules (1) to (11) of Rule 31 contain detail procedure for conducting elections to the Office of Chairman and Vice-Chairman. What is to be noted is that Chairman and Vice-Chairman are elected by simple majority. Rule 33 which is directly on the point raised, fixes a term of two years for Chairman and Vice-Chairman. It also provides for contingencies in which the Chairman and Vice-Chairman shall ceases to hold office and that the vacancy may be filled by fresh election.

17. Rule 33 being directly on issue deserves to be reproduced in full :

"33. Term of office and casual vacancy in the office of Chairman and Vice-Chairman. - (1) Any person elected as Chairman or Vice-Chairman shall hold office for two years from the date of his election as Chairman or Vice-Chairman as the case may be:-

Provided that on the expiry of the term of office he shall continue to carry on the current duties of the Chairman, or Vice-Chairman, as the case may be, till a new Chairman or Vice-Chairman, as the case may be, is elected and takes over charge of his duties :

Provided further that if such person ceases to be a member of the market committee, he shall cease to hold the office of the Chairman of Vice-Chairman as the case may be.

(2) In the event of the expiry of the term of Office of the Chairman or the Chairman dying , resigning or ceasing to hold the office for any reason before the expiry of his term of office, the Director, or any person, authorised by the Director in this behalf shall call a meeting of the market committee to elect another person as Chairman, from amongst its members of the class specified in clauses (i) , (ii) and (iii) of sub-section (1) of Section 11. The Director or the person so authorised shall preside over such meeting but shall not vote. Every Chairman elected under this sub-rule to fill a casual vacancy shall hold office for so long as the Chairman in whose place he is elected would have held it if the vacancy had not occurred.

(3) In the event of the expiry of the term of office of the Vice-Chairman or the Vice-Chairman, dying, resigning or ceasing to hold the office for any reason before the expiry of his term of office, the Chairman, shall call a meeting of the market committee to elect another person as Vice-Chairman from amongst its members of the class specified in clause (i), (ii) and (iii) of sub-section (1) of Section 11. The Chairman shall preside over such meeting and shall be entitled to vote. Every Vice-Chairman elected under this sub-rule to fill a casual vacancy shall hold office for so long as the Vice-Chairman in whose place he is elected would have held it if the vacancy had not occurred.

(4) Subject to the provisions of sub-rules (2) and (3), the provisions of Rule 31, shall so far as may be, apply to the election of a Chairman or Vice-Chairman to fill up a temporary vacancy under this rule."

18. Rule 35 contains the procedure for conducting business of the Market Committee through meetings. Sub-rule (6) of Rule 35 provides that 1/3rd of the number of members of the Market Committee shall form a quorum for meeting of the Market Committee.

19. One relevant provision is Rule 32 which provides the functions and powers of Chairman and Vice-Chairman and reads thus :-

"32. Functions and powers of the Chairman and Vice-Chairman. - The Chairman or in his absence the Vice-Chairman, shall subject to these rules and directions if any given by the market committee, control and supervise the work of the market committee. The Chairman or in his absence the Vice-Chairman shall (i) preside over the meetings of market committee and conduct business at such meetings, (ii) watch over the financial and executive administration of the market committee, (iii) exercise supervision and general control over the acts and proceedings, of the employees of the market committee in matters of executive administration and in matters concerning the accounts and records of the market committee, and (iv) direct in cases of emergency the execution or stoppage of any work on the doing of any act which requires the sanction of the market committee.

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20. On these relevant provisions of the Act and the Rules of Agricultural Produce Markets, the petitioners/appellants herein, who are facing or have faced no confidence motion for their removal from elected offices the learned counsel raise contentions as under :

21. It is submitted by learned counsel Shri K. S. Zaveri, Shri Nirupam Nanavati and Shri Tushar Mehta, who addressed the Court separately, that right to elect a leader of statutory body is essentially a statutory right conferred upon the electorate and can be exercise only in the manner as provided by the statutory provisions. The right to move and pass a no confidence motion, not being a common law right, cannot be inferred as an implied right, without existence of provisions in that behalf, in the law governing the constitution and functioning of such bodies. It is further submitted that whenever Legislature intended to confer a right on the electorate to recall or remove a person elected, it has specifically and unequivocally provided and conferred such right statutorily. Reference is made to Sections 56, 60 and 84 of the Gujarat Panchayats Act, 1993. Reading those provisions, it is pointed out that they specifically confer statutory powers upon the members of the Panchayat to move a motion of no confidence against the Sarpanch or the President, as the case may be, respectively of the Gram, Nagar and District Panchayat, while also safeguarding the possibility of the provisions being misused and seeking to protect the statutory tenure of an elected President being curtailed on extraneous grounds. For this purpose, a stringent provision is made providing that though such Sarpanch or President is elected by simple majority, he can be removed by a motion of no confidence passed by 2/3 majority and that too of total number of members (and not 2/3rd number of members present and voting in the motion).

22. So far as the no confidence motion moved and passed against the Chairman of Special Justice Committee of Taluka (which is the subject of LPA No. 1451/97 arising out of SCA No. 3484/97) is concerned, the learned counsel Shri Tushar Mehta referred to the provisions of Sections 123 and 145 of the Gujarat Panchayat Act, 1993 to point out that both the provisions provide for constitution, tenure, functions etc. of various committees to be constituted under Taluka Panchayats and District Panchayats. Attention is also invited to Sections 126 and 140 of the Gujarat Panchayats Act, 1993. It is pointed out that the procedure in respect of meetings of statutory committees is left to be provided by way of subordinate legislation in the form of statutory rules. Comparing provisions of the Gujarat Panchayats Act, it is sought to be demonstrated that while Sections 56, 70 and 84 provide for passing of no confidence motion, against Sarpanch or President, as the case may be, only by 2/3rd majority, Sections 96, 127 and 151 of the Act respectively for Gram, Taluka, and District Panchayats provide that all questions are to be decided by majority of votes and further confer power upon the President who presides over meetings to exercise and cast vote. Thus, reading the relevant provisions mentioned above of Agricultural Produce Markets Act and the Rules framed thereunder and the Gujarat Panchayats Act, the principle contention advanced is that whenever the competent legislature, has in its wisdom, conferred right to move and pass no confidence motion upon the electorate to recall/remove the leader elected by them, the Legislature has enacted stringent procedural provisions laying down the manner of moving the motion, the strength required for moving the motion, corresponding right upon the elected persons to represent their views against the motion, strength required for passing the motion and also a provision that such a motion even if passed shall not take effect before three days of its passing.

23. Learned counsel Shri Tushar Mehta in support of his argument in LPA No. 1451/97 concerning passing of no confidence motion against the Chairman of Social Justice Committee of Taluka Panchayat, Kheralu submits that since the term of the Social Justice Committee is already over, the appeal on facts has been rendered infructuous. But since the Appeal is directed against the order of the learned single Judge deciding an important question of law of moving and passing of a no confidence motion against Chairman of Social Justice Committee of Taluka Panchayat, it is necessary to press the Appeal, as the question is of recurring nature and one of interpretation of the provisions of the Gujarat Panchayat Act and the Rules. Elaborating

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his argument on the provisions of Panchayats Act and the Rules , learned counsel Shri Tushar Mehta in LPA 1451/97 submits that considering the scheme of the Act, the object behind providing for the statutory committee and the scheme of the above quoted provisions, it is clear that Legislature could never have envisaged a situation whereby though a Sarpanch or President can be removed by motion of no confidence only under specially framed stringent provisions, the Chairpersons of statutory committees can be so removed by a simple majority, without any stringent procedural safeguards, statutorily providing and permitting the person facing such motion even to exercise his casting vote. It is argued that the legislative intent is apparent by omission to make provisions for such removal/recall. It is a conscious and deliberate omission and therefore such a right cannot be read either as an implied right or an inherent right. On this aspect, it is further argued that even if it is assumed that there is a casus omissus or an inadvertent lapse in the provisions of the Act, such provision or principle cannot be read or supplied by the Court as the would be encroaching the sphere of legislation. It is submitted that such a right of passing no confidence motion cannot be inferred even by implication from the provisions of the Act, may be, that without such a right, sometimes, the elected holder of office losing confidence of the elected body finds it difficult to function efficiently.

24. Reliance is placed on the "Principles of Statutory Interpretation" by Justice G.P. Singh 2001 Edition pages 57 to 62, Crawford's "Statutory Interpretation" pages 269 to 272 and Craise on "Statute Law". Learned counsel argued that the omission in not providing for a power of moving and passing no confidence motion appears to be a deliberate legislative omission. It may be with the object of conferring unrestricted and uninterrupted tenure upon the person who is elected as the Chairperson. It is found necessary to give such an unrestricted and fixed tenure to the Chairperson so that he may not be forced to succumb to the politics of pulls and pushes of those who have elected him and he would be in a position to plan and implement the programmes, policies and causes in a phased manner spread over during his tenure and to ensure implementation of programme and policies of the Social Justice Committee.

25. It is submitted that there are sufficient safeguards in the provisions of the Act to control the action of such Chairperson, if his acts are found either illegal, contrary to the provisions of the Act or against the interest of the body. These powers are conferred on the State Government and its Authorities to check misuse of power by the Chairperson.

26. Learned counsel Shri K. S. Zaveri and Senior Counsel Shri Nirupam Nanavati appearing respectively for Chairman of Market Committees in Valsad and Junagadh have also made submissions on similar lines and placed reliance on several decisions cited at the Bar, of which the following decisions are directly on the point and need to be discussed.

27. Heavy reliance is placed on the Division Bench decision of Andhra Pradesh High Court in the case of Veeramachaneni Venkata Narayana v. Deputy Registrar of Co-operative Societies, Eluru, West Godavari District reported in ILR (1975) Andh Pra 242; Full Bench decision of Punjab and Haryana High Court in the case of Jagdev Singh v. Registrar, Co-operative Societies, Haryana reported in AIR 1991 Punj and Har 149; Division Bench decision of Bombay High Court at Nagpur Bench in the case of Jehangir Bhikaji Panthaki v. Corporation of the City of Nagpur reported in 1960 Nag LJ 99 and Division Bench decision of Bombay High Court in the case of Hindurao Balwant Patil v. Krishnarao Parshuram Patil reported in AIR 1982 Bom 216. On the point of settled proposition that right to election is neither a fundamental or common law right, but it is a statutory right, reliance is placed on a decision of the Supreme Court in the case of Mohan Lal Tripathi v. District Magistrate, Rae Bareilly reported in AIR 1993 SC 2042.

28. Learned counsel for the petitioners and the appellants question the correctness of the judgment of learned single Judge in the case of Narmadaben (supra) reported in 1998 (1) Guj LR 225 : (1998 AIHC 1318) which is the subject matter of LPA No. 1451/1997 before us. It is submitted that the learned single Judge in reading a provision of no confidence motion in the Gujarat

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Panchayats Act and Rules for its application to Chairman of Social Justice Committee, wrongly took recourse to the provisions of Section 16 of the General Clauses Act, and committed an error in relying on overruled decisions of Punjab and Haryana High Court and Andhra Pradesh High Court. It is pointed out on behalf of the petitioner that Punjab and Haryana decision reported in the case of Haji Anwar Ahmed Khan v. Punjab Wakf Board, AIR 1980 Punj and Har 306 has been overruled in the case of Jagdev Singh v. Registrar, Co-operative Societies Haryana, AIR 1991 Punj and Har 149 and N. Venkatarathnam Naidu v. District Collector, Nellore, AIR 1972 Andh Pra 349 relied by the learned single Judge has been overruled in Veeramachaneni Venkata Narayana v. The Deputy Registrar of Co-operative Societies, Eluru, West Godavari ILR (1975) Andh Pra 242.

29. We have also heard learned counsel Sr. Counsel Shri B. S. Patel and Shri Mangukia appearing for the respondents representing those who had moved the no confidence motion. On behalf of the private respondents, the reasoning and ratio of the decision of learned single Judge (M. S. Shah, J.) in Narmadaben case (1998 AIHC 1318) (supra) has been supported and it is pointed out that learned single Judge has in coming to his conclusion placed reliance on a Division Bench decision of this Court in the case of Chimanbhai R. Patel v. Anand Municipality reported in 1983 (1) 24 Guj LR 67 : (AIR 1983 Guj 136). From the relevant provisions of the Agricultural Produce Markets Act and the Panchayats Act, learned counsel of the private respondents submitted that the right to elect is a statutory right and in it is inherent the right to remove the person from the elected office by those who have elected him. It is submitted that in the absence of express prohibition for moving and passing a no confidence motion, such right has to be inferred as statutory right in elected bodies. It is submitted that any other interpretation would make the functioning of elected bodies sometimes difficult and many times impossible. It is submitted that confidence by the members in the elected Office is the core of democracy and no interpretation on the provisions of a Statute should be placed by the Court which would render the functioning of democratic body an impossibility. From the relevant provisions of the Act and the Rules quoted above of the Agricultural Procedure Markets, it is sought to be pointed out that Chairman can be elected by a simple majority to the Agricultural Produce Market Committee and in the absence of prohibition or provisions for a particular majority for moving the motion and particular majority for passing it, a no confidence motion can be passed by simple majority, at one of the meetings like any other meetings of the Committee. It is submitted that under the Agricultural Produce Markets Act, the Chairman represents the whole Committee and under Section 19 a contract by the Market Committee has to be signed by him along with two other members. Rule 32 provides for his functions and powers which include not only presiding over the meetings of Market Committee, but also to watch over the financial and executive administration of the Market Committee, exercise supervision and general control over the acts and proceedings of the employees of the Market Committee in matters of executive administration and concerning accounts and records. He has also extraordinary powers, in case of emergency, on execution or stoppage of any work or doing of any act which may subsequently require the sanction of the market committee. The learned counsel for the private respondents submitted that keeping in view of the nature of office of the Chairman and Vice-Chairman, his duties, functions and powers as are conferred on him under the Act and specifically under Rule 32, interpreting the provisions of the Act to find in it complete omission of passing of a no confidence motion by the members would be derogatory to the smooth functioning of the committee. It is submitted that enjoyment of confidence of the members of the committee by the Chairman/Vice-Chairman is necessary for him to lead the committee and carry on the functions of the Act and fulfil its purposes. An attempt was made from the provisions of the Act and the Rules pertaining to Market Committee to show that without supplying any omission or reading any provision into the Act and the Rules, this Court can come to the conclusion that the members who have elected the Chairman and the Vice-Chairman have a right to remove/recall them for loss of confidence and it is submitted that recourse to Section 16 of the General Clauses Act was rightly made

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by the learned single Judge (M.S. Shah, J.)

30. On behalf of the respondents heavy reliance is placed not only on the decision of the learned single Judge (M.S. Shah, J) and decision of Division Bench of this Court in the case of Chimanbhai R. Patel v. Anand Municipality, 1983 (1) 24 Guj LR 67 : (AIR 1983 Guj 136), but also on the Division Bench decision of Delhi High Court in the case of Bar Council of Delhi v. Bar Council of India reported in AIR 1975 Delhi 200. In support of the submission that Section 16 of the General Clauses Act can be taken recourse of for reading in the Statute a right to remove by no confidence motion as included in right to elect, reliance is placed on decision of Federal Court reported in Kutoor Vengayil Rayarappan Nayanar v. Kutoor Vengayil Valia Madhai Amma, AIR 1950 FC 140 in which Section 16 of General Clause Act was held applicable for removal of a receiver by the Court under Order 40, Rule 1 of C.P.C.

31. Right to participate in election, as has been reiterated by the Supreme Court in the case of Mohan Lal Tripathi (supra) , AIR 1993 SC 2042, is neither a "fundamental right " nor "common law right", but a special right created by the Statute. It is observed thus (para 2) :-

It is a "political right" or "privilege" and not a "natural", "absolute", or "vested right". Concepts familiar to common law and equity must remain stranger to election law unless statutorily recognised. Right to remove an elected representative, too must stem out of the Statute, as "in absence of a constitutional restriction, it is within the power of a legislature to enact a law for the recall of officers. Its existence or validity can be decided on the provisions of the Act and not as a matter of policy. In modern political set up direct popular check by recall of elected representatives has been universally acknowledged in any civilised system. The efficacy of such a device can hardly admit of any doubt, but how it should be initiated, what should be the procedure, who should exercise it within the ambit of constitutionally permissible limits falls in the domain of legislative power."

32. Taking guidance from the above authoritative pronouncement of the Apex Court, we have to construe the provisions. First we take up the case under Agricultural Produce Markets Act to examine whether any statutory right exists in the members of the Market Committee to recall or remove its Chairman/Vice-Chairman by moving a no confidence motion.

33. The arguments advanced on behalf of the petitioners appear plausible that since in the Agricultural Produce Markets Act there is no specific right given and procedure provided for moving and passing a no confidence motion by the members of the Market Committee, such provision cannot be read by implication. In this respect, it is also argued that the foremost requirement of passing of a no confidence motion is that the person against whom the motion is moved and may be passed must be given a reasonable opportunity to participate in the proceedings of the motion so as to place his point of view and persuade or convince the members to drop the motion and repose confidence in him. On behalf of the petitioners/appellants it is submitted that wherever Legislature desired that such a right of recall or removal of a Chairman or Vice-Chairman should be provided to the members of the elected body, a detail procedure with requisite majority for moving and for passing it has been laid down coupled with right of participation and hearing to the Chairman/Vice-Chairman against whom the motion is moved and likely to be passed . As has been mentioned above, relevant provisions of Municipalities Act and Panchayats Act containing detail procedure for passing no confidence motion were pointed out to us and were read with various decisions rendered on those provisions by this Court and the Apex Court. Comparing the provisions of Agricultural Produce Markets Act with Acts governing other local authorities like Municipalities and Panchayats, the contention advanced on behalf of the petitioners is that in the absence of express provision regulating the procedure for moving and passing a no confidence motion with participation of person against whom the motion is moved, such a provision or right to the members should not be read by implication, because right to election and recall is merely a statutory right and not a "fundamental right" or "common law right". It is also argued that the safeguard which is a part of principle of natural justice of providing opportunity to the person against whom motion is moved of participation and

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the hearing is not to be found in the provisions of Agricultural Produce Markets Act and the Rules.

34. These arguments advanced on behalf of the petitioners as stated above would require closer and deeper examination of the provisions of Agricultural Produce Markets Act and the Rules. In interpreting a Statute or statutory provision under it, recourse to comparable legislation is permissible as an external aidfor interpretation of Statute, but where in the Statute itself there is sufficientinternal aid reference or recourse to comparable legislation may not be necessary. Election of Chairman or Vice-Chairman to the Market Committee is provided in Section 17 of the Act. Election of Chairman and Vice-Chairman does not require any particular specified majority of 1/3rd or 2/3rd. A Chairman or Vice-Chairman is elected by simple majority in accordance with Rule 31, which permits participation of the Chairman or person authorised by him for the purpose of election.

35. The procedure for convening meeting and transacting business of the Committee is to be found in Rule 35. Sub-rule (5) of Rule 35 which is quoted below allows business to be transacted by the committee by the vote of majority of the members present at the meeting :-

"35(5) All questions which may come up before the committee at any meeting shall be decided by the vote of the majority of the members present at the meeting and in every case of equality of votes the person presiding over a meeting shall have and exercise a second or casting vote."

36. Under sub-section (6) of Rule 35, 1/3rd of the number of members of the Market Committee are to form quorum for the meeting. It there is quorum available for particular business in a meeting, all decisions can be taken by vote of the majority of the members. Under sub-rule (7) of Rule 35, the Director is authorised to attend any meeting of the Market Committee, although he will not have any right to vote. It is obligatory for the Secretary under sub-rule (8) to attend every meeting of the Market Committee, to express his views and explain any matter under discussion, although he also has no right to vote or make any proposition. Sub-rule (1), (5), (6), (7) and (8) of Rule 35 which are relevant for the purpose of these cases are quoted here as under :-

"35. Meeting of the market committee - (1) Every meeting of the Market Committee other than the one referred to in sub-rule (1) of Rule 31 of sub-rule (2) of Rule 33 shall be presided over by the Chairman or in his absence by the Vice-Chairman or in the absence of both by a member elected by the meeting to preside for the occasion.

(5) All questions which may come up before the committee at any meeting shall be decided by the vote of the majority of the members present at the meeting and in every case of equality of votes the person presiding over a meeting shall have and exercise a second or casting vote.

(6) One third of the number of the members of the Market Committee shall form a quorum for the meeting of the Market Committee. If there be no quorum, the meeting shall be adjourned to another date and at the adjourned (the business) of the original meeting shall be disposed of, whether there is a quorum or not.

(7) The Director or any person authorised by him in this behalf shall be entitled to attend any meeting of the Market Committee but they shall not be entitled to vote.

(8) The Secretary shall attend every Meeting of the Market Committee and may express his views or explain any statement of facts, in regard to any subject under discussion but he shall not be entitled to vote upon, or make any proposition at such meeting."

37. Rule 33 and its sub-rules already reproduced in earlier paragraphs above are most important to be examined for deciding the main question of existence or otherwise of a right to the members of the Market Committee to move and pass a motion of no confidence .

38. Sub-rule (1) of Rule 33 prescribes two years tenure to Chairman or Vice-Chairman and he can continue in office until new incumbent takes over on expiry of his term. First proviso to Rule 33(1) provides that Chairman or Vice-Chairman shall continue in Office to discharge current duties, till a new Chairman or Vice-Chairman is elected and takes over charge. Second proviso to sub-rule (1) of Rule 33 is pertinent, which says "provided further that if such person ceases to be a member of the Market Committee,

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he shall cease to hold the office of Chairman or Vice-Chairman, as the case may be". The second proviso quoted above makes it explicit that continuance of membership of the Market Committee is necessary for holding the Office of Chairman or Vice-Chairman as the case may be. It is only by virtue of his membership of the committee that a Chairman or Vice-Chairman gets elected to those offices. In accordance with the provision of Section 13 a member of the committee can be removed by the recommendations of at least 2/3rd of the whole number of members on the Committee, if the member is found guilty of neglect or misconduct in the discharge of his duty or of any disgraceful conduct or he has become incapable of performing his duties as a member. Proviso below sub-section (1) of Section 13 of the Act requires that resolution recommending removal of member has to be passed by the Market Committee, only after giving the concerned member a reasonable opportunity of showing cause, why such recommendation of the Director be not accepted. By second proviso of sub-section (1) of Section 13, he is also required to be given a reasonable opportunity of being heard.

39. In the course of arguments on behalf of the petitioner/appellants, it was argued that such detailed procedure as is to be found for removal of a member under Section 13 of the Act is not provided for moving a no confidence motion against Chairman or Vice-Chairman in the Agricultural Produce Markets Act or Rules.

40. Under Section 14 of the Act, several circumstances are stated under which an elected or nominated member shall cease to hold office and such circumstances inter alia include his cessation of membership by the electorate of which he was elected. If the member is of the category under the Clause (1) of sub-section (1) of Section 11, namely, an agriculturist, grant of traders licence to him may result in cessation of his membership as an agriculturist, and if he is nominated by a local authority, his membership in the committee ceases, if he ceases to be a councillor, or member of local authority or is granted a license of trading which would take him out of category of a nominee of the local authority.

41. Similarly the second proviso of sub-rule (1) of Rule 33 lays down that if a Chairman and Vice-Chairman ceases to be a member of the Market Committee under circumstances like those mentioned in Section 13 and 14 of the Act, he would automatically cease to hold the Office of Chairman or Vice-Chairman as the case may be.

42. Sub-rule (2) of Rule 33 needs critical examination, as it answers the question of existence of power of passing of no confidence in the Committee. Sub-rule (2) of Rule 33 reads :

"In the event of the expiry of the term of office of the Chairman or the Chairman dying, resigning or ceasing to hold the office for any reason before the expiry of his term of office, the Director, or any person, authorised by the Director in this behalf shall call a meeting of the Market Committee to elect another person as Chairman, from amongst its members of the class specified in clauses (i), (ii) and (iii) of sub-section (1) of Section 11."

Sub-rule (2) of Rule 33 further reads ;

"The Director or the person so authorised shall preside over such meeting but shall not vote. Every Chairman elected under this sub-rule to fill a casual vacancy shall hold office for so long as the Chairman in whose place he is elected would have held it if the vacancy had not occurred."

43. Similar provision is to be found in sub-rule (3) of Rule 33, stating that in the event of casual vacancy in the office of Vice-Chairman instead of Director, the Chairman shall call a meeting of the Market Committee, to elect another Vice-Chairman for filling the vacancy.

44. The language of sub-rule (2) of Rule 33 is required to be noted and to be applied to various situations in which office of Chairman or Vice-Chairman may fall vacant. The contention advanced on behalf of the petitioners was that office of Chairman or Vice-Chairman may fall vacant only by death, resignation, or ceasing to hold office by him for reason of loss of his membership of the committee in the circumstances like S. 13 and 14 of the Act.

45. The contention advanced by petitioners on interpretation of second proviso to sub-rule (1) and sub-rule (2) of Rule 33 does not seem acceptable. What is to be noted from the plain language of sub-rule (2) of Rule 33 is that after the words like "dying",

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"resigning", the expression used is "or ceasing to hold office for any reasonbefore the expiry of his term of office". The above expression "ceasing to hold the office for any reason" cannot be restricted to merely reason contained in second proviso to sub-rule (1) of Rule 33. Under the second proviso, the Chairman or Vice-Chairman, as the case may be, shall cease to hold his respective office, if he ceases to be a member of the Market Committee. If the Legislature wanted to restrict the application of sub-rule (2) on matter of filling casual vacancy only to the event contemplated in second proviso to sub-rule (1) of Rule 33, i.e. cessation of his office; consequent upon cessation of his membership of the committee, sub-rule (2) of Rule 33 would have been worded differently. In that situation, the subordinate legislation under sub-rule (2) of Rule 33 could have very easily used the expression "ceasing to hold the membership of the Market Committee in terms of second proviso to Rule 33". Instead the use of the wider expression "ceasing to holdthe office for any reason" covers situations and contingencies inclusive of the contingency covered by second proviso to sub-rule (1) of Rule 33, namely, cessation of membership of the committee.

46. A vacancy in the office of the Chairman and Vice-Chairman may arise by death, resignation, or loss of membership of the committee, but casual vacancy may also arise for many conceivable reasons, like conviction and imprisonment of the holder of elected office, by his physical or mental disability, by his continuous absence and want of whereabouts, and many other similar situations, including his removal by no confidence motion. The language in sub-rule (2) of Rule 33 uses a wide expression "ceasing to hold office for any reason" and second proviso under sub-rule (1) of Rule 33 is merely one such reason along with death or resignation.

47. In our considered view, in the expression "ceasing to hold office for any reason would be included "removal or recall of Chairman or Vice-Chairman by moving and passing of a no confidence motion against him". This right of members to remove holder of elected office for loss of confidence is to be found in the provisions of the main Act and the Rules, and it is not to be inferred by implication as part of a common law right. Where a Statute itself permits passing of a no confidence motion, like any other business transacted in the meetings of the committee by simple majority, it is not necessary for us to go to theexternal aidof comparing other legislations in Municipalities and Panchayats Acts, and on that comparison to come to the conclusion that such right in the elected body of its members does not exist under the provisions of the Agricultural Produce Markets Act.

48. As we have taken note of the Rules and quoted them above, election to the Office of the Chairman and Vice-Chairman can be made by the members of the Committee with quorum of 1/3rd by simple majority. If the election to the Office can be made by 1/3rd members present as the quorum, by simple majority, a no confidence motion to remove or recall a member elected to the Office of Chairman or Vice-Chairman by simple majority with same 1/3 quorum is permissible and not expressly prohibited by either the provisions of the Act or the Rules.

49. The learned single Judge (M. S. Shah, J.) in the order impugned in LPA No. 1451/97 rightly took recourse to S. 16 of the Bombay General Clauses Act :-

"16. Power to appoint include power to suspend or dismiss :- Where by any Bombay Act or Gujarat Act a power to make any appointment is conferred, then, unless a different intention appears, the authority having powers to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power."

50. The Division Bench of Bombay High Court in the case of Hindurao Balwant Patil v. Krishnarao Parshuram Patil reported in AIR 1982 Bombay 216 did not apply the provisions of S. 16 of the General Clauses Act to a similar situation while considering provisions of Maharashtra Co-operative Societies Act. It held that S. 16 is restricted in its application to holders of non-elective offices. From the language of S. 16, it is not possible to give the Section such restricted application. As has been rightly held by the learned single Judge (M.S. Shah, J.) that election to the office of Chairman and Vice-Chairman is one of the modes of appointment, and application of S. 16 of General Clauses Act cannot be restricted to non-elective

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offices. Decision of Federal Court (which was the Apex Court before the Constitution) in the case of Kutoor Vengayil Rayarappan Nayanar v. Kutoor Vengayil Valia Madhai Amma, AIR 1950 FC 140 supports our conclusion. In that case the provisions of S. 16 of the General Clauses Act were made applicable to read in the power of Court under Order 40, Rule 1 of CPC 'to appoint a receiver' 'the power to remove him'.

51. Our conclusion, therefore, is that moving of a no confidence motion and passing the same by simple majority is permissible and not expressly prohibited by either the provisions of the Agricultural Produce Market Act or the Rules. In fact, as we have read and construed, under Rule 33(2) and Rule 35 (quoted above) passing of no confidence motion against Chairman and Vice- Chairman is one of the reasons contemplated in the Rules by which vacancy is created in those offices and which are required to be filled by the Director by calling a meeting of the Committee for the purpose.

52. On behalf of the petitioners, it is urged that under the Agricultural Produce Markets Act and the Rules, no procedure has been indicated for moving and passing a no confidence motion and for grant of opportunity to the holder of the elected office against whom the motion is moved. As we have examined the provisions of the Act and the Rules in detail and discussed them above, the contention cannot be accepted that no procedure is indicated under which a no confidence motion can be moved and passed. It is true that there is no express provision for a minimum prescribed number for moving a motion by the members and there is also no prescribed majority by which it can be passed, but as we have held above, in the absence of such a provision of a requisite majority for passing and moving it, no confidence motion like any other subject or agenda in a meeting, can be passed by simple majority. As we have held above, if the election in a meeting with requisite quorum can be made by simple majority to the post of Chairman/Vice-Chairman, a no confidence motion can be moved and be passed by simple majority against the holder of the post.

53. So far as the procedure is concerned, Rule 35 of the Agricultural Produce Markets Act which contains a detailed procedure is applicable for passing a no confidence motion. The procedure of meeting for electing Chairman and Vice-Chairman, the functions and powers of the Chairman and 'the Vice-Chairman and other incidental provisions for conducting the business of the committee are contained in Part IV of the Rules. Rule 76 empowers the Director of Agricultural Marketing and Rural Finance, Gujarat State, to call meeting of a Market Committee, on requisition from at least half of the members of the Market Committee or on his own motion, if he is satisfied that there is an urgency for calling a special meeting of the Market Committee for considering matter of immediate importance of the working of the market. Rule 76 deserves to be quoted as this is the provision which can apparently be invoked by the members proposing to move a motion of no confidence against the holder to the elected office of Chairman and Vice-Chairman :-

"76. Authority empowered to call meeting of Market Committee. On requisition from at least half of the number of members of the Market Committee or of his own motion, the Director may, if he is satisfied about the urgency of the matter, call a special meeting of the Market Committee to consider matters of immediate importance for the working of the market."

54. Sub-rule (1) of Rule 35 states "every meeting of the Market Committee other than one referred to in sub-rule (1) of Rule 31 (i.e. for first election of the Chairman and the Vice-Chairman) or sub-rule (2) of Rule 33 (for filling a vacancy in the office of Chairman and Vice-Chairman through the Director) shall be presided over by Chairman, or in his absence by the Vice-Chairman or in the absence of both by a member elected by the meeting to preside for the occasion.

55. Sub-rule (1) of Rule 35 is available for passing a no confidence motion when it is moved. Such meeting, if the motion is against the Chairman and the Chairman is present, can be presided by himself, and if he is absent by the Vice-Chairman. If both are absent, the meeting can be presided by a member elected by the meeting.

56. In the case of no confidence motion, if the Chairman or Vice-Chairman as the case may be, is present in the meeting, he will have full opportunity to participate in the meeting and will get opportunity to speak

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on the no confidence motion and place his point of view before the members to regain confidence. Sub-rule (4) of Rule 35 provides "that the person presiding over the meeting shall be entitled to speak and vote on all questions at the meeting". This Rule permits Chairman or Vice-Chairman, as the case may be, if he is presiding the meeting to speak and vote. If he is not presiding the meeting, he is entitled to participate and speak qua member of the meeting. As in case of any other meeting, a meeting called for passing no confidence motion will also require three days clear notice with specification of time and place at which such meeting is to be held and all members including Chairman or Vice-Chairman against whom no confidence motion is proposed are required to be served with the notion of the meeting, A copy of the notice of the meeting is also required to be sent to the Director or his authorised representative. Sub-rule (7) of Rule 35 provides, that the Director or his authorised representative shall be entitled to attend any meeting, but he shall not be entitled to vote. The presence of Director or his authorised representative in every meeting or his authorised representative in every meeting including in a meeting specially called for passing a no confidence motion, will ensure smooth holding of such a meeting with due participation of all the members and grant of opportunity to participate and speak to the holder of the elected office against whom the no confidence motion is proposed to be moved and passed. Under sub-rule (8) of Rule 35, it is obligatory for the Secretary of the committee to attend every meeting to express his views and explain facts concerning the topic or agenda under discussion. Secretary, is thus responsible for proper conduct of every meeting of the Market Committee, although, he has no right to vote or to make any proposal in the meeting.

57. The examination of the procedure of holding meeting under Rule 35 as discussed above, covers, in our considered opinion, a special meeting called by members for passing a no confidence motion by simple majority.

58. A contention was also advanced that there are no Specific Rules regulating the procedure of moving of a no confidence motion in a particular manner and in the prescribed form with stating grounds on which the motion is moved, as is to be found in the provisions of the Municipalities and Panchayats Acts, particularly in Education Committee of Panchayat. Reference in this respect is made to Gujarat Panchayats (Procedural) Rules 1997 which were published in the Gazette of Government of Gujarat Extraordinary Part IA No. 29 on 6-3-1997. (See 1997 GOD Gujarat Section Part II at page 147). On the basis of the above Procedural Rules applicable to Panchayats, it is pointed out that it is only against Sarpanch/President or Upa-Sarpanch/Vice President (under rule 20) and against the Chairman of the Education Committee (Rule 48), that no confidence motion can be moved in prescribed Form A and B respectively provided under the Rules. On the basis of the prescribed Form A and B for moving no confidence motion, it is pointed out that it contemplates specification of the reasons for moving the no confidence motion. Such a provision or procedure, it is contended, being absent in the Agricultural Produce Markets Act and Rules, a no confidence motion cannot be allowed to be moved without specification of reasons or grounds for moving the motion and without grant of opportunity to the holder of the elected office against whom motion is moved so as to allow him to meet those grounds and reasons to persuade the members to repose confidence in the holder of the office.

59. As has been held by us above, democratic institution transacts its business on majority opinion of its members. This is an unwritten Rule, tradition and work culture of every elected body. It is only when there is a departure from this tradition or unwritten Rule that Rules of business, bye-laws or statutes governing the democratic institutions may provide for particular majority of 2/3rd or less for taking decisions. Decision making process of democratic institution requires formation of opinion for resolutions by majority of its members. Enjoyment of confidence by the leader of the democratic body is essential in decision making process and it is more necessary for implementation of the decisions of the majority. Take for example that a particular decision is taken by majority, but due to lack of confidence enjoyed by the leader, the decision is not carried out, a conflict, and some times, a stalemate will be created in the working of the elected body. As has been quoted above,

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S. 19 of the Agricultural Produce Markets Act requires that every contract entered into by Market Committee shall be in writing and shall be signed on behalf of the Market Committee by its Chairman and two other members and no contracts not so executed shall be binding on it. A situation might arise where the Chairman, because he has lost confidence, is unable to obtain the signatures on a contract to be executed on behalf of the committee, although a resolution in favour or against such a contract had already been passed. Similarly, Rule 32 of the Agricultural Produce Market Rules confers powers for performing important functions by the Chairman and Vice-Chairman, such as, to preside over the meetings, conduct business, watch over the financial and executive administration of the Market Committee, exercise supervision and general control over the acts and proceedings of the employees in matters of executive administration, and in case of emergency, direct execution or stoppage of any work, which may require sanction of the Market Committee. If a Chairman or Vice-Chairman has lost confidence of the members of the Committee, action taken by him under Rule 32 in discharge of his duties and functions will be criticised or opposed and will not get any support from the members. Thus, loss of confidence in the leader of an elected body would many times hamper smooth working of the elected body, and some times, may make it impossible for him to carry on the functions of the committee due to internal feuds and conflicts. The work culture of a democratic body inheres in it the right of its members to move a no confidence motion against their elected leader, which is a concomitant of the right to elect the leader. No confidence motion can be passed by simple majority against the holder of the elected office, who is elected by simple majority, unless the Rules of business or bye-laws or statute indicate a contrary intention or prohibit passing of a no confidence motion. We do not find any force in the submission made that no confidence motion has to be moved only on reasons to be specified in writing in the notice proposing the motion and has to be passed after grant of opportunity on those reasons to the holder of office against whom it is moved. Supreme Court had occasion in the case of Babubhai Muljibhai Patel v. Nandlal Khodidas Barot reported in AIR 1974 SC 2105 to consider the nature and requirement of a no confidence motion in local bodies, particularly under Gujarat Municipalities Act, the provisions of which came up for consideration before it. Comparing 'no confidence motion' with a 'motion for censure', the Supreme Court observed thus (at p. 2114 of AIR) :

"There is no imperative requirement in the case of a motion of no confidence that it should be passed on some particular ground. There is nothing in the language of S. 36 of the Gujarat Municipalities Act reproduced earlier which makes it necessary to specify a ground when passing a motion of no confidence against the President. It is no doubt true that according to the form prescribed the ground for the motion of no confidence has to be mentioned in the notice of intention to move a motion of no confidence. It does not, however, follow therefrom that the ground must also be specified when a motion of no confidence is actually passed against a President. It is pertinent in this context to observe that there is a difference between a motion of no confidence and a censure motion. While it is necessary in the case of a censure motion to set out the ground or charge on which it is based, a motion of no confidence need not set out a ground or charge. A vote of censure presupposes that the persons censured have been guilty of some impropriety or lapse by act or omission and it is because of that lapse or impropriety that they are being censure. It may, therefore, become necessary to specify the impropriety or lapse while moving a vote of censure. No such consideration arises when a motion of no confidence is moved. Although a ground may be mentioned when passing a motion of no confidence, the existence of a ground is not a pre-requisite of a motion of no confidence. There is no legal bar to the passing of a motion of no confidence against an authority in the absence of any charge of impropriety or lapse on the part of that authority. The essential connotation of a no confidence motion is that the party against whom such motion is passed has ceased to enjoy the confidence of the requisite majority of members."

60. From the observations quoted above, it is clear that no confidence motion does not require statement of any reasons for moving the motion nor does it require passing

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of motion by stating reasons for passing the same. As has been rightly emphasised by the counsel for the respondents, confidence in the elected holder of office is the soul of democracy. All democratic institutions function on mutual confidence between the members and their leader. Loss of confidence without anything else, which is based on objective basis, is sufficient to move the motion. The principles of natural justice are not breached where a no confidence motion is moved with due notice to the person against whom it is moved and he gets an opportunity in the meeting for passing the motion to participate and have his say to regain confidence of the elected body. Merely because in the Agricultural Produce Markets Act and the Rules, there is no Rule and Form prescribed for moving the motion with requirement of specification of reasons and grounds for moving and passing it, it cannot be held that a no confidence motion cannot be passed against the Chairman and Vice-Chairman of Market Committee. Justice M.S. Shah in considering absence of similar express provision of no confidence motion against Chairman of Social Justice Committee in Gujarat Panchayats Act and the Rules, read and recognised such a provision, as a necessary adjunct of the power of committee to elect. In the case of Narmadaben (supra) reported in 1998 (1) Guj LR 225 : (1998 AIHC 1318), the following quoted observations of M.S. Shah, J. have our respectful approval, as it accords with the views expressed by us above :-

"I have heard the learned counsel for the parties at length. It is true that the provisions of the Act do not specifically provide for removal of the Chairman of the Committee by passing a vote of no-confidence. However, it is required to be noted that the provisions of Sec. 123(9)(b) provide for the term of the Committee making it co-extensive with the duration of the Panchayat which is five years. However, no term is provided for the office of the Chairman of the Committee. There is, therefore, nothing in the provisions of S. 123 of the Act which gives any fixed term to the Chairman of the Committee although the members of the Committee get term co-extensive with the duration of the Panchayat. If the legislature intended to confer any such fixed term on the Chairman of the Committee the legislature would have clearly provided so.

It is also true that there are specific provisions for removal of Sarpanch/Upa-sarpanch of the Gram Panchayat, President/Vice President of Taluka Panchayat under Ss. 56, 70 and 84 respectively but there is no such provision for Chairman of any Committee. But Mr. Jani has rightly pointed out that in all those provisions specific provision is made requiring passing of no confidence motion by 2/3rd majority and not by a simple majority. It is a basic tenet of democracy that an elected body has the power to elect its office bearers and if the body is not held to have power to appoint or remove its office bearers, the body will never be able to enforce accountability or responsibility of its office-bearers, the body will never be able to enforce accountability or responsibility of its office bearers or control the action of its office bearers. For instance, if one looks to the constitution of the Social Justice Committee, it comprises of five members and if, as in the instant case, out of five members four members have no confidence in the Chairman and if this situation is allowed to continue till expiry of the term of the Committee (which event will take place in July 2000 in the instant case), there will be constant dead-lock and the Committee will not be able to function effectively and carry out the duties assigned to it. It must, therefore, be held that the body which has power to elect its office bearers by a simple majority has also the inherent or implied power to remove them by provisions prescribing a special procedure or special requirement, such as the requirement for 2/3rd majority to remove the President/Vice President of the taluka Panchayat/District Panchayat."

61. Learned single Judge M.S. Shah, J. in taking the above view placed reliance amongst many other decisions, mainly on the Division Bench decision of Delhi High Court, in the case of Bar council of Delhi v. Bar Council of India reported in AIR 1975 Delhi 200. In Bar Council case, a similar question arose, as to whether, in the absence of specific provision under the Advocates Act, Chairman of Bar Council, can be removed by the members of the Bar Council, by moving a no confidence motion. The Division Bench of Delhi High Court took the view that the general or common law is that those who have elected have a right to remove the person elected by them, and if this

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general principle is to be departed from, the statute or law governing the elected body should contain such a provision indicating a contrary intention. In absence thereof, the general or common law will prevail, that those who elect can be removed by moving a no confidence motion. Such right is inherent in the elected body. Otherwise, holder of elected office would become irremovable, although, he has lost the confidence of the body and he is acting against the interest of the body. The following observations of Division Bench of Delhi in the case of Bar Council (AIR 1975 Delhi 200, Para 12) (supra) deserve to be quoted :

"The view expressed by the majority of the Bar Council of India that a rule cannot be made under S. 15 of the Advocates Act for the removal of the Chairman of the State Bar Council leads to the result that once elected such Chairman is irremovable. He would go out of office only when the State Bar Council does at the expiry of its statutory tenure. Such a result can be justified only if the common law stated above has been changed by the statute. The view of the Bar Council of India is, on the other hand, based on the every silence of the statute on this point. We are of the opinion that such silence indicates that the common law regarding the removal of the holder of an office remains unchanged. The statute does not, therefore, have to say that the Chairman of the State Bar Council would be removable by a resolution of no-confidence. The reason is that such power of removal is inherent in the Bar council which elects its Chairman. The power given to the State Bar Council to elect its Chairman is the codification of only a part of the common law. Such codification does not change the other part of the common law which implies in the State bar Council the power to remove the Chairman so elected. Just as rules can be made under S. 15 to carry out the expressed power of the Bar Council to elect the Chairman, it would appear that rules may also be made to carry out the implied power of the State Bar Council to remove the Chairman. The two powers are inseparable in common law. They can be separated only by a statutory intervention. So long as this is not done, they would remain connected with each other even though only one of the powers, namely, the power of election has been made statutory while the other power, namely, the power of removal has been left to be implied. If such a power is not implied, the mere codification of the power to elect would result in a change in the common law. There is no warrant for implying such a change. On the contrary, the construction of the statute in the light of the common law implied such a power in the State Bar Council."

62. Taking somewhat a different view from the observations of the Delhi High Court in the case of Bar Council (AIR 1975 Delhi 200) (supra), we have held that not as a common law right, but an inherent statutory right exists in the members of the elected body to remove its leader by no confidence motion in accordance with the same procedure by which he is elected and in the absence of contrary provision in the law governing such elected body, such right has to be read into the statute.

63. On behalf of the petitioners/appellants, heavy reliance has been placed on the Division Bench decision of Andhra Pradesh High Court ILR (1975) Andh Pra 242 and Full Bench decision of Punjab and Haryana High Court AIR 1991 Punj and Har 149). It is also pointed out that the learned single Judge (M.S. Shah, J.) in his order impugned in the Letters Patent Appeal relied on the decision of Single Bench of Andhra Pradesh High Court, AIR 1972 Andh Pra 349 (supra) which was overruled by the Division Bench Decision (supra) and decision of Punjab and Haryana High Court which was overruled by the Full Bench decision (supra) of the same Court.

64. The Division bench decision of Andhra Pradesh High Court and Full Bench decision of Punjab and Haryana High Court arose from the provisions of Co-operative Societies Acts of the respective States. The Courts by taking external aid of comparable laws applicable to other local bodies, in which provisions of no confidence with procedure of moving and passing it existed, came to the conclusion that absence of similar provisions in co-operative law indicates an intention contrary, and it is not permissible for the Court to read provision of no confidence motion in co-operative law.

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65. We do not consider it necessary to express any opinion on the correctness of the reasonings and conclusions contained in the decisions of Full Bench of Punjab and Haryana High Court and Division Bench decision of Andhra Pradesh High Court (supra), because we have construed the provisions of Agricultural Produce Markets Act and the Rules and the Panchayats Act and the Rules, as discussed above. Similarly, the decisions of Nagpur Bench of Bombay High Court (1960 Nag LJ 99) and Division Bench decision of Bombay High Court (AIR 1982 Bom 216) are not only distinguishable on facts, but to the extent they hold that provisions of Sections 16 of the General Clauses Act not applicable to elective office, we have expressed our respectful disagreement for the reasons mentioned above.

66. Our conclusion, therefore, both in relation to the Chairman and/or Vice-Chairman of Market Committee under the Agricultural Produce Markets Act and the Rules and Chairman of various Committees of Panchayats under the Panchayats Act and the Rules, is that if a holder of office is elected by simple majority by the body in requisite quorum, he can be removed or recalled by a simple majority, in the absence of any provision prohibiting such a course or prescribing any particular procedure of moving the no confidence motion with a particular majority and passing the same by a particular majority.

67. The decisions of Division Bench of Delhi High Court (AIR 1975 Delhi 200) relating to no confidence motion against Chairman of Bar Council and Division Bench decision of our own Court in Chimanbhai R. Patel (supra) 1983 (1) 24 Guj LR 67 : (AIR 1983 Gujarat 136) fully support the view taken by us and with which we have expressed our respectful agreement.

68. In construing provisions of law regulating the constitution and working of an elected body, such interpretation should be preferred which ensures its smooth functioning, and any other interpreting which might create hindrance or stalemate in its functioning needs to be avoided.

69. In this batch of cases not only a common question of law has been referred to us for answer, we are also required to decide all the cases on merits. We shall therefore deal with the merits of each of the cases before us :

LETTERS PATENT APPEAL NO. 1451 OF 1997

WITH

CIVIL APPLICATION NO. 11524 OF 1997

70. Letters Patent Appeal No. 1451 of 1997 has arisen from the order of the learned single Judge (M.S. Shah, J.) (supra), the reasoning and conclusion of which we have approved and upheld. We have already dealt with the arguments advanced by Shri Tushar Mehta, learned counsel for the petitioner in which his submissions supported by the Rules framed under the Gujarat Panchayats Act were that no confidence motion in the Act has been provided only against the President, Vice-President, Sarpanch and Upa-sarpanch of the various Panchayats and against only Chairman of the Education Committee with Rules and Forms containing the procedure for moving such no confidence motion. The argument advanced and has already been considered above is that against the Chairman of Education Committee, no confidence motion, in the absence of provisions in the Act and Rules, could not be moved. The petitioner had approached in Social Civil Application No. 3484 of 1997 against calling meeting and passing of no confidence motion against Chairman of the Social Justice Committee. During pendency of the Special Civil Application No. 3484 of 1997 interim relief continued in favour of the petitioner under which he continued to discharge duties of Chairman of Social Justice Committee. After the learned single Judge (M.S. Shah, J.) dismissed the petition by the order impugned in this Letters Patent Appeal, interim order was continued by the Division bench, and as a result thereof learned counsel for the appellant now informs, that not only that the petitioner has completed his tenure in the office of the Chairman of Social Justice Committee of the Taluka Panchayat, but even the term of the Taluka Panchayat was completed long back.

In the circumstances, the Letters Patent Appeal and the Civil Application preferred therein have been rendered infructuous and are accordingly dismissed.

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LETTERS PATENT APPEAL NO. 1177 OF 2001 IN

SPECIAL CIVIL APPLICATION NO. 9842 OF 2001

71. This Letters Patent Appeal has arisen from an interim order dated 23-10-2001 passed by the learned single Judge refusing interim relief against passing of a no confidence motion against the petitioner as Chairman of the Market Committee, Valsad. Since by the same petitioner, after passing of no confidence motion, separate petition (Special Civil Application No. 5120 of 2001) has been filed and is being decided by us by this common judgment, it is not necessary to pass any separate order in this Letters Patent Appeal No. 1177/91 arising out Special Civil Application No. 9842/01 in which only an interim order refusing stay of calling meeting and order of status was granted.

Letters Patent Appeal No. 1177/01 is, therefore, disposed of in terms of the order that we are passing in Special Civil Application No. 5120 of 2001.

SPECIAL CIVIL APPLICATION NO. 5120 OF 2001

72. In this case, 11 Directors of Market Committee Valsad moved no confidence motion against the Chairman. A meeting was duly called in accordance with Rule 26 of the Market Committee Rules. The petitioner was present in the meeting concerned for passing no confidence motion held on 11-7-2001. In the meeting even a charter of grievances and charges against the petitioner for his alleged misconduct or misdeeds was given in writing, which is annexed with the connected Letters Patent Appeal filed by the same petitioner. Under the interim protection given by this Court, the votes given in the said meeting had been kept in sealed cover and the result is not declared. Since, we have come to the conclusion that a no confidence motion can validly be passed under the existing provisions of the Act and the Rules, we vacate the interim orders granting interim relief to the petitioner and direct the respondent authorities, viz, the Deputy Director and Director (respondent Nos. 1 and 2) to open the sealed cover of the proceedings of the meeting of the no confidence motion to declare the result and implement the same.

SPECIAL CIVIL APPLICATION NO. 7278 OF 2001

73. This is a petition by the Chairman and the Vice-Chairman of the Market Committee, Junagadh. The petitioners No. 1 and 2 were elected as Chairman and Vice-Chairman respectively on 6-7-2001. A motion of no confidence was moved against the Chairman and Vice-Chairman by 9 members of the committee and they approached the Deputy Director for calling a meeting for passing a no confidence motion. The Deputy Director by letter dated 30-7-2001 wrote to the Secretary of the Committee that there is no provision for passing a no confidence motion against the Chairman and the Vice- Chairman of the Market Committee. It appears that an approach was also made by the movers of the no confidence motion to the Director. The Director by his letter dated 31-7-2001 wrote to the Chairman that since a motion of no confidence has been moved against the petitioners Nos. 1 and 2, it has been decided to immediately call a General Meeting of the Board. After receipt of the above communication from the Director, the petitioner Nos. 1 and 2 sent the protest letter stating that no such provision of passing a no confidence motion exists. On the advice of the Director, the Deputy Director, however, had called a special General Meeting of the Members of the Committee on 5-9-2001. In view of the pendency of this petition, ultimately no confidence motion came to be passed in the meeting held on 1-10-2001. The proceedings of the meeting have been placed on record to show that the no confidence motion was carried against the petitioner Nos. 1 and 2 by a majority of 10 against 5. The petitioner No. 1 (Nandlal Bavanjibhai Posiya) who was elected as Chairman and was present in the meeting of the no confidence motion, although petitioner No. 2 (Pragjibhai Bhanabhai Karkar) remained absent. The no confidence motion passed against the petitioners Nos. 1 and 2 although passed by majority was not implemented because of the interim order of stay passed by this Court. In view of our opinion and conclusion expressed by us above by this common judgment, the interim relief granted is vacated. The petition is dismissed. It is directed that no confidence motion passed against petitioners Nos. 1 and 2 shall now be implemented.

In the result, both the Letters Patent

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Appeals and both the Special Civil Applications are hereby dismissed. All pending Civil Applications stand disposed of and interim orders are vacated.

Rule is discharged. However, in the circumstances, there shall be no order as to costs.

After pronouncement of judgment, the learned counsel made a request for extension of period of interim relief. Since this is a matter of 'no confidence' against the elected member, we do not consider it proper to grant any further extension. Request is refused.

Order accordingly.

AIR 2001 GUJARAT 112 "G. E. B. v. Agricultural Produce Market Committee"

GUJARAT HIGH COURT

Coram : 1 Miss. R. M. DOSHIT, J. ( Single Bench )

G.E.B., Appellant v. Agricultural Produce Market Committee, Respondent.

Second Appeal No. 338 of 1980, D/- 16 -10 -2000.

(A) Telegraph Act (13 of 1885), S.3(6), S.15 - Civil P.C. (5 of 1908), S.9 - ELECTRICITY - TELEGRAPH - CIVIL PROCEDURE - Jurisdiction of civil Court - Suit by Electricity Board against Market Committee - Electricity Board cannot be said to be Telegraph authority as defined in S. 3 (6) of Act - Suit before Civil Court not barred in view of S. 15.

Where a civil suit was instituted by the Electricity Board against the market committee for restraining them from making any construction in violation of the horizontal and vertical clearance under the electric lines as required by the Electricity Rules, the suit cannot be said to be barred in view of S. 15 as the electricity board cannot be said to be a Telegraph authority as defined in S. 3 (6) of the Act. (Para 5)

(B) Gujarat Agricultural Produce Markets Act (20 of 1964), S.58(1) - AGRICULTURAL PRODUCE - Bar of suit in absence of notice - Suit by Electricity Board for demolition of godown constructed by members of Market Committee

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in violation of Electricity Rules - Cannot be dismissed for want of notice.

Suit for demolition of godown constructed by the members of the market committee in violation of the electricity rules, cannot be dismissed for want of notice in view of Section 58(1) as the construction of godown cannot be said to be the purpose of the Act.

The object of the Act is to regulate buying and selling of agriculture produce and the establishment of market for the same. The establishment of market cannot be equated with that of construction of godown by the members. By alloting plots to the members for construction of godowns, the market committee cannot be said to be acting under the Act. (Para 6)

Cases Referred : Chronological Paras

Patna Electric Supply Co. Ltd. v. Patna Municipal Corporation : AIR 1970 SC 491 3, 4, 5

M. D. Pandya, for Appellant; P. J. Vyas and Mrs. Padmaben N. Amin, for Respondent.

Judgement

ORAL JUDGEMENT : -- This appeal arises out of the judgment and order dated 5th April, 1980 passed by the learned Joint District Judge, Ahmedabad [Rural] in Regular Civil Appeal No. 21 of 1979 arising of the judgment and order dated 30th December, 1978 passed by the learned Civil Judge (JD), Dehgam in Regular Civil Suit No. 199 of 1976. The appellant before this Court is the plaintiff.

2.The plaintiff is the Gujarat Electricity Board, a statutory Board established under the Electricity Supply Act, 1948 [hereinafter referred to as, 'the Board']. In or around the years 1960-61, the Board, under the powers conferred upon it under the Indian Electricity Act, 1910, had laid 60 KVA and 22 KVA lines. The said lines passed above the lands bearing Survey No. 454/1-2-3 and Survey No. 455, situated at Rakhial area of District-Ahmedabad [Rural]. The said lands, bearing Survey No. 454/1-2-3 and Survey No. 455, were acquired in or around the year 1962 for the purpose of the Agricultural Produce Market Committee, Dehgam, the defendant, for a sub-market yard. The said Market Committee divided the said lands in several sub-plots and gave the said sub-plots to the traders for constructing their godowns. While constructing the said godowns, the Horizontal Clearance and the Vertical Clearance required to be maintained under the Indian Electricity Rules, 1956 was not maintained and the construction was thus made in violation of the said Rules. The Board, therefore, instituted the above referred Regular Civil Suit No. 199 of 1976 and prayed that the defendant-Market Committee be restrained from making any construction in violation of the Horizontal and Vertical Clearance, as required under the Electricity Rules and any construction made in violation of the Horizontal and Vertical Clearance be removed. The suit was contested by the defendant-Market Committee by filing its written statement at Exh. 16. It was contended that the suit instituted without notice, as envisaged under Section 58 of the Gujarat Agriculture Produce Markets Act, 1963, was not maintainable and even otherwise, in view of Section 15 of the Indian Telegraph Act, 1885, the Civil Court had no jurisdiction to entertain such a suit.

3. Mr. Pandya has submitted that Section 58 of the Gujarat Agriculture Produce Markets Act, 1963 provides for a notice in writing two months before the institution of the suit or other proceedings against the Market Committee for anything done or purported to be done in good faith under the said Act. He has submitted that the object of the said Act is to regulate buying and selling of agricultural produce and the establishment of the markets for agricultural produce. The construction of the godowns of the traders dealing in agricultural produce cannot be said to be an act under the said Act. No notice, therefore, was required to be given prior to the institution of the suit requiring demolition of illegal construction made in contravention of the Electricity Rules. He has further submitted that both the Courts below have erred in relying upon the Indian Telegraph Act, 1885 and particularly Section 15 thereof. Section 15 of the said Act refers to a dispute arising between the Telegraph Authority and a Local Authority. The Board is not a Telegraph Authority as defined in Section 3 (6) of the Indian Telegraph Act, 1885. In support of this argument, Mr. Pandya has relied upon the judgment of the Hon'ble Supreme Court in the matter of The Patna Electric Supply Company Limited v. The Patna Municipal Corporation and Ors., [AIR 1970 SC 491]. He

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has submitted that Section 51 of the Indian Electricity Act, 1910 does empower the State Government, by an order in writing, to confer upon the Board, subject to such conditions and restrictions [if any] as the State Government may think fit to impose and to the provisions of the Indian Electricity Act, 1885, any of the powers which the Telegraph Authority possess under the said Act with respect to placing of the Telegraph lines and posts for the purpose of a telegraph established or maintained by the Government or to be established or maintained. However, by conferment of such power, the Board does not become a Telegraph authority as defined in Section 3 (6) of the Indian Telegraph Act, 1885.

4. In the matter of Patna Electric Supply Company Limited [supra], the Hon'ble Supreme Court has held that, 'merely because some of the powers conferred under the Indian Telegraph Act on the Telegraph authority could be conferred on a licensee under the Indian Electricity Act, it does not follow that all the rights and liabilities of a licensee under the Indian Electricity Act are governed by the provisions of the Indian Telegraph Act.' It further held that, 'a licensee under the Indian Electricity Act cannot be considered as a Telegraph authority, an expression defined in Section 3 (6) of the Telegraph Act. Further, that the disputes that can be referred to arbitration under the provision are only those referred to in that section and no other.'

5. I am of the view that both the Courts below have grossly erred in invoking the provisions contained in Section 15 of the Indian Telegraph Act, 1885. The said section deals with the disputes between the Telegraph authority and a Local Authority. It cannot be gainsaid that the defendant-Market Committee is a Local Authority. However, by no stretch of imagination, the Board can be said to be a Telegraph Authority as defined in Section 3 (6) of the Indian Telegraph Act, 1885. As held by the Hon'ble Supreme Court in the matter of Patna Electric Supply Company Limited [supra] merely because some powers conferred upon the Telegraph Authority can be conferred upon the licensee under the Indian Electricity Act, 1910, such a licensee does not become a Telegraph Authority. Both the Courts below, therefore, were not right in holding that the remedy lay before the officer appointed by the Central Government in that behalf under Section 15 of the Indian Telegraph Act, 1885. I am of the view that the remedy would lie under the General Civil Law and the suit in the subject matter before the Civil Court was maintainable.

6. Section 58 of the Agriculture Produce Market Act, 1963 requires that no suit or other proceedings shall be instituted against a Market Committee until the expiration of two months next after the date of notice in writing containing the details referred to in sub-section (1) of Section 58 of the said Act. The said sub-section refers to a suit or other proceedings against a Market Committee or a Member, Officer or servant thereof or a person acting under the instructions of any of them for anything done or purporting to be done in good faith under the said Act. The question, therefore, would be whether construction of godowns by the members of the Market Committee can be said to be an act done under the said Act. The object of the said Act is to regulate buying and selling of agriculture produce and the establishment of the markets for agricultural produce. The construction of godowns by the members of the Market Committee may be an act in furtherance of the objects of the Act i.e., construction of such godowns may facilitate buying and selling of agricultural produce. However, the same cannot be said to be the purpose of the Act. The purpose of the Act is not to construct godowns for the dealers in the agricultural produce nor the establishment of market can be equated with that of construction of godowns by the members of the Committee. To me, it appears that while making sub-plots out of a large piece of land and in allotting such plots to the members of the Committee for construction of the godowns, the defendant-Market Committee cannot be said to be acting under the said Act. For a suit praying for demolition of such godowns in so far as they are constructed in violation of the Indian Electricity Rules, 1956, no notice as envisaged under Section 58 of the said Act would be required to be given. The suit, therefore, could not have been dismissed for want of notice as envisaged under Section 58 of the said Act. The suit in the present nature was, therefore, competent.

7. The trial Court under its judgment and order dated 30th December, 1978 has

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recorded a finding that the defendant-Market Committee had made construction on lands Survey No. 454/1-2-3 and Survey No. 455 without obtaining vertical and horizontal clearance. The said finding has not been challenged by the defendant-Market Committee and has thus achieved finality. As I have held that the suit before the Civil Court was competent and since the construction is in violation of the Indian Electricity Rules, 1956 has been proved, the plaintiff must succeed.

8. In view of the above discussion, the appeal is allowed. The Regular Civil Suit No. 199/76 filed before the learned Civil Judge (JD), Dehgam is decreed. The defendant-Market Committee is directed to remove the construction from the lands - Survey No. 454/1-2-3 and Survey No. 455 situated at Rakhial which is in violation of the Rules 77 to 82 of the Indian Electricity Rules, 1956. The defendant-Market Committee is also permanently injuncted from putting any construction on the lands Survey No. 454/1-2-3 and Survey No. 455 situated at Rakhial in contravention of the horizontal and vertical clearance under the Indian Electricity Rules, 1956. The defendant-respondent shall bear the costs of the plaintiff throughout.

Appeal allowed.

AIR 1998 GUJARAT 107 "Vadasama Seva Sahakari Mandli Ltd. v. Director, Agri. Marketing and Rural Finance"

GUJARAT HIGH COURT

Coram : 1 S. D. PANDIT, J. ( Single Bench )

Vadasama Seva Sahakari Mandli Ltd., Petitioner v. Director, Agri. Marketing and Rural Finance and others, Respondents.

S.C.A. No. 8089 of 1997, D/- 11 -11 -1997.D/- 12 -12 -1997.

(A) Gujarat Agricultural Produce Markets Act (20 of 1964), S.7 - Gujarat Agricultural Produce Markets Rules (1965), R.7 - Gujarat Co-operative Societies Act (10 of 1962), S.12 - AGRICULTURAL PRODUCE - Constitution of Agricultural Produce Market Committee - Election of members - Preparation of voters' list - Inclusion of names of members of Managing Committee of Agricultural Co-operative Society - Co-operative Society dispensing agricultural credit in such market area is alone entitled to inclusion - Mere registration under that Act is not sufficient.

The Market Act and the Co-operative Societies Act are two separate and independent Acts. The Markets Act is a special enactment created for the benefit and upliftment of the agriculturists. The cultivators, tillers and agriculturists suffer from many handicaps in getting the good price for the agricultural produce and in order to remove said handicaps and to see that the agriculturists, tillers and farmers should get good price for their agricultural produce, the Markets Act has been enacted. Therefore, bearing this aspect in mind R. 7 has to be considered and interpreted. The words "dispensing agricultural credit in the market area" are used in this R. 7(1) as and by way of adjective to a Co-operative Society. Said adjective indicates in clear and unambiguous terms the intention of the Legislature that every Co-operative Society which is actually dispensing agricultural credit in the market area shall have their right of their managing committee members in the list of voters. (Para 3)

The Registrar has classified the societies in the classifications as (1) Agricultural Credit Co-operative Societies, (2) Agricultural Non-Credit Co-op. Societies, (3) Non-Agricultural Non-Credit Co-op. Societies and (4) Other types of Co-operative Societies and this classification made by the Registrar is implemented in view of the provisions of the said S. 12 and necessary entries are made in the registers of Societies maintained under Ss. 9 and 10 of the said Act. But that classification or registration is made for the consideration and the application of the provisions of the said Act. That classification could not be taken to be final and binding while considering the claim of a co-operative society under any other provisions of any other law. What is meant by S. 12 is to give finality to the classification made by the Registrar for the purpose of the provisions of the said Act. Therefore, merely because a co-operative society has got its registration as agricultural credit co-operative society, it cannot claim to have registration of the names of the members of the managing committee of that society in the list of voters to be prepared under R. 7 of the said Rules. In order to get registration as a voter in the list of voters all the names of the members of the managing committee of the society, the co-operative society must be dispensing agricultural credit in the merket area when there is a consideration of including the names in the list of voters. (Para 4)

Thus, in view of the provisions of R. 7(1) the authorised officer has to go into the question as to whether the co-operative society is dispensing agriculture credit in the market area or not and he is not bound by the fact that bye-laws of the said co-operative society and the registration of the said society shows that it is an agricultural credit co-operative society and the classification made by the Registrar under the said Act, is not binding on the said authorised officer. Case law discussed. (Para 6)

(B) Constitution of India, Art.226 - Gujarat Agricultural Produce Markets Rules (1965), R.28 - AGRICULTURAL PRODUCE - Constitution of Agricultural Produce Market Committee - Provisional list of voters prepared - Names of members of petitioner Agricultural Co-operative Society not included in list - Alternative remedy for challenging action available under R. 28 - Petition is not maintainable. (Paras 8, 10)

Cases Referred : Chronological Paras

S.C.A. No. 7616 of 1997, Detia Seva Sahakari Mandli Ltd. v. Director Agricultural Marketing and Rural Finance 5

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1988 (2) Guj LH 149 9

1984 (1) Guj LR 603 6

S. K. Jhaveri, for Petitioner; Served by DS, for Respondents Nos. 1-3; K. S. Jhaveri, for Respondent No. 4.

Judgement

ORDER :- The petitioners are the Co-operative Societies registered under the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as the said Act). According to them they are registered under the said Act as Agriculture Credit Co-op. Societies and therefore, in view of the provisions of Rule 7 of the Gujarat Agricultural Produce Markets Rules, 1965, (hereinafter referred to as the said Rules), their names must be included in the voters' list for the purpose of election of the members of the managing committee of the Agriculture Produce Market Committee for Mehsana district. It is their claim that in the preliminary list of voters published under the provisions of Section 8(1), their names were not included. They have filed objections before the concerned authorities to include their names in the list of voters. It is their contention that once they are registered as the Agriculture Credit Co-operative Societies, it is not open for the authority under the Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to as the Markets Act) to inquire into whether they are actually dispensing the credit to the agriculturists or not and the respondent No. 3 has gone into the question illegally and improperly and has refused to include their names in the list of voters. Therefore, they have come before this Court to get a direction to the respondent No. 3 to include their names in the list of voters. It is also their contention that the circulars issued by the State Government on 25-9-97 and 10-10-97 for the purpose of preparing the list of voters were also illegal and invalid and therefore, they should also be struck down.

2. The respondent No. 3 has filed affidavit in reply. On behalf of respondent No. 3 is it contended that if the provisions of Rule 7 of the said Rules are considered, then it would be clear that the action taken by the respondent No. 3 could not be said to be illegal and improper. It is further contended on behalf of the respondent No. 3 that present petition involves disputed question of facts viz. as to whether actually the petitioners are dispensing agriculture credit or not. It is further contended that the petitioners have already filed their objections for including their names in the list of voters and those objections are get to be decided and the final list is to be published on 12-11-1997. Therefore, in the circumstances, present petition is premature and therefore, the same deserves to be rejected. It is further contended that the petitioners have got alternative remedy of preferring an election petition as per the provisions of Rule 28. Therefore, on that ground also present petition need not be entertained.

3. Mr. S. K. Zaveri learned Sr. Counsel for the petitioners urged before me that if the provisions of Section 7(1) of the Markets Act are considered in the background of the provisions of Section 12 of the Gujarat Co-operative Societies Act, then it would be quite clear that the officer preparing the list of voters has to include the names of the members of the managing committee of a co-operative society which has got registration as Agriculture Credit Co-operative Society in view of the bye-laws of the said society and he cannot go into the question as to whether said society is actually functioning and advancing loans to its members or not. In order to deal with the said submission of him, it is necessary to consider the provisions of Rule 7 of the said Rules which is running as under :

"7. Preparation of list of voters for general election : (1) Whenever a general election to market committee is to be held-

(i) every co-operative society dispensing agricultural credit in the market area shall communicate the full names of the members of its managing committee together with the place of residence of each members.

(ii) the market committee shall communicate the full names of the traders holding general licenses in the market area together with the place of or residence of each such trader; and

(iii) every Co-operative Marketing Society shall communicate the full names of the members of its managing committee together with the place of residence of each such member.

to the authorised officer before such date as the Director may by order fix in that behalf;

Provided that the date to be so fixed shall not be later than sixty days before the date of the general election.

(2) The authorised officer shall within seven

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days from the date fixed under sub-rule (1) cause to be prepared the lists of voters as required by Rule 5 on the basis of the information received under sub-rule (1) and, if necessary, after making such inquiry as he may deem fit.

(3) Every list of voters shall show the full name, place of residence and the serial number of each voter."

(Emphasis supplied)

It must be remembered that the Market Act and Gujarat Co-operative Societies Act are two separate and independent Acts and the Gujarat Co-operative Societies Act, 1961 legislations framed are framed under the said Act in view of the provisions of the said independent Act. It is very pertinent to note that there is no section/provisions in the Market Act saying that the provisions of the said Act would be applicable wherever there is no specific provision to that effect in this Act - Markets Act. It must also be remembered that the Markets Act is a special enactment created for the benefit and upliftment of the agriculturists. The cultivators, tillers and agriculturists suffer from many handicaps in getting the good price for the agricultural produce and in order to remove said handicaps and to see that the agriculturists, tillers and farmers should get good price for their agricultural produce, this enactment viz. the Markets Act has been enacted. Therefore, bearing this aspect in mind the above quoted Rule 7 has to be considered and interpreted. The words "dispensing agricultural credit in the market area" are used in this Rule 7(1) as and by way of adjective to a Co-operative Society. Said adjective indicates in clear and unambiguous terms and intention of the Legislature that every Co-operative Society which is actually dispensing agricultural credit in the market area shall have their right of their managing committee members in the list of voters.

4. Section 12 of the said Act empowers the Registrar under the said Act to classify the societies under various heads and it further says that said classification made by him would be final. That would be clear from the following provisions of Section 12 of the said Act :

"12. Classification of societies. The Registrar may classify all societies in such manner, and into such classes, as he thinks fit; and the classification of a society under any head of classification by the Registrar shall be final."

But the above provisions of Section 12 are the provisions under the said Act and it could not be said that said provisions are binding and applicable in consideration of a claim under any other independent Act. Under the said provision of Section 12, no doubt, it is open for the Registrar of Co-operative Societies to have classification of the societies in various classes. It is also not in dispute that by using said powers, the Registrar has classified the societies in the classifications as (1) Agricultural Credit Co-operative Societies, (2) Agricultural Non-Credit Co-op. Societies, (3) Non-Agricultural Non-Credit Co-op. Societies and (4) other types of Co-operative Societies and this classification made by the Registrar is implemented in view of the provisions of the said Section 12 and necessary entries are made in the registers of Societies maintained under Sections 9 and 10 of the said Act. But that classification or registration is made for the consideration and the application of the provisions of the said Act. That classification made under the said Act could not be taken to be final and binding while considering the claim of a co-operative society under any other provisions of any other law. What is meant by Section 12 is to give finality to the classification made by the Registrar for the purpose of the provisions of the said Act. Therefore, merely because a co-operative society has got its registration as agricultural credit co-operative society, it cannot claim to have registration of the names of the members of the managing committee of that society in the list of voters to be prepared under Rule 7 of the said Rules. In order to get registration as a voter in the list of voters all the names of the members of the managing committee of the society, the co-operative society must be dispensing agricultural credit in the market area when there is a consideration of including the names in the list of voters. This provision seem to have made to see that those persons who are actually and factually working for the welfare of the agriculturist must alone be voters for election of a Market Committee. If at all the Legislature intended that names of the managing committee of all the co-operative societies which have got registration as agricultural credit society, then Rule 7(1) would have mentioned accordingly. The emphasis given under the provisions to sub-rule (1) of Rule 7 is on dispensing of agricultural

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credit in the market area by a co-operative society. Therefore, it is open to the authorised officer to inquire into as to whether the co-operative society is actually dispensing agricultural credit in the market area or not. Therefore, it could not be said that the authorised officer had no jurisdiction to inquire into the question as to whether a co-operative society is actually dispensing agricultural credit or not when it has got its registration as agricultural credit society as per its bye-laws.

5. No doubt the State Government has issued two circulars on 25-5-97 and 10-10-97 giving certain directions as to how to ascertain whether a co-operative society is dispensing agricultural credit or not and as per the said circulars a co-operative society which wants registration of the names of the members of the managing committee in the list of voters has to give certain details regarding dispensing of the agricultural credit. If these circulars are considered along with the provisions of Rule 7(1)(i) it could not be said that said circulars are illegal or improper. After all the circulars are the administrative guidelines and they have no force of law. No doubt in SCA No. 7616 of 1997 filed by Defia Seva Sahakari Mandli Ltd. v. Director Agricultural Marketing and Rural Finance, the learned Additional Government Pleader had made a statement that the authorised officer will prepare the list of voters without being influenced by the circular dated 25-9-1997 and the subsequent notification dated 10-10-1997 and by ignoring them. At the cost of repetition it must be stated that these two circulars are only giving guidelines for the purpose of ascertaining whether a co-operative society is dispensing agricultural credit in the market area of nor (sic). In the view taken by me in view of Rule 7(1)(i) of the said Rules, a co-operative society which is actually dispensing agricultural credit in the market area is entitled to have the names of the members of the managing committee of that society in the list of voters. Therefore, for finding out that fact, the authorised officer has to go into the question as to whether the co-operative society is actually dispensing agricultural credit in the market area or not and for that purpose he has to make reference to certain facts. But merely because he has done so it could not be said that he has acted contrary to the statements made on his behalf before this Court in SCA 7616/87. In the order passed by the authorised officer he has no- where stated that he has taken into consideration the guidelines given in these circulars and from his order it is also not possible to hold that as a matter of fact he was influenced by those circulars. Therefore, in the circumstances, non-inclusion of the names of the members of the managing committee of the petitioners-societies could not be said to be contrary to the statement made before this Court in SCA No. 7616/97.

6. At the cost of repetition it must be stated that in view of the provisions of Rule 7(1) the authorised officer has to go into the question as to whether the co-operative society is dispensing agriculture credit in the market area or not and he is not bound by the fact that bye-laws of the said co-operative society and the registration of the said society shows that it is an agricultural credit co-operative society and the classification made by the Registrar under the said Act, is not binding on the said authorised officer. This view of mine is supported by the earlier decision of this Court in the case of Gunvantrai Manibhai Desai v. B. Narasimhan, 1984 (1) Guj LR 603. In this case it has been observed as under :

"The Registrar of Co-operative Societies, who is created as an authority under the Act and for the purposes of the Act, cannot have any powers to decide anything regarding another Act, and presumptively for the purposes of the Agricultural Produce Markets Act where the hierarchy of Officers is totally distinct. It is to be noted that when the Agricultural Produce Markets Act gives the clear definition of what an agriculture is and, therefore, what an agricultural co-operative society is and also gives what a co-operative marketing society is for the purpose of this Act, the definition given in the Act alone is to be looked to and any arbitrary classification made by the Registrar of Co-operative Societies, may be under the misconceived resolutions of the Government, cannot have any effect whatsoever, simply because in the Agricultural Produce Markets Act, societies are referred to as societies registered under the Co-operative Societies Act, the provisions of the Gujarat Co-operative Societies Act are not enbloc attracted, nor can those provisions be read as a part and parcel of and supplementary to the provisions of the Agricultural Produce Markets Act."

7. There is no dispute of the fact that as per the

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provisions of Rules 7 and 8(1) a provisional list of voters is prepared on 7-11-97 and in the said list the names of the members of the managing committee of the present petitioners are not included. It is also an admitted fact that present petitioners have made representations before the authorised officer for including the names of the members of the managing committee in the voters' list and those objections raised by the present petitioners are not yet decided and no final list of voters is prepared till today. The final list is to be prepared after deciding the objections raised by the present petitioners and to be published on 12-11-97. Therefore, the claim made by the petitioners in this petition which is filed on 3-11-97 is a premature petition.

8. Mr. S. K. Zaveri submitted before me that none of the members of the managing committee of the petitioners society is desirous of contesting the election and therefore, if the provisions of Rule 28 are taken into consideration then it would be quite clear that the petitioners will have no alternative remedy of filing an election petition to set aside the election is available. It is further submitted by him that if the provisions of Rule 28 are considered then only those persons who are classified either to be elected or to be voted can file an election petition. Therefore, as the names of the members of the managing committee of the present petitioners are not included in the list of voters, they cannot be governed by the provisions of Rule 28 of the said Rules. It must be remembered that right to vote is not a fundamental right but it is a statutory right. If there is illegal deprivation of the said statutory right, then that person authority can come before the election Tribunal to challenge the said election. The denial of right to vote or denial to contest an election could be a cause of action for filing an election petition. The question as to whether a person has got a right to vote or to contest the election is to be considered by the election Tribunal. Therefore, I am unable to accept the contention of Mr. Zaveri that the petitioner has no alternative remedy under Rule 28.

9. The Division Bench of this Court in the case of Mehsana District Co-operative Sales and Purchase Union Ltd. v. State of Gujarat, 1988 (2) Guj LH 149 has taken the view that the dispute regarding preparation and publication of list of voters in the election to the market committeee could be by way of challenging the validity of the election and writ petition under Article 226 is not tenable by observing as under :

"The question in these two petitions is, whether the High Court in exercise of jurisdiction under Art. 226 of the Constitution would be justified in arresting the election programme which has been set in motion by the issuance of an order under Rr. 4 and 10 of the Rules on the plea of omission of certain names from the list of voters finalised by the Authorised Officer in view of the special forum and remedy provided by R. 28 of the Rules ? On a combined reading of Rr. 5, 7 and 8 with S. 11 of the Act it becomes clear that the list of voters has to be prepared for the constitution of a market committee under S. 11 of the Act. It is therefore, manifest that the list of voters has to be prepared as a first step in the direction of holding election for the constitution of a market committee under S. 11 of the Act. Prima facie, therefore, the preparation of list of voters is a step in the direction of holding of elections so far as the scheme of the Rules is concerned. R. 28 provides for the machinery for determination of an election dispute which touches the validity of the election. According to the said Rule, if the validity is questioned after the declaration of the result, it has to be decided by the special forum created by the said Rule. That forum has the power to confirm or amend the declared result or set aside the election. It must be remembered that the right to be included in the voters' list is conferred by statute and not dehors the said statute since the petitioners have no right in equity or at common law. The right being a statutory right must be exercised within the framework of the statute and if the statute provides for an efficacious remedy for the enforcement of the right, the High Court would be justified in refusing to exercise jurisdiction under Art. 226 of the Constitution."

10. Thus Mr. Zaveri for the petitioners has urged before me to grant interim relief by issuing direction to the respondent No. 3 to include the names of the members of the managing committee of the petitioners in the list of voters subject to the final decision of this petition and the question raised by the petitioners should be decided finally subsequently by issuing Rule. But in view of the discussion and the reasons given above, I am of the view that present petition is not tenable and the same need not be admitted.In my opinion, no

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such interim relief could be granted in view of the fact that present petition does not lie under Article 226 of the Constitution in view of the provisions of Rule 28 of the said Rules and in view of the decision taken by the Division Bench of this Court. I therefore, do not accept said submission made by him. Thus I hold that present petition deserves to be rejected. I therefore, reject the same with no order as to costs. Notice discharged.

Petition dismissed.

AIR 1995 GUJARAT 143 "The Agricultural Produce Market Committee v. Gondal Municipality, Gondal"

GUJARAT HIGH COURT

Coram : 1 D. G. KARIA, J. ( Single Bench )

The Agricultural Produce Market Committee, Petitioner, v. Gondal Municipality, Gondal and anther, Respondents.

Special Civil Application No. 3492 / 82, D/- 8 -4 -1994.

(A) Gujarat Education Cess Act (35 of 1962), S.13(12) - EDUCATION - AGRICULTURAL PRODUCE - LOCAL AUTHORITY - Levy of cess - "Local authority" - Agricultural produce market committee - Is "local authority" - Levy or recovery of education cess from market committee - Not permissible.

1971 (3) SCC 815, Foll. (Para 7)

(B) Gujarat Municipalities Act (34 of 1964), S.99, S.100 - PROPERTY TAX - AGRICULTURAL PRODUCE - MUNICIPALITIES - Levy of property tax Agricultural produce market committee - Cannot be treated as "Government" - Not exempt from payment of property tax to municipality

General Clauses Act (10 of 1897), S.3(23).

According to Section 3(23) of the General Clauses Act, Government shall include both the Central Government or any State Government. This is undoubtedly an inclusive definition. However, by no stretch of reasoning, the definition can be extended to any local authority such as the petitioner-Market Committee that may include in the aforesaid definition of "Government". Therefore, Market Committee could not be treated as Government so as to exempt it from payment of property tax to the Municipality. (Paras 10, 13, 14)

The local authority is not sought to be exempted from the payment of property tax leviable by Municipality as per the scheme of Sections 99 and 100. (Para 11 )

Cases Referred : Chronological Paras

AIR 1971 SC 1427 13

1971 (3) SCC 815 7

(1967) 8 Guj LR 359 5

AIR 1940 Mad 916 12

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Mr. G.R. Udwani for Mr. K.G. Vakharia Counsel, for the Petitioner; Mr. P.K. Parekh Counsel for the Respondent No. 1 (Absent) Mr. L.R. Poojari, A.G.P. Counsel, for the Respondent No. 2.

Judgement

ORDER: - By this petition under Art. 227 of the Constitution of India, the Agricultural Produce Market Committee of Gondal, which is a corporate sole under Section 10 of the Gujarat Agricultural Produce Markets Act, 1963 (for short, "the said Act"), has challenged the levy of property tax under the provisions of the Gujarat Municipalities Act, 1963 and cess under the Gujarat Education Cess Act, 1962 by the respondent No. 1 Gondal Municipality. The petitioner-Market Committee has prayed for appropriate writ or direction quashing and setting aside the bill dated July 7, 1982 and notices at Annexures "C" and "D" and for restraining the respondents from recovering any property tax and education cess from the petitioner-Market Committee.

2. It is not in dispute that the petitioner Market Committee has put up construction of the market, known as Sardar Patel Market, consisting of various stalls. The said market yard exists as per the notification issued by the Competent Authority under Section 7 of the said Act. The stalls in the market yard are occupied by the licence-holders who have been carrying on their business. The administration-office of the petitioner market Committee is also situated in the said market yard. It is the case of the petitioner - Market Committee that the entire building is for the public purpose, i.e. regulating, buying and selling of vegetable produce and the establishment of market for agricultural produce as provided by the various provisions of the said Act.

3. The first respondent-Gondal Municipality has been levying property tax in the city of Gondal and demanding the property tax from the petitioner-Market Committee. The first respondent-Municipality has issued bill as per Annexures "C" and "D" for recovery of such property tax from the petitioner-Market Committee. The petitioner-Market Committee has impunged the said two bills. It has also challenged the recovery of the education cess from the petitioner.

4. Mr. G. R. Udwani, learned Advocate appearing for the petitioner, contended that the petitioner-Market Committee is local authority and as such by virtue of the provisions of Section 13 of the Gujarat Education Cess Act, 1962, the petitioner-Market Committee, being local authority, has been exempted from payment of education cess. Section 12 of the Gujarat Education Cess Act, 1962 provides that subject to the provisions of the Act, there shall be levied and collected a tax on lands and buildings situated in an urban area at the rates set out in the said provisions of Section 12 of the Act. Section 13 of the Act provides for exemption of certain lands and buildings from payment of tax. Sub-section (2) of Section 13 of the Gujarat Education Cess Act, 1962 contemplates that buildings and lands vesting in the State Government, or belonging to a local authority, local board, taluka panchayat, district panchayat or a Cantonment Board and used solely for public purposes and not used or intended to be used for purposes of profit will be exempted from payment of tax under Section 12 of the Act.

5. Therefore, the pertinent point that would arise would be whether the petitioner Market Committee is a local authority as contemplated under Section 13(2) of the Gujarat Education Cess Act, 1962. In the case of Ochhavlal v. State of Gujarat, (1967) 8 Guj LR 359, the question arose whether the Market Committee constituted under Section 5 of the Market Act is "local authority" within the meaning of Clause (31) of Section 3 of the General Clauses Act. The Division Bench of this Court, consisting of N.M. Miabhoy, C.J. and J.B. Mehta, J. (as they were then) held in para 3 of the said judgment as follows:-

"Now, the expression "local authority" has not been defined in the Act. The same has, however, been defined in the General Clauses Act X of 1897 (hereafter called the Clauses Act). The definition is in clause (31) of Section 3. The expression is also defined in clause (26) of Section 3 of the Bombay General

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Clauses Act, The definitions contained in the two above enactments -- the General Clauses Act and the Bombay General Clauses Act -are not exactly identical. Respondents have also placed reliance upon the definition contained in the Bombay General Clauses Act. However, the Act being a central enactment, the Bombay General Clauses Act is not applicable for construing the Act. Therefore, the learned Acting Advocate General rightly did not place any reliance upon the definition of the expression "local authority" contained in the Bomaby General Clauses Act. But, fortunately, that part of the definition contained in the General Clauses Act, on which alone reliance can be placed by respondents, is in the same terms as the relevant part of the definition in the Bombay General Clauses Act, on which respondents could have placed reliance. That being so, Mr. Vakil, learned counsel for petitioners, did not object to, and in fact cited available authorities, which have construed clause (26) of Section 3 of the Bombay General Clauses Act and an allied definition which, though different in some respects, is also identical on the relevant part of the definition of the same expression in the Madhya Pradesh General Clauses Act. Respondents have also relied upon sub-section (2) of Section l0 of the Gujarat Agricultural Produce Markets Act, 1963. That sub-section enacts - "A Market Committee shall be deemed to be a local authority within the meaning of clause (26) of Section 3 of the Bombay General Clauses Act, 1904"......."

6. Definition of the expression "local authority" as provided in Section 3(31) of the General Clauses Act, 1897, is as follows :-

"local authority" shall mean a Municipal Committee, District Board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund. "

7. The Supreme Court has upheld in the case of Patel Premji Jiva by L. Rs. v. State of Gujarat, reported in 1971 (3) Supreme Court Cases 815, that by virtue of Section 10(2) of the Gujarat Agricultural Produce Markets Act, 1963, the Market Committee is a local authority within the meaning of the Bombay General Clauses Act. Para 4 of the said judgment reads as under :-

"4. The expression "local authority" is not defined in the Land Acquisition Act. But by the General Clause Act 10 of 1897 the expression "local authority" is defined as meaning "a municipal committee, district board, body of port commissioners or other authority legally entitled to or entrusted by the Government with, the control or management of a municipal or local fund". By virtue of Section 10 (2) of the Gujarat Agricultural Produce Markets Act, 1963, the market committee is a local authority within the meaning of the Bombay General Clauses Act. A local authority being by virtue of Section 3(26) of the Bombay General Clauses Act, 1904, a body which is entrusted by Government with control or management, inter alia, of a local fund, there is no scope for the argument that the market committee constituted under Gujarat Agricultural Markets Act, 1963, is not a local authority within the meaning of Section 6 of the Land Acquisition Act. "

In view of the aforesaid decision of the Supreme Court, it is now concluded that the Market Committee duly constituted under Section 10(2) of the said Act is a local authority. The petitioner Market Committee is, therefore, a local authority. As aforesaid by virtue of Section 13 of the Gujarat Education Cess Act, 1962, the tax under Section 12 shall not be leviable in respect of buildings and lands vesting in the State Government or belonging to a local authority. It has, therefore, to be held that the respondent-s are not empowered to levy or recover the education cess from the petitioner-Market Committee.

8. Next, it takes me to the question of levy and recovery of the property tax from the various stalls in the administrative office of the Market, known as Sardar Patel Market of the petitioner-Market Committee. Respondent-Municipality is empowered and authorised to impose the taxes as listed in Section 99 of the Gujarat Municipalities Act. Clause (i) of sub-section (1) of Section 99 of the Act provides about the tax on buildings or lands

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situated within the municipal borough to be based on the annual letting value or the capital value or a percentage of capital value of the buildings or lands or both. Thus, the Municipality duly constituted under the provisions of the Gujarat Municipalities Act, 1963, is authorised and empowered to impose and recover property tax, among other taxes, as per Section 99 of the Gujarat Municipalities Act, 1963.

9. Mr. Udwani, learned Advocate appearing for the petitioner, has, however, relied upon the proviso (a) to Section 99 of the Gujarat Municipalities Act, providing exemption. It reads as under :-

"(a) no tax imposed as aforesaid, other than a special sanitary cess, a drainage tax or a water rate, shall, without the express consent of the Government be leviable in respect of any building or part of any building or of any vehicle, animal or other property, belonging to Government and used solely for public purposes and not used or intended to be used for purposes of profit; and no toll shall be leviable in respect of any, animal or vehicle used for the passage of troops or the conveyance of Government stores or of any other Government property or for the passage of military or police officers on duty or the passage or conveyance of any persons or property in their custody."

The aforesaid proviso to Section 99 contemplates that no tax imposed as provided in sub-section (1) of Section 99, other than a special sanitary cess, a drainage tax or a water-rate, shall without the express consent of the Government be leviable in respect of any building or part of any building or of any vehicle, animal or other property belonging to Government and used solely for public purposes and not used or intended to be used for purposes of profit. In submission of Mr. Udwani, petitioner-Market Committee should be equated with the Government as it has been functioning by issuing licences and thereby regulating the buying and selling of agricultural produces and managing and conducting the establishments of markets for agricultural produce. Under Section 36 of the said Act, the Market Committee has power and authority to impose penalty for contravention of Section 6 or 8 of the Act. It has also power to impose penalty for making or recovering unauthorised trade allowance, as provided in Section 37 of the Act. It can impose the fine and penalty for failure to furnish information, etc Mr. Udwani, therefore, submits that the petitioner Market Committee has been discharging duties and functions for public purposes. The respondent-Municipality cannot, therefore, be authorised to levy or collect. Mr. Udwani submits, any property tax from the buldings belonging to the petitioner-Market Committee.

10.The General Clauses Act, 1897 defined in clause (23) of Section 23 "Government" to include both the Central Government or any State Government. Thus, according to Section 3(23) of the General Clauses Act, Government shall include both the Central Government or any State Government. This is undoubtedly an inclusive definition. However, by no stretch of reasoning, definition can be extended to any local authority such as the petitioner-Market Committee that may include in the aforesaid definition of "Government". I therefore, do not find any merit in the submission of Mr. Udwani that the petitioner-Market Committee should be treated as Government so as to exempt it from payment of property tax to the respondent-Municipality.

11. Section 100 of the Gujarat Municipalities Act, 1963 provides about the payment to be made to the municipality in lieu of tax on buildings by the Government or district panchayat or the taluka panchayat concerned. Section 100 says that the Government or the district Panchayat or the taluka Panchayat concerned shall pay to the Municipality annually, in lieu of tax on buildings from which the buildings vesting in Government or in district Panchayat or taluka Panchayats are exempted by clause (a) or (b) of the proviso to sub-section 99, a sum ascertained in the manner provided in sub-sections (2) and (3). It is significant to note that section 100 does not contemplate any local authority which is required to make payment to Municipality in lieu of the tax on buildings owned by such local authority. It is,

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therefore, clear that the local authority is not sought to be exempted from the payment of property tax leviable by municipality as per the scheme of Sections 99 and 100 of the Gujarat Municipalities Act, 1963.

12. The question arose way back in 1940 in case of M.L.N. Mahalingam Chettiar v. Raja Srimathu Muthu Vijia Raghunatha Doraisingam, reported in AIR 1940 Madras 916, whether the local authority could be included in the term "Government". Leach, C.J. negatived the contention and observed as follows :-

Mr. Narasimhachariar has asked the Court to hold that the word "Government" should be interpreted as including the District Board. To do so would, in my opinion be to distort true meaning of the word. Moreover, Section 3(21), General Clauses Act, 1897, says that "Government" or "the Government" shall include the local Government" as well as the Government of India. No reference is made to local authorities. There is a further answer to Mr. Narasimhachariar's argument. If one turns to the sentence which precedes the provision in the deed with regard to the levy of tax by the Government one sees that the parties used the word "Government" in its proper sense... "

13. In case of Basappa Rudrappa Betgeri v. The Hubli-Dharwar Municipal Corporation, AIR 1971 SC1427, the question that was posed for consideration of the Supreme Court was that could the Municipality validly impose house tax on its own buildings and realise it from lessees or occupiers of those buildings. The Supreme Court held that the scheme of the Bombay Municipal Boroughs Act, 1925 does not contain any indication that buildings belonging to the Municipality itself cannot be subjected to the house tax which can be imposed under Section 73 of the Act. The Supreme Court further held that in fact the language of Section 85 specifically envisages imposition of such a tax on buildings belonging to the municipality. It clearly lays down that such a tax shall be leviable primarily from the actual occupier of the property on which the tax is assessed, even if he holds it on a lease from the Municipality. The fixation of such responsibility primarily on the occupier holding a building on lease from the municipality could only be laid down on the basis that the buildings owned by the municipality can be subjected to the tax. Once the tax is imposed on such a building, it would be payable by the occupier if he holds it as a lessee of the municipality. The same principle applies to the case of buildings held on a lease from the Government. It may, be noted that all Government buildings are not exempted from the tax. Only those buildings are exempted which are used solely for public purposes and are not used or intended to be used for purposes of profit. In the instant case, the various stalls in the market are occupied by the licence-holders carrying on their respective businesses. In view of the principles laid down in the aforesaid case of Basappa Rudrappa Betgeri (supra), the contention on behalf of the petitioner-Market Committee that the various stalls and the property belonging to the Market Committee should be exempted from the property tax, cannot be accepted.

14. In view of the aforesaid discussion, the submission of Mr. Udwani about the exemption from property tax to the properties belonging to the petitioner-Market Committee cannot be accepted. In view of the above, the prayer with respect to exemption from the property tax has to be rejected.

15. In the result, the petition is partly allowed. The respondent-authorities under law are not empowered or authorised to recover education cess from the petitioner-Market Committee. The prayer with respect to exemption from the property tax on the buildings belonging to the petitioner-Market Committee is turned down, and the prayer with regard to quashing the bills at Annexures 'C' and 'D' to the petition is rejected. Rule is made absolute to the aforesaid extent, with no order as to costs.

Petition partly allowed.

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AIR 1990 GUJARAT 149 "Dhari Agrl. Produce Market Committee v. Chavda Rajaballi Valibhai"

GUJARAT HIGH COURT

Coram : 1 K. J. VAIDYA, J. ( Single Bench )

Dhari Agricultural Produce Market Committee, Dhari and another, Appellants v. Chavda Rajaballi Valibhai, and another, Respondents.

Criminal Appeal No. 83 of 1981, D/- 7 -10 -1989.\*

(A) Gujarat Agricultural Produce Markets Act (20 of 1964), S.8, S.2(xxiii), S.2(vii) - AGRICULTURAL PRODUCE - Exclusive dealer in fair price shop - Shop situated in market area - Not necessary for him to obtain licence under Markets Act - He is not a "trader" or "Commission Agent" within meaning of the Act.

Fair price shop - Exclusive dealer in - Shop situated in market area - Still not necessary for him to obtain licence under Agri. Produce Markets Act.

Gujarat Agricultural Produce Markets Rules (1965), R.56.

If a person who is strictly and exclusively a dealer in the fair price shop, and is so authorised by the Government intending to distribute the essential commodities like food-grains, sugar, rice, millet, etc. (for short, hereafter referred to as the agricultural produce) to the weaker sections of the society at a fair and reasonable price, and is accordingly supplied with the same, and when such fair price shop dealer in his turn distributes the same to specifically allotted and so named card holders, residents of so named specific areas only, at stipulated, fixed and reasonable price, and further when the relationship between the Government on the one hand and the dealer of the fair price shop on the other hand is purely of a contractual nature being subject to the over-all control and supervision under the terms and conditions of the Rules and Regulations under the statute, and further when such fair price shop dealer has nothing to do with any other deal or transaction which directly or otherwise adversely affects the interest of the poor, illiterate and ignorant agriculturist for whose ultimate benefit and protection the said Market Act has been specially enacted, and when the said dealer in the fair price shop is merely a conduit-pipe serving as a passage of essential supplies between Government and the recipient weaker sections of the society then it is not obligatory for him to obtain a licence under the Gujarat Agricultural Produce Markets to carry on the distributing activity of the agricultural produce to the customers supplied by the Government, even though such shop is situated within the market area. However if any person dealing in the fair price shop is also desiring to carry on his activity

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as a trader by purchasing and selling the agricultural produces other than and/or over and above the supplies made by the Government, it will be obligatory upon him to have the licence under the Act. Though a person who is exclusively a fair price shop dealer is not under the legal obligation to obtain a licence to carry on his distribution activity, yet to the extent his shop is situated within the market area, he would be subject to the power of supervision and check under the authorities provided under the said Marketing Act in order to see that under the clever disguise of running an exclusive fair price shop, a fair price shop dealer is not clandestinely carrying on his activity as a "trader" or a "broker" or a "general commission agent" as defined in the Act. (Paras 12, 13, 19, 20)

It cannot be said that since agricultural produces are purchased by the dealer of fair price shop from the Government and thereafter he sells it to the customers for a price, therefore, he as a dealer of the fair price shop is also a "trader" within the defined meaning under the Marketing Act. Firstly, definition of "trader" does not expressly include any sole and exclusive dealer of the fair price shop. Secondly, the exclusive dealer of the fair price shop is certainly not a free-lance trader of his own as the word trader is generally known and commonly understood. Further a dealer in the fair price shop is not a "trader" or a businessman in the sense that like any other traders or a business man while purchasing the agricultural produce, he is not in a position to strike a deal and then to sell it off at the highest possible price, keen of course to have a margin of profit as much as his greed and the circumstances would permit him to have. Thirdly, an exclusive dealer in fair price shop is merely serving . as a distributing channel or a supply-line between the Government godown and needy economically weaker sections of the society. Further, nor does the case of the dealer of fair price shop dealer can be brought within the fold of the word "general commission agent" as defined in S.2(vii) of the Market Act. Thus, S.8 comes into operation only when a "person operates in a market area" i.e. operates independently as a trader by purchasing and selling the agricultural produce at arbitrarily fixed profit. (Paras 16, 17)

(B) Essential Commodities Act (10 of 1955), S.3 - Gujarat Agricultural Produce Markets Act (20 of 1964), Pre., S.2(xxiii), S.8 - OBJECT OF AN ACT - ESSENTIAL COMMODITIES - Fair Price Shop Scheme and Markets Act - Object of both is to subserve interests of weaker section of society - No conflict between the Scheme and the Act.

Fair price shop scheme - Object is to subserve interests of weaker section of society.

The scheme of fair price shop, under the public distribution management under which the essential commodities like wheat, rice, sugar, edible oil, kerosene etc. are easily, regularly and at a reasonable price made available has a distinct and laudable object to serve economically weaker sections of the society. At the same time, the Gujarat Agricultural Produce Markets Act has also a definite object viz. to subserve the interest of the poor, illiterate and ignorant agriculturists from being exploited by the powerful vested interest. As a matter of fact, there is no conflict whatsoever between the aims and objects as clearly set out in the Marketing Act and that of the fair price shop. Both interests can independently and separately as well as jointly serve the cause for the classes of the society for which the same have been designed. Neither the aims and objects of the Marketing Act nor the scheme of the fair price shop appear to overlap or conflict in any manner with each other. (Paras 13)

The dominant object under the scheme of fair price shop is an equitable distribution and availability of the essential commodities at fair and reasonable price so as to benefit the consumers a class consisting of the weaker section of the society. The primary consideration, therefore, under the scheme of fair price shop is a fixation of price, which would be in the interest of the consumers, and the individual interests, howsoever precious or great, if need so arises, it has got to yield to the larger and ultimate interest of the consumers - weaker section of the society. (Paras 19)

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Cases Referred : Chronological Paras

AIR 1959 SC 300 14

S.K. Zaveri, for Appellants; S.J. Joshi, for Respondent; R.R. Tripathi, Addl. Public Prosecutor, for the State.

\* Against Judgment and order of G.R. Shah, Judl., Magistrate 1st Class, Dhari, D/-308-1980.

Judgement

JUDGMENT:- Is it compulsory for a dealer in the fair price shop having his shop situated in the market area to obtain a licence under the Gujarat Agricultural Produce Markets Act, 1963 (for short hereafter referred to as the Market Act)?

Thus, an impartinent question that arises for consideration in this appeal is regarding the interpretation of Section 8 and words (i) "general commission agent", and (ii) "trader" as defined in Sections 2(vii) and 2(xxiii) respectively of the said Markets Act.

2. The material facts constituting the context and the background out of which the above question emerges are briefly stated as under:

"Whether, when any person (i) who is strictly and exclusively a dealer in the fair price shop, and (ii) is so authorised by the Government intending to distribute the essential commodities like food-grains, sugar, rice, millet, etc. (for short, hereafter referred to as the agricultural produce) to the weaker sections of the society at a fair and reasonable price, and (iii) is accordingly supplied with the same, and (iv) when such fair price shop dealer in his turn distributes the same to specifically allotted and so named card holders, residents of so named specific areas only, (v) at stipulated, fixed and reasonable price, and (vi) further when the relationship between the Government on the one hand and the dealer of the fair price shop on the other hand is purely of a contractual nature being subject to the overall control and supervision under the terms and conditions of the Rules and Regulations under the statute, and (vii) further when such fair price shop dealer has nothing to do with any other deal or transaction which directly or otherwise adversely affects the interest of the poor, illiterate and ignorant agriculturist for whose ultimate benefit and protection the said Market Act has been specially enacted, and (viii) when the said dealer in the fair price shop is merely a conduit-pipe serving as a passage of essential supplies between Government and the recipient weaker sections of the society can he under such circumstances be said to be a person operating in the `market-area' within the scope and meaning of Section 8 of the said Market Act? and further therefore can he be under the statutory obligation to obtain the licence from the market committee? Merely and incidentally because (a) his shop is situated within "market area" and (b) he deals with the food-grains which is also an `agricultural produce' within the definition meaning of Sections 2(xii) and 2(i) respectively of the said Market Act?

3. In order to appreciate and understand the parameters of this question and to have correct legal answer to it, it is necessary, first of all to understand brief facts of the case, the evidence brought on the record and then aims and objects underlying the scheme of the fair price shop and the said Marketing Act.

4. Briefly, according to the prosecution, one PW 1 Dhirajlal Revashankar, Ex. 6, who was working as an Inspector in Dhari Agricultural Produce Market Committee, filed a complaint Ex. 1 against the accused viz. Chavda Rajabhai Valibhai, a fair price shop dealer at Dhari, before the learned J.M.F.C. Dhari, for the alleged offence punishable under Section 36(1) of the said Market Act, alleging therein that since the Act in question was made applicable to the entire area of Dhari, it was incumbent upon every such persons dealing in business of purchase and sale of agricultural produce to obtain a licence from Dhari Agricultural Produce Market Committee. Accordingly, it was further alleged that the accused who was also having a fair price shop at Dhari (as being approved and authorised by the Government) was a "trader" of the agricultural produce like wheat, rice, millet, etc. as well as other agricultural produces. Since during the period from 1-7-1979 till 30-9-1980, the accused had carried on his aforesaid activity of distributing wheat, rice and millet, it was

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not only compulsory for him to obtain the licence but was also required to maintain certain registers as per the rules and regulations under the said Marketing Act. Thus, the accused having not obtained the required licence, had committed a breach of Section 8 of the said Market Act and therefore consequently was liable to be punished under Section 36(l) of the said Marketing Act.

5. On receipt of the above complaint, the trial court directed the same to be registered as a Criminal Case No: 196/80 and further ordered issuance of summons against the accused for the alleged offence under Section 8 read with Section 36(1) of the said Marketing Act.

6. At the trial, accused not only not pleaded guilty, and claimed to be tried, but he raised a specific defence to the effect that he was merely an exclusive dealer in fair price shop and was distributing essential commodities like wheat, rice, millet, sugar, etc. at fair and reasonable price as supplied to him by Mamlatdar and that he was neither purchasing nor selling any other agricultural produces from any other persons and accordingly it was not obligatory for a person like him to have a licence under the said Act.

7. The prosecution in order to bring home the charge against the accused, have mainly relied upon two witnesses, viz. (i) PW 1, Dhirajlal Revashanker Joshi, Ex. 6, Inspector in Dhari Agricultural Produce Market Committee, and (ii) PW 2, Ramesh-chandra Bhanushanker Bhatt, Ex. 11, Deputy Mamlatdar, Civil Supply Department, Dhari.

8. The trial court after duly appreciating the evidence and considering the rival contentions of the parties, by judgment and order dated 30th August, 1980, was pleased to acquit the accused and hence, aggrieved by the same, the original complainant has filed this acquittal appeal.

9. Mr. S.K.Zaveri, the learned counsel appearing for the appellant-complainant has made the following submissions:

That the impugned judgment and order of acquittal is Patently illegal in as much as the trial court has not correctly interpreted Section 8 and other relevant provisions of the said Market Act vis-a-vis facts of this case.

Developing this point further, Mr. Zaveri submitted that since the accused as a dealer of the fair price shop, has purchased the agricultural produce viz. wheat, millet, rice, etc. from the Mamlatdar Office and thereafter he sold the same to the customers by charging the price from them and was gaining the profit, he was a person operating within the market area and therefore it was compulsory for him to have a licence for the same. According to Mr. Zaveri, thus, the trial court committed a serious error in treating the entire transaction of the purchase of the agricultural produce from the Mamlatdar Office and selling it to the customers, as merely a distribution work. According to Mr. Zaveri, the accused who was a dealer in the fair price shop was in fact `trader' and was carrying on his activities of purchase and sale within the market area which squarely fall within the scope and ambit of the said Market Act. It was further submitted by Mr. Zaveri that the fair price shop was run by accused as a "trader" on his own sole responsibility and the Government had no concern except to supervise and regularise the sale price of the agricultural produces or any other item purchased by the said dealer and sold by him to the card holders. Mr. Zaveri finally submitted that the accused fair price shop dealer must be held to be operating in the market area dealing with the agricultural produce regulated under the said Market Act and therefore was liable to be punished under Section 36(1) for the breach of Section 8 of the said Market Act.

10. As against the above submissions of Mr. Zaveri, Mr. S.J. Joshi, learned advocate for the accused has supported the judgment and order of acquittal and has adopted the very reasoning of the trial court by way of his arguments in this appeal.

11. Mr. R.R. Tripathi, the learned Addl. P. P. appearing for the State has submitted

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that the view taken by the trial court appears to be just, legal and proper and there is no reason for this court to interfere with the same.

12. Now in our quest for the just interpretation of the relevant provisions of the said Marketing Act, let us first of all advert to the evidence brought on the record by the prosecution.

(A) To start with the first witness examined in this case is PW 1 Dhirajlal Revashanker, Ex. 6, who is a complainant. According to this witness, the accused was a dealer in the fair price shop and was also selling other agricultural produce and has not obtained required licence for the period in between 1st September, 1979 and 30th September, 1980, and as a result of this, he was constrained to file the complaint against him for an offence punishable under Section 36(I) of the said Act. The cross-examination of this witness makes an interesting reading. In substance, it has been admitted by this witness in his cross-examination that the accused was running a fair price shop since many years in Station Plot area in Dhari. He has also admitted that though in compound of the market area, auction of the agricultural produce does take place where merchants participate, however, the accused has never before purchased or sold any agricultural produce. He has also specifically admitted that the accused was selling these commodities only which was being supplied by the Mamlatdar to him. Surprisingly, this witness in his further cross-examination has made a convenient somersault to quote the same - "It is not true that the accused was not selling other commodities except those received from the Mamlatdar Office. He did not know from where other commodities come". He also admitted that he did not know as to whom the said commodities were sold. He also admitted that at no point of time, he has made any efforts to make a panchnama about other 'commodities, at his fair price shop. According to him, he had merely orally conveyed to the President of the Committee that the accused was keeping in his shop other agricultural produces also. He has also admitted that the accused has to account for and re-deposit commodities supplied to him by the Mamlatdar. He further deposed that to quote - "It is true that the accused is distributing those agricultural produce only which is received by him from the Mamlatdar and that he was not doing any other business". He has also denied the suggestion of the learned advocate for the accused that the accused was shown a letter addressed to him by the Mamlatdar wherein it was suggested that it was not necessary to have a licence for him. It could be seen that the evidence of this witness ultimately favourable leans in favour of the accused.

(B) The next witness is PW 2 Rameshchandra Bhanushanker Bhatt, whose evidence in substance is that even the office of the Mamlatdar has to take a licence from Marketing Yard Committee and accordingly the fair price shop dealer also had to obtain the said licence. Like the first witness, the admissions elicited in cross-examination of this witness also throws a flood of light on the real facts and circumstances which is ultimately going to decide which way Section 8 of the said Act, deserves to be interpreted. This witness has admitted that the Mamlatdar Office is giving food-grains, sugar etc. at the controlled rates to the dealers of the fair price shop and the said dealers in turn has to distribute the said commodities at fixed price. He also admitted that the customers of the fair price shop are issued cards and every fair price shop dealer is allotted a specific area and specified and named card holders to whom agricultural produce supplied by the Mamlatdar is to be distributed. He- also admitted that a dealer in fair price shop can not sell agricultural produce to any other person except to the card holders of the specified area. He has also admitted that the office of the Mamlatdar also specifies the quantity of all the agricultural produce to be given to each card holding customer. In any given month, if the supplied agricultural produce is found to be in excess as a result of the card holders not purchasing the same, then such stock is to be accounted for etc. He also admitted that one Mr. Korant was serving as a clerk in the office the Mamlatdar.

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He also admitted that a circular dated 14th April, 1978, issued by the Mamlatdar Office at Dhari and produced at Ex. 12, was also given to the accused. The said circular is produced at Ex. 12 and which in substance reads as under:-

"That all the dealers of the fair price shop in Dhari are hereby informed that any of them who are dealing in other agricultural produce, it is necessary to obtain a licence under the provisions of the Gujarat Agricultural Produce Market Act, 1963. However, if the said fair price shop dealers are merely distributing Government food-grains, not selling any other agricultural produce, then for them it is not compulsory to pay every year licence fees. The fair price shop dealers only distributing Government food-grains, if they have paid any market fee, they are entitled to get it refunded on an application being made in this regard to the Collector".

(C) The conjoint appreciation of the evidence of aforesaid two witnesses coupled with reading the purport of the circular dated 14th April, 1978 at Ex. 12, makes it abundantly clear that - (i) the accused is admittedly an exclusive fair price shop dealer, (ii) that he is receiving agricultural produce at the controlled rates from the Government, (iii) that he distributes the said agricultural .produce to the named card holders of a specified area, (iv) at a fixed and reasonable price, (v) that there is no evidence on record that the accused was ever found in possession of agricultural produce other than the one supplied by the Government, (vi) that he had never participated in auction sale in market yard, (vii) that he was never found to have sold any other agricultural produce except one supplied by the Government, (viii) that the fair price shop dealer was a sort of a conduit-pipe channelising the supplies of the essential commodities and thereby implementing the Government's intention to distribute the agricultural produce to the specified and named card holders at a fair and reasonable price; and (ix) that he is controlled under certain statutory rules and regulations and terms and conditions thereunder as per the agreement between the fair price shop dealer and the Government; (x) that there is not an iota of an evidence on record to show that the transaction regarding the "supply" and the "distribution" of the agricultural produce had any element which was working to the prejudice and contrary to the interest of the poor, illiterate cultivators, ignorant of market prices subjecting them to exploitation out of helpless situation; (xi) that two terms "purchase" and "sale" in the context of facts and circumstances of the case cannot be termed as "purchase" and "sale". The whole transaction broadly speaking, is that of a "supply" of an agricultural produce by Government through the fair price shop dealer to be for "distribution" to card holders, (xii) that the dealer in fair price shop is not a free-lance trader as the word `trader' is commonly understood. Thus, how in view of such glaring facts and circumstances of the case, the accused can ever be said to `operate' in the market area within the meaning of Section 8 of the said Marketing Act so as to make obligatory upon him to obtain the licence under the said Marketing Act.

13. Thus, having appreciated the evidence of the two witnesses, let us now concentrate on second important aspect of the case viz. what are the aims and objects underlying the scheme of the fair price shop. In this regard, Mr. Tripathi, learned Additional P. P. has invited my attention to the underlying object of the scheme of the fair price shop. According to Mr. Tripathi, by this time, it is quite well known and therefore a judicial notice can be taken of the fact that the Government of Gujarat, in order to render succor to economically weaker sections of the society and persons residing in the remote Adivasi areas, has resolved and evolved an exhaustive and self-contained scheme of the fair price shop, under the public distribution management under which the essential commodities like wheat, rice, sugar, edible oil, kerosene etc. are easily, regularly and at a reasonable price made available. Mr. Tripathi submits that this scheme of the fair price shop in substance and effect promotes and protects the interest of the needy consumers and as such society at large. Under this scheme, a person intending to be a dealer of the fair

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price shop has first to make an application in a prescribed form to the appropriate Government authorities furnishing the required particulars on oath declaration. After the said application is granted, the applicant is required to enter into a written agreement with the Government and thereafter a contract between the parties comes into existence and that thereafter the relationship between the Government and the said dealer of the fair price shop will be governed as per the said terms and conditions of the said contract. According to Mr. Tripathi, this is nothing but a shop set-up by the Government of Gujarat under its own scheme. There are number of terms and conditions and accordingly as per the contract, the dealer of the fair price shop over and above, though he is free to carry on other retail or wholesale business (over and above the distribution activity under the fair price shop), he cannot do so unless and until he obtains a prior permission and licences from the concerned appropriate authorities. Further, a person who is both (i) a dealer in the fair price shop; and (ii) a wholesale or a retail "trader" will have to maintain separate registers, accounts, godowns, etc. Not only that, but as a dealer in fair price shop, he is prohibited from trading the essential commodities supplied by the Government under the fair price scheme in an open market. Thus, the scheme of the fair price shop has a distinct and laudable object to serve economically weaker sections of the society. At the same time, the said Marketing Act, as will be seen in the course of the later part of this judgment, has also a definite object viz. to subserve the interest of the poor, illiterate and ignorant agriculturists from being exploited by the powerful vested interest. As. a matter of fact, there is no conflict whatsoever between the aims and objects as clearly set out in the said Marketing Act and that of the fair price shop. Both interests can independently and separately as well as jointly serve the cause for the classes of 'the society for which the same have been designed. Neither the aims and objects of the said Marketing Act nor the scheme of the fair price shop appear to overlap or conflict in any manner with each other. It must he made, clear that a person desiring to ride two horses viz. to be (i) a dealer in fair price shop, and (ii) a "trader", then it will be incumbent upon him to obtain licence under Marketing Act as well.

14. Having screened the object and spirit of the scheme of the fair price shop, let us now scan the third important aspect of the case viz. what are the aims and objects underlying the scheme of the said Market Act. The Gujarat Agricultural Produce Markets Act, 1963 (Gujarat Act No. 20 of 1964) came into force on 20th May, 1964. Its preamble at the very outset duly introduces the character and significance of the said Act with a declaration that -"This Act is to consolidate and amend the law relating to the regulation of (i) buying and selling of agricultural produce, and (ii) the establishment of the markets of agricultural produce in the State of Gujarat". This Act in fact replaces the prior Act viz. The Bombay Agricultural Produce Markets Act, 1939. In order to find and finalise answer to the question raised in this appeal, it is worthwhile to have a look at the observations made by the Supreme Court in a case of M.C.V.S. Arunachala Nadar v. State of Madras, reported in AIR 1959 SC 300. By this decision while considering the validity of the Madras Commercial Crops Market Act, 1939, their Lordships of the Supreme Court have' traced and examined the historical background of the Act and the necessity of the marketing legislation. In paragraphs 6 and 7 of their Lordships' learned judgment, which is reproduced as under:

Para-6. There is a historical background for this Act. Marketing legislation is now a well settled feature of all commercial countries. The object of such legislation is to protect the producers of commercial crops from being exploited by the middlemen and profiteers and to enable them to secure a fair return for their produce. In Madras State, as in other parts of the country, various Commissions and Committees have been appointed to investigate the problem, to suggest ways and means of providing a fair deal to the growers of crops, particularly commercial crops, and find a market for selling their produce at proper rates. Several Committees,

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in their reports, considered this question and suggested that a satisfactory system of agricultural marketing should be introduced to achieve the object of helping the agriculturists to secure a proper return for the produce grown by them. The Royal Commission on Agriculture in India appointed in 1928 observed -

"That cultivator suffers from many handicaps: to begin with he is illiterate and in general ignorant of prevailing prices in the markets, especially in regard to commercial crops. The most hopeful solution of the cultivator's marketing difficulties seems to lie in the improvement of communications and the establishment of regulated markets and we recommend for the consideration of other provinces the establishment of regulated markets on the Berar system as modified by the Bombay legislation. The establishment of regulated markets must form an essential part of any ordered plan of agricultural development in this country. The Bombay Act is, however, definitely limited to cotton markets and the bulk of the transactions in Berar market is also in that crop. We consider that the system can conveniently be extended to other crops and with a view to avoiding difficulties, would suggest that regulated markets should only be established under Provincial legislation".

The Royal Commission further pointed out in its report -

"The key note to the system of marketing agricultural produce in the State is the predominant part played by middlemen.

It is the cultivator's chronic shortage of money that has allowed the intermediary to achieve the prominent position he now occupies".

The necessity for marketing legislation was stressed by other bodies also like the Indian Central Banking Enquiry Committee, the All 'India Rural Credit and Survey Committee, etc. Recently the Government of Madras appointed an expert Committee to review the Act. In its report the Committee graphically described, the difficulties of: the cultivators and their dependence upon the middlemen thus:

"The middleman plays a prominent part in sale transactions and his terms and methods vary according to the nature of the crop and the status of the cultivator. The rich ryot who is unencumbered by debt and who has comparatively large stocks to dispose of, brings his produce to the taluka or district centre and entrusts it to a commission agent for sale. If it is not sold on the day on which it is brought, it is stored in the commission agent's godown at the cultivators' expense and as the latter generally cannot afford to wait about until the sale is effected, he leaves his produce to be sold by the commission agent at the best possible price and it is doubtful whether eventually he receives the best price. The middle-class ryot invariably disposes of his produce through the same agency but, unlike the rich ryot he is not free to choose his commission agent, because he generally takes advances from a particular commission agent on the condition that he will hand over his produce to him for sale. Not only, therefore he places himself in a position where he cannot dictate and insist on the sale being effected for the highest price but he loses by being compelled to pay heavy interest on the advance taken from the commission agent. His relations with middlemen are more akin to those between a creditor and a debtor, than of a selling agent and producer. In almost all cases of the poor ryots, the major portion of their produce finds its way into the hands of the village money-lender and whatever remains is sold to petty traders who tour the villages and the price at which it changes hands is governed not so much by the market rules, but by the urgent needs of the ryot which are generally taken advantage of by the purchaser. The dominating position which the middleman occupies and his methods of sale and the terms of his dealings have long ago been realised".

The aforesaid observations describe the pitiable dependence of the middle-class and poor ryots on the middlemen and petty traders, with the result that the cultivators are not able to find markets for their produce wherein they can expect reasonable price for them

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Para-7. "....... The Act, therefore, was the result of a long exploratory investigation by experts in the field, conceived and enacted to regulate the buying and selling of commercial crops by providing suitable and regulated market by eliminating middlemen and bringing face to face the producer and the buyer so that they may meet on equal terms, thereby eradicating or at any rate reducing the scope for exploitation in dealings ......."

15. Having examined the historical background of the Marketing Act, in reference to the question involved in this appeal, it is also necessary to consider and examine the relevant provisions of the Marketing Act, which are reproduced as under:

S. 2(i) " `agricultural produce' means all produce, whether processed or not, of agriculture, horticulture and animal husbandry, specified in the schedule.

S. 2(iii) `broker' means an agent whose ordinary course of business is to negotiate and make contracts on payment of commission for purchase or sale of agricultural produce on behalf of his principal but does not include a servant of such principal whether engaged in negotiating or making such contracts.

S. 2(vii) `general commission agent' means a trader who bona fide buys or sells or offers to buy or sell for an agreed commission, any agricultural produce on behalf of another person and does or offers to do anything necessary for completing and carrying out the transaction of such sale or purchase.

S. 2(ix) `licence' means a licence granted under Section 6 or as the case may be a general or special licence granted under Section 27.

S. 2(x) `licensee' means a person holding a general licence under this Act.

S. 2(xiii) `market area' means any area declared or deemed to be declared to be a market area under this Act.

S. 2(xiv) `market committee' means a market committee established or deemed to be established under this Act.

S. 2(xv) `market proper' means any area declared or deemed to be declared to be a market proper under this Act.

S. 2(xxiii) `trader' means any person, who carried on the business of buying or selling of agricultural produce or of processing of agricultural produce for sale and includes a co-operative society, joint family or an association of persons, whether incorporated or not, which carries on such business.

S. 6. pertains to the declaration of market area.

(1) xxx xxx xxx

(2) Notwithstanding anything contained in any law for the time being in force, from the date on which any area is declared to be a market area under sub-section (1) no place in the said area shall be used for the purpose of sale of any agricultural produce specified in the notification except in accordance with the provisions of the Act:

Provided that pending the establishment of a market in such area the Director may grant a licence to any person to use any place in the said area for the purchase or sale of any such agricultural produce and a licence so granted shall unless it is cancelled or otherwise ceases to be in force, continue in force until the establishment of a market in the said area and for such period thereafter as may be prescribed.

S. 8. No person shall operate in the market area or any part thereof except under and in accordance with the conditions of a licence granted under this Act.

S. 23. `A market committee shall exercise the powers and perform the functions `and duties conferred or imposed on it by this Act and the rules'.

S. 26. It shall be the duty of every market committee to maintain and manage the market, to take all possible steps to prevent adulteration and to promote grading and standardisation of the agricultural produce as, may be prescribed, to provide such facilities in the market as the Director may from time to time direct and to enforce in the market area

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the provisions of this Act the rules, bye-laws and the conditions licences granted under the Act in connection with the purchase and sale of the agricultural produce with which it is concerned. It shall also be the duty of every market committee to collect and maintain such information relating to market intelligence as may be prescribed and to supply the same to Government whenever so required."

S.29. The Chairman, Vice-Chairman or secretary of the market committee or any member, officer or servant authorised by the committee in this behalf, may -

(a) for carrying out any of the duties imposed on the market committee under this Act at all reasonable times enter and search any place, premises or vehicle, and

(b) seize any article in respect of which he has reason to believe that an offence under this Act has been or is being or is about to be committed, and any vehicle or animal which he has reason to believe to be in use or to have been used or to be about to be used for carrying such articles, and shall detain the same so long as may be necessary in connection with any proceeding under this Act or for a prosecution:

Provided that a report of the seizure shall forthwith be made by the person seizing the article, vehicle or animal to the Chairman if he is not the Chairman himself:

Provided further that the grounds for seizing any such article, vehicle or animal shall be communicated in writing within twenty four hours of the seizure to the person from whose possession the same was seized.

S.30 (1) The Chairman, Vice Chairman or Secretary of the market committee or any other member, officer or servant authorised by the committee in this behalf may summarily evict from the market any person found to be operating in the market area without holding a valid licence.

(2) Such eviction shall be without prejudice to any punishment to which the person evicted may be liable under this Act.

Section-36 pertains to penalty for contravention of section 6 or 8. Section-41 pertains to trial of offences. Section-42 pertains to previous sanction necessary for prosecution.

In exercise of the powers conferred by section 59 of the said Marketing Act, the Government of Gujarat has framed the Rules which are known as The Gujarat Agricultural Produce Markets Rules, 1965 (for short hereafter to be referred to as the said Rules). The relevant rules of the said Rules are reproduced as under :-

Rule 54 (1) Place of sales of agricultural produce in the market -

(1) All agricultural produce arriving into the market shall be brought into the principal market yard or sub-market yard in the first instance and shall not, be bought or sold at any place outside such yards:

Provided that ginned cotton, husked paddy, groundnut seeds split, pulses and tobacco may be sold anywhere in the market area in accordance with the provisions of byelaws.

(2) Details of all agricultural produce resold in wholesale in the market area shall be reported to the market committee.

(3) Any person who contravenes the provisions of this rule shall, on conviction, be punishable with fine which may extend to Rs. 500/-.

Rule-56. Licenced traders and general commission agents -

(1) Any person desiring to obtain a licence to do business as a trader or a general commission agent in agricultural produce in any market area or part thereof shall make a written application in such form as the market committee may determine to the market committee and shall pay such fees as may be determined by the market committee subject to a maximum of Rs. 200/-.

Provided. . . . . . . . .

(2) to (6) xxx xxx xxx xxx

Rule 57 pertains to business in market area prohibited except under licence. On careful perusal of the entire scheme of the Act as well as Rules made thereunder, it is very clear that

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the facts and circumstances of the case in no way fall within the ambit of the Act.

16Now in the background of the aforesaid discussion, picking up the thread of arguments made by Mr. Zaveri, learned counsel for the appellant in paragraph-9 of this judgment further, at the outset it must be stated that the same has failed to convince me. First of all, it is not possible to agree with Mr. Zaveri that since agricultural produces are purchased by the accused from the office of the Mamlatdar and thereafter the accused sells it to the customers for a price, therefore, he as a dealer of the fair price shop was also a "trader" within the defined meaning under the Marketing Act. Firstly, definition of "trader" does not expressly include any sole and exclusive dealer of the fair price shop and rightly so. Secondly, the exclusive dealer of 'the fair price shop is certainly not a free-lance trader of his own as the word trader is generally known and commonly understood. Further a dealer in the fair price shop is not a "trader" or a businessman in the sense that dike any other traders or a business man while purchasing the agricultural produce, he is not in a position to strike a deal and then to sell it off at the highest possible price, keen of course to have a margin of profit as much as his greed and the circumstances would permit him to have. Thirdly, an exclusive dealer in fair price shop is merely serving as a distributing channel or a supply-line between the (Government godown and needy economically weaker sections of the society. Further, nor does the case of the accused fair price shop (dealer can be brought within the fold of the sword "general commission agent" as defined in S.2(vii) of the Market Act. Thus, S.8 comes into operation only when a "person operates in a market area" i.e. operates independently as a trader by purchasing and selling the agricultural produce at arbitrarily fixed profit. The exclusive fair price shop dealer has not those traders-wings to be a trader in the sense that he can fly anywhere, in any direction, at any heights, in whatever manner and wherever he likes.

17. Further, in the matter of licences under the Marketing Act, a provision is also

made in Rule 56 of the said Rules, which pertains to the licenced traders and general commission agents. The sum and substance of this rule is that if any person is desirous of obtaining a licence to do business as a "trader" or a "commission agent" (Emphasis supplied) in agricultural produce in any market area, he shall make a written application in such form as the market committee may determine and shall pay such fees as may be determined by the market committee subject to the maximum of Rs. 200/-. Thus, it is very clear that a licence as a condition-precedent is necessary only in those cases, wherein any person is desiring to do a business as a "trader" or a "general commission agent" in agriculture produce (in any market area). Therefore a person like an accused in the instant case, who is not desiring to do a business as a "trader" or "commission agent" but wants to carry on his limited activity as an approved agent of the Government as a dealer in fair price shop, it is not necessary for him to obtain the licence. Merely because a fair price shop dealer incidentally is having a shop in a market area and distributes items which also fall within the ambit of the word "agricultural produce" as defined in Section 2(i) of the Marketing Act, that by itself does not bring him within the statutory limits and liability to obtain a licence, unless he is also proved to be, a free-lance trader in commodities over and above those supplied by the Government for distribution.

18. This does not mean that the market committee will be helpless and powerless to control a "trader" within the meaning of the Marketing Act, operating clandestinely under the guise of a dealer in fair price shop. In this regard, it is necessary to bear in mind the powers and duties of the market committee as provided in sections 23, 26 and 27 and 30 of the Marketing Act. Thus, on examining the aforesaid provisions, it is very clear that the market committee is fully empowered under the said Marketing Act to enter and search any place, premises or a vehicle in order to carry out and implement the objectives of the Act. The said market committee is also empowered to remove unauthorised person from the market i.e. the person carrying on

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business as a trader or as a commission agent or as a broker as defined in the Act prejudicially to the interest of the poor, illiterate and ignorant agriculturists. Thus, if a person like an accused in the present case, who is strictly and exclusively a fair price shop dealer, if he happens to be found ultimately to be a trader dealing in purchase and sale of agricultural produce over and above supplied by the Government for distribution at fair price, by the market committee, then in that case, the market committee is not powerless to control him under the Act.

19. Therefore, if the shop keeper is a person who is a dealer in a fair price shop and is also trading in agricultural produce in a market area, other than the one covered by the fair price shop, then he has to abide by the statutory rules and regulations and the terms and conditions thereunder of both i.e. under the said Market Act as well as under the scheme of fair price shop. But in case, the dealer in a fair price shop is exclusively and strictly dealing in the agricultural produce under the authorisation and terms and conditions regarding fair price shop of the Government, then in that case, there is no duty cast on him to have a licence from the marketing committee under the said Market Act. It has got to be borne in mind that the dominant object under the scheme of fair price shop is an equitable distribution and availability of the essential commodities at fair and reasonable price so as to benefit the consumers - a class consisting of the weaker section of the society. The primary consideration, therefore, under the scheme of fair price shop is a fixation of price, which would be in the interest of the consumers, and the individual interests, howsoever precious or great, if need so arises, it has got to yield to the larger and ultimate interest of the consumers - weaker section of the society.

The last submission of Mr. Zaveri was to the effect that witnesses in terms have deposed to the effect that the accused even as a dealer in a fair price shop was bound to have a licence under the said Market Act. I do not agree. Merely because the said witnesses are labouring under some misconception of law and asserts that the accused was under a legal obligation to obtain a licence, that by itself cannot add or abridge the legal position. N o provision of the Act can ever be interpreted by these assertions of any witness, divorced of its spirit, aims and objects of the Act and the rule of common sense interpretation.

20. Thus, as per the above discussion, having examined the question involved from all angles, the net result of the same is answered as under:

(i) If a person happens to be a dealer in a fair price shop falling within the stream lined category as referred to in the earlier paragraph-2 of this judgment, then in that case, it is not obligatory to obtain a licence under the Marketing Act to carry on the distributing activity of the agricultural produce to the customers supplied by the Government, even though such shop is situated within the market area.

(ii) As against the first category, if any person dealing in the fair price shop is also desiring to carry on his activity as a trader by purchasing and selling the agricultural produces other than and or over and above the supplies made by the Government, it will be obligatory upon him to have the licence under the Act.

(iii) Though a person falling in the first category, is held to be not under the legal obligation to obtain a licence to carry on his distribution activity, yet to the extent his shop is situated within the market area, he would be subject to the power of supervision and check under the authorities provided under the said Marketing Act in order to see that under the clever disguise of running an exclusive fair price shop, a fair price shop dealer is not clandestinely carrying on his activity as a "trader" or a "broker" or a "general commission agent" as defined in the Act.

Thus, in view of the facts and circumstances of the case, it was not necessary for the accused to obtain licence under the said Marketing Act, as his activity of distributing agricultural produce does not fall in ambit of word "trader" or any other provisions of the Market Act.

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21. In the result, the impugned judgment and order of acquittal passed by the trial court is confirmed and the appeal against the acquittal deserves to be dismissed and hence it is dismissed accordingly.

Appeal dismissed.

AIR 1990 GUJARAT 161 "Desai Dharamsinhbhai Taljabhai v. Babulal M. Jathalal Patel"

GUJARAT HIGH COURT

Coram : 1 G. T. NANAVATI, J. ( Single Bench )

Desai Dharamsinhbhai Taljabhai and others, Petitioners v. Babulal M. Jathalal Patel and others, Respondents.

Special Civil Appln. No. 3950 of 1986, D/- 11 -4 -1989.

(A) Gujarat Agricultural Produce Markets Rules (1965), R.8 - AGRICULTURAL PRODUCE - Voters' list - Preliminary list with amendments, alternations, deletions published - Date fixed for hearing objections thereto - Application for addition of new names cannot be made at that stage.

Gujarat Agricultural Produce Markets Act (20 of 1964), S.11(1)(i).

Where the preliminary lists of voters along with the proposed amendments, alternations or deletion is published by the Authorised Officer and a day is fixed for hearing objections, if any, against the proposed amendments etc., fresh applications/ objections for correcting the preliminary lists of voters could not be entertained at such stage. (Paras 14, 15)

What sub-rule (1) of Rule 8 requires is that the Authorised Officer has to publish the preliminary lists of voters and fix a date for inviting objections. After receiving applications for amendment or objections, as they are often described, he has to republish the said lists along with the proposed amendments, alterations or deletions and invite objections from the persons likely to be adversely affected by the said proposed amendments, alterations or deletions. Inviting such objections is really in the nature of a hearing to be given to the persons who are likely to be affected thereby. This being the requirement of principles of natural justice, it has been read in sub-rule (1) of Rule 8, and keeping that object in mind, it will have to be held that after the second publication of the preliminary lists of voters what is required to be done by the Authorised Officer is to hear persons likely to be affected by the proposed amendments, alterations or deletions. He cannot receive or entertain fresh applications for new additions, alterations or deletions, or fresh objections in that behalf. (Para 10)

Sub-rule (1) require as the Authorised Officer to give a notice, while publishing the preliminary voters' lists, for making applications to him for amendment of the lists within 14 days from the date of publication of the notice. Thus, the Authorised Officer has to prescribe the last date before which applications for amendment can be made. Applications for amendment of lists of voters are thus required to be made within the prescribed time and the Authorised Officer would have no authority of law to entertain applications received after that date. Sub-rule (2) then requires the Authorised Officer to decide those applications and cause to be prepared and published a final list of voters. It does not prescribe any time limit within which that process has to be completed but final list has to be prepared at least thirty days before the date fixed for nomination of candidates for the election. It is, therefore, open to the Authorised Officer to decide such applications after further inviting objections to those applications from persons likely to be adversely affected and then decide the same. But, in any case, he will have no authority to invite or entertain fresh applications for amendment of the list of voters. (Para 11)

On the true interpretation of sub-rules (1) and (2) of Rule 8, it cannot be said that the qualifying date for the purpose of determining the eligibility of a person to be enrolled as a voter is the date on which the final list is published. (Para 12)

(B) Gujarat Agricultural Produce Markets Rules (1965), R.28 - ELECTION - AGRICULTURAL PRODUCE - Election petition -Plea that names of non-eligible persons included in Voters' Lists while persons eligible

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not included - No evidence to show that result of election materially affected thereby - Plea not maintainable.

Election - Voters' list - Irregularity in - No evidence that election result affected materially thereby - Election cannot be set aside. (Para 15)

Cases Referred : Chronological Paras

(1988) 29 Guj LR 1060 : (1988) 2 Guj LH 149 13

AIR 1987 Guj 33 : 1986 Guj LH 430 12

(1979) 20 Guj LR 406 3, 7, 9

S.K.Jhaveri, for Petitioners; G.N.Desai, (for Nos. 1, 2 and 3) M.I.Hava, (for Nos. 4 and 5) and Bharat C.Dave, (for No. 6) for Respondents.

Judgement

ORDER :- This petition arises out of the general election of the Agricultural Produce Market Committee, Patan, and the decision of the Director of Agricultural Marketing and Rural Finance, Gujarat State, in Election Petition No. 193 of 1985.

The Director passed and published an order dated 30-7-1985 fixing 30-11-1985 as the date of election of the members of the Agricultural Produce Market Committee, Patan. By a notification dated 24-8-1985 he also fixed 3-9-1985 as the date for communicating to the Authorised Officer the names as required by Rule 7 of the Gujarat Agricultural Produce Markets Rules, 1965 for preparation of the lists of voters. 24-8-1985 was the date fixed by him for calling for necessary information by the Authorised Officer. The date for publication of the preliminary lists of voters was fixed as 10-9-1985. The last date for submitting the applications/ objections for additions and alterations in the preliminary lists was fixed as 24-9-1985. He fixed 27-9-1985 as the date for republication of the preliminary lists of voters prepared after considering the objections and suggestions. 11-10-1985 was the date fixed for submitting objections against the republished preliminary lists of voters. The date of publication of the final lists of voters was fixed as 16-101985. As we are not concerned with the subsequent stages of election fixed by the Director, it is not necessary to refer to the same. The election was held on 30-11-1985 and the result was declared on 1-12-1985.

2. The petitioners and respondents Nos. 4, 5 and 6 were declared elected. Thereafter respondents Nos. 1, 2 and 3 filed Election Petition No. 193 of 1985 under Rule 28 of the Rules to the Director, challenging the said election with respect to the agriculturists' constituency. In the said application, it was contended that between 10-10-1985 and 1510-1985, eight co-operative societies dispensing agricultural credit in the market area submitted their objections to the list of voters for that constituency as published on 27-91985 and called upon the Authorised Officer to substitute the names of those who were elected as members of the Managing Committee in their general meetings held after 27-91985 in place of those who were members of the old Managing Committee and whose names are shown in the voters' lists. The Authorised Officer refused to entertain those objections on the ground that the stage fixed for entering or not entering name of any person in the voters' list was already over, and that preliminary publication of the voters' list as prepared after considering the amendments, suggestions and objections was made on 27-9-1985. It was their case that the Authorised Officer was not right in not entertaining the objections filed by the eight cooperative societies and he ought to have deleted the names of the members of the old Managing Committee and added names of 22 persons who were newly elected as Managing Committee members. It was their case that if those 22 persons were permitted to vote and those, who had unauthorisedly voted at the election were prevented from voting, then that would have materially affected the result of the election as the difference of votes obtained by the candidates as elected and those who lost was less than 22. They had, therefore, prayed that the entire election with respect to the agricultural constituency should be set aside.

3. The Director held that the Authorised Officer committed an error of law in not considering the applications in the nature of objections received by him after 27-9-1985 but

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before 11-10-1985 in view of the decision of this Court in the case of Patel Bhagwanbhai Narottamdas v. Authorised Officer, reported in (1979) 20 Guj LR 406. He also held that even if the objections were valid in respect of four societies only, the result of the election would have been materially affected. He therefore, set aside the entire election of the agricultural constituency and directed that a fresh election be held. This decision of the Director is challenged in this petition.

4. It was contended by the learned Advocate for the petitioners that the Director committed an error of law in holding that the election deserved to be set aside as it took place on the basis of the final list of voters which was defective. It was contended that the final list of voters was not at all defective as the Authorised Officer was justified in not entertaining fresh amendments suggested and objections raised after 24-9-1985. The Director was in error in taking the view that the representations received in this behalf till 11-10-1985 which was the last date for submitting amendments or objections to the republished preliminary lists of voters, were required to be considered by the Authorised Officer. The learned Advocate went to the extent of submitting that as the lists of voters were required to be prepared on the basis of the information received by 3-9-1985, that date should be regarded as the qualifying date for the purpose of determining eligibility of a person to be enrolled as a voter. In the alternative, it was contended that 24-9-1985 was the last date for receiving suggestions and objections for the purpose of amending the lists of voters and, therefore the Authorised Officer could not have lawfully taken into consideration any subsequent change in the constitution of the Managing Committees of the Co-operative Societies constituting agricultural constituency. It was also submitted that the Authorised Officer could not have taken note of such changes without there being any supporting material produced before him along with the applications which the aforesaid eight co-operative societies had made. It was lastly urged that no evidence whatsoever was led by the persons challenging the election to show that if the suggested amendments were made in the list of voters that would have affected the result of the election. No evidence was led by them to show whether 22 persons, whose names were desired to be deleted, had actually voted at the election. Even if 22 persons, whose names were suggested for inclusion in the list of voters, had voted at the election, that would not have affected the result of the first four candidates, who were declared elected.

5. On the other hand, it was contended on behalf of respondents Nos. 1, 2 and 3, who had filed the Election Petition, that on true interpretation of Rules 7 and 8, the qualifying date for the purpose of determining eligibility of a person to be enrolled as a voter is the date on which the final voters' lists are published. As 16-10-1988 was the date fixed for publication of the final voters' lists and particularly when in the election programme, when notified, it was stated that the last date for receiving objections to the republished preliminary lists was 11-10-1985, all applications made on or before that date were required to be considered by the Authorised Officer. As that was not done by him, the Director was justified in holding that the final voters' list was not in accordance with Rules 7 and 8. It was also submitted that as the difference of votes obtained by the candidates who were declared elected and who lost at the election was very small, the Director was justified in setting aside the whole election of the agricultural constituency.

6. Respondents Nos. 4, 5 and 6, who were declared elected at the said election and respondents Nos. 7 and 8, who are the Director and District Registrar, respectively, have supported the petitioners.

7. In order to appreciate the rival contentions, it will be necessary to refer to the relevant provisions of law. Section 11 of the Gujarat Agricultural Produce Markets Act, 1963 deals with the constitution of Market Committee, and the relevant part thereof reads as under:

"11. (1) Every market committee shall consist of the following members, namely :

(i) eight agriculturists who shall be elected

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by members of managing committees of cooperative societies (other than co-operative marketing. societies) dispensing agricultural credit in the market area, . . . . . . . ."

No other section of the Act has any bearing on the point raised in the petition. The relevant rules are the Gujarat Agricultural Produce Markets Rules, 1965. Rule 4 provides for fixation of date of election by the Director by an order in writing. As pointed out earlier, the Director in this case had by his order dated 30-7-1985 fixed 30-11-1985 as the date of election. Rule 5 requires preparation of three separate lists of voters in respect of the three constituencies contemplated by section 11 of the Act. According to Rule 6, a person, whose name is entered in a list of voters, is regarded as qualified to vote at an election to which the list of voters relates, unless he has ceased to hold the capacity in which his name was entered in such list. Rules 7 and 8 are important for the purpose of this petition and they read as under:

"7. Preparation of list of voters for general election.- (1) Whenever general election to a market committee is to be held :-

(i) every Co-operative -Society dispensing agricultural credit in the market area shall communicate the full names of the members of its managing committee together with the place of residence of each member;

(ii) the market committee shall communicate the full names of the traders holding general licences in the market area together with the place of residence of each such trader; and

(iii) every Co-operative Marketing Society shall communicate the full names of the members of its managing committee together with the place of residence of each such member;

to the Authorised Officer before such date as the director may by order fix in that behalf

Provided that the date to be so fixed shall not be later than sixty days before the date of the general election.

(2) The Authorised Officer shall within seven days from the date fixed under sub-rule (1) cause to be prepared the lists of voters as required by rule 5 on the basis of the information received under sub-rule (1) and, if necessary, after making such inquiry as he may deem fit.

(3) Every list of voters shall show the full name, place of residence and the serial number of each voter.

8. Provisional and final publication of lists of voters.- (1) As soon as a list of voters is prepared under rule 5, it shall be published by the Authorised Officer by affixing a copy thereof at the office of the market committee and at some conspicuous place in the principal market yard in the market area along with a notice stating that any person whose name is not entered in the list of voters and who claims that his name should be entered therein or any person who thinks that his name or the name of some other person has been wrongly entered therein or has not been correctly entered, may within fourteen days from the date of the publication of the notice, apply to the authorised officer for an amendment of the list of voters.

(2) If any application is received under sub-rule (1) the Authorised Officer shall decide the same and shall cause to be prepared and published the final list of voters, after making such amendments therein as may be necessary in pursuance of the decision given by him on the application. The final list shall be prepared at least thirty days before the date fixed for the nomination of candidates for the election.

(3) Copies of the final list of voters prepared under this rule shall be kept open for public inspection at the office of the Authorised Officer and at the office of the market committee."

As stated earlier, the Director had fixed 3-91985 as the date for communicating to the Authorised Officer necessary information for preparation of the lists of voters. Obviously that order was passed under rule 7 (1). As the lists of voters were required to be prepared within seven days from the date fixed under sub-rule (1) of Rule 7, 10-9-1985 was the date fixed for preparation and publication of the said

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lists. The said lists were published alongwith a notice stating that if any person whose name is not entered in the lists of voters and who claims that his name should be entered therein, or any person believes that his name or the name of some other person has been wrongly entered therein, or has not been correctly entered, should apply for amendment of the said list on or before 24-9-1985. Though Rule 8 does not contemplate republication of the first preliminary lists of voters, the Authorised Officer, in order to comply with the requirement of the said Rule, as interpreted by this Court in Patel Bhagwanbhai's case (1979-20 Guj LR 406) (supra), fixed 27-9-1985 as the date for publishing such lists together with the additions or alterations and inviting objections with respect to them. He fixed I 110-1985 as the date for receiving objections to the said preliminary lists of voters. The changes, which took place between the first publication of the preliminary lists and the date for receiving objections after republication thereof, have given rise to the point which is-involved in this petition.

8. The respondents, who challenged the election, have contended that the Authorised Officer was bound to receive objections to the preliminary lists of voters till 11-10-1985 and could not have refused the applications made by the aforesaid eight co-operative societies for that purpose. On the other hand, the contention of the petitioners and other respondents, who were declared elected, is that no fresh objections could have been received by the Authorised Officer. The correct answer to this controversy depends upon the true interpretation of Rule 8.

9. Rule 8 came to be interpreted by this Court in the case of Patel Bhagwanbhai (supra). In that case, the preliminary list of voters was published on April 30, 1978. It did not include the names of respondents Nos. 3 to 17 of that petition. Thereafter applications for amendment were received by the Authorised Officer and after considering the same he prepared a final list of voters which was published on May 19, 1978 and which included the names of respondents Nos. 3 to 17. It was contended on behalf of the petitioners in that case that after publication of the preliminary list of voters, an opportunity should have been given to the persons who objected to the wrong inclusion of voters or wrong deletion of voters in the voters' list and, if such a requirement was not read in Rule 8, than that would be violative of fair play and principles of natural justice. As against that, it was contended by the other side that as and when the name of any voter is to be removed or deleted from the voters' list, an opportunity should be given to a person whose name is to be so removed or deleted but when names of new persons are to be included in the voters' lists, it is not at all necessary for the Authorised Officer to give any public notice inviting objections from other persons regarding inclusion of new names. This Court did not accept the latter contention and held that an opportunity is required to be given to the parties who are likely to be affected by the objections raised against the voters' lists and, if no such opportunity is given, then that would amount to flagrant violation of the principles of natural justice. It was, therefore, held that such a requirement should be read in sub-rule (1) of Rule 8. Thus, what has been held in that case is that after receiving applications for amendments or objections, the Authorised Officer should give an opportunity of being heard to the persons who are likely to be adversely affected by such applications or objections. This is how sub-rule (1) of Rule 8 came to be interpreted in that case. However, the point which has been raised in this petition did not arise for consideration in that case. It only indirectly helps us in finding out the real answer to the question raised in this petition.

10. In my opinion, what sub-rule (1) of Rule 8 requires is that the Authorised Officer has to publish the preliminary lists of voters and fix a date for inviting objections. After receiving applications for amendment or objections, as they are often described, he has to republish the said lists along with the proposed amendments, alterations or deletions and invite objections from the persons likely to be adversely affected by the said proposed amendments, alterations or deletions. Inviting such objections is really in the nature of a

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hearing to be given to the persons who are likely to be affected thereby. This being the requirement of principles of natural justice, it has been read in sub-rule (1) of R.8, and keeping that object in mind, it will have to be held that after the second publication of the preliminary lists of voters what is required to be done by the Authorised Officer is to hear persons likely to be affected by the proposed amendments, alterations or deletion. He cannot receive or entertain fresh applications for new additions, alterations or deletions, or fresh objection in that behalf. The Authorised Officer was, therefore, fully justified in this case in not entertaining the fresh objections raised by the aforesaid eight co-operative societies for the first time between 10-10-1985 and 11-10-1985.

11. A conjoint reading of R.8 (1) and R.8 (2) also supports this conclusion. Sub-rule (I) requires the Authorised Officer to give a notice, while publishing the preliminary voters' lists, for making application to him for amendment of the lists within 14 days from the date of publication of the notice. Thus, the Authorised Officer has to prescribe the last date before which applications for amendment can be made. Application for amendment of lists of voters are thus required to be made within the prescribed time and the Authorised Officer would have no authority of law to entertain applications received after that date. Sub-rule (2) then requires the Authorised Officer to decide those applications and cause to be prepared and published a final list of voters. It does not prescribed any time limit within which that process has to be completed but final list has to be prepared at least thirty days before the date fixed for nomination of candidates for the election. It is, therefore, open to the Authorised Officer to decide such applications after further inviting objections to those applications from persons likely to be adversely affected and then decide the same. But, in any case, he will have no authority to invite or entertain fresh applications for amendment of the list of voters.

12. In my opinion, on the true interpretation of sub-rules (1) and (2) of R. 8, the contention raised on behalf of the contesting respondents that the qualifying date for the purpose of determining the eligibility of a person to be enrolled as a voter is the date on which the final list is published cannot be accepted. No doubt, the learned single Judge of this Court did accept that contention while deciding Special Civil Application No. 5620 of 1985. As I am taking a contrary view, it would have become necessary for me to refer the matter to a Division Bench but for the fact that the decision rendered by the learned single Judge in that case was challenged in Letters Patent Appeal No. 382 of 1985 and the Letters Patent Bench allowed the appeal, set aside the judgment of the learned single Judge and dismissed the Special Civil Application. It should be stated that the Division Bench dismissed the special civil application on a different ground and did not go into the question as to which is the correct qualifying date for the purpose of determining the eligibility of a person to be enrolled as a voter (See: Patan Proper Fal and Shak Bhaji Kharid Vechan Sahakari Mandali Ltd. v. Pali Shak Bhaji and Fal Ful Adi Ugarnaraoni Kharid Vechan Sahakari Mandali Ltd., 1986 Guj LR 439: (AIR 1987 Guj 33).

13. Rule 8 again came to be considered by this Court in Mehsana District Co-operative Sales and Purchase Union Ltd. v. State of Gujarat, (1988) 29 Guj LR 1060. But the question, which was raised in that case, was quite different and the said decision is not useful for the purpose of deciding the question which has arisen in this case.

14. It was urged by the learned Counsel for the contesting respondents that the Legislature, knowing full well that it was dealing with agriculturists, did not provide for any procedure for the purpose of holding an election. Moreover, Co-operative year starts from 1st July. The co-operative societies are bound to take some time in electing new members of the Managing Committee and, therefore, this Court should not interprete sub-rule (1) of R. 8 strictly and hold that applications for amendment made after 14 days from the date of publication of the notice

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under sub-rule (1) cannot be entertained by (the Authorised Officer. In my opinion, on such considerations sub-rule (1) cannot be interpreted as contended, in view of its clear language and express provision fixing the period within which the applications for amendment are required to be made. It was also urged that in view of the notice, which was published by the Authorised Officer, the aforesaid co-operative societies can be said to have been misled in believing that the last date for submitting objections was 1 I-10-1985 as that was also the date fixed by the Authorised Officer for receiving objections. As stated earlier, the said date was fixed for receiving objections with respect to the preliminary lists of voters as proposed to be amended or altered in view of the applications received in that behalf earlier. Moreover, it was not the case of the said eight co-operative societies, nor evidence was led to the effect, that the said eight co-operative societies were misled as a result of the notice published by the Authorised Officer. Therefore, this contention also cannot be accepted.

15. In the view that I have taken, it will have to be held that the Authorised Officer had rightly refused to entertain fresh applications made by the aforesaid eight co-operative societies for making alterations in the list of voters pertaining to the agricultural constituency. He could not have lawfully included the names of those whose names were suggested for inclusion by the aforesaid eight co-operative societies after 24-9-1985. The Director, therefore, was clearly in error in taking a contrary view. Moreover, as pointed out earlier, there is no evidence on record to show that those 22 persons, whose names were included in the voters' lists because they were members of the previous Managing Committee, had voted at the said election. It was for the contesting respondents to lead evidence to show that they had voted at the election and that as a result of their votes, the 'result was materially affected. In absence of such evidence, it is not possible to hold that they had voted at the said election, or that, if they had not voted at the said election, the result would have been different. The Director was; therefore, not justified in setting aside the election of the Agricultural Produce Market Committee, Patan and directing a fresh election to be held. The judgment and order passed by him, therefore, will have to be set aside.

16. In the result, this petition is allowed. The judgment and order passed by the Director in Election Petition No. 193 of 1985 is quashed and set aside, with the result that the persons, who were declared elected by the Authorised Officer, will have to be regarded as validly elected. Rule is made absolute accordingly with no order as to costs.

Petition allowed.

AIR 1989 GUJARAT 9 "Kantilal v. Director of Agricultural M. and R. Finance"

GUJARAT HIGH COURT

Coram : 1 R. C. MANKAD, J. ( Single Bench )

Kantilal Rajhuram Thakkar, Petitioner v. The Director of Agricultural Marketing and Rural Finance, Gujarat and another, Respondents.

Special Civil Appln. No. 5866 of 1987, D/- 2 -12 -1987.

Gujarat Agricultural Produce Markets Act (20 of 1964), S.11(4)(b) - Gujarat Agricultural Produce Markets Rules (1965), R.33 - AGRICULTURAL PRODUCE - ELECTION - Market Committee - Election of Chairman/Vice-Chairman - Election to new committee held but committee not reconstituted due to disputes - Old committee continues to be in existence - Term of Chairman/Vice-Chairman expiring - Election must be held for posts of Chairman/Vice-Chairman every two years - Such election would not pose any problem vis-a-vis reconstitution of new committee as term of Chairman/Vice-Chairman so elected would expire along with term of old committee. (Para 5)

S. K. Zaveri, for Petitioner; M. I. Mawa, for Respondents.

Judgement

ORDER : - Petitioner, who is member of the Patan Agricultural Produce Market Committee (hereinafter referred to as 'the Committee), has filed this petition praying

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that respondents be directed to hold election of Chairman and Vice-Chairman of the Committee.

2. The following facts are undisputed :-

The Committee of which the petitioner is member was elected in 1981 for a period of four years. The period of four years expired on Sept. 30, 1985. However, the election of the new committee was held on Nov. 30, 1985. This new committee has not come into existence as disputes relating to its election have been raised. Under S.11(4)(b) of the Gujarat Agricultural Produce Markets Act, 1963, the term of the committee is deemed to be extended to and expire with the day immediately before the date of the first General Meeting of the Market Committee as reconstituted on the expiry of its term. Therefore, the term of the Committee of which the petitioner is member will continue to be in existence till the date immediately before the date of the first General Meeting of the Committee which has been elected in November 1985, on account of the election disputes, this new Committee has not yet come into existence. In other words, the Committee has not been reconstituted and, therefore, there is yet no question of holding its General Meeting. Under the circumstances, as observed above, the Committee of which the petitioner is member, continues to be in existence.

3. The committee elected its Chairman and Vice-Chairman on Sept. 19, 1985. Rule 35 of the Gujarat Agricultural Produce Markets Rules, 1965, inter alia, provides that any person elected as Chairman or Vice-Chairman shall hold office for two years from the date of his election as Chairman or Vice-Chairman, as the case may be. Therefore, the term of the Chairman and Vice-Chairman elected on Sept. 19, 1985 came to an end on September 18, 1987. It, therefore, became necessary to hold the election of Chairman and Vice-Chairman of the Committee. The District Registrar of Co-operative Societies and Deputy Director, Agricultural Marketing and Rural Finance, Mehsana - respondent No. 2 herein - issued notice Annexure-'A' dt. Sept. 14, 1987 for holding of election of Chairman and Vice-Chairman on Sept., 23, 1987. A meeting of the Committee was called on Sept. 23, 1987 for the purpose of electing Chairman and Vice-Chairman. However, by notice Annexure-'B' dated September 21, 1987, the Secretary of the Committee informed the members of the Committee that the meeting which was to be held on Sept. 23, 1987, was postponed for administrative reasons. Thereafter, no notice for holding the meeting of the Committee for the purpose of electing Chairman and Vice-Chairman has been given. The grievance of the petitioner is that, there is no reason or justification for not holding such meeting and it is the duty of respondent No. 2 to call meeting of the Committee for the purpose of electing "Chairman and Vice-Chairman. It is in the background of these facts that the petitioner has moved this court by way of this petition seeking direction against the respondents to hold the meeting of the Committee for the purpose of selecting the Chairman and Vice-Chairman of the Committee.

4. The only ground on which the respondents have resisted this petition is that, fresh election of Chairman and Vice-Chairman for a period of two years, as provided in R.33 of the aforesaid Rules, is likely to create complications in view of the fact that the election for the reconstitution of the Committee has already been held on Nov. 30, 1985, It is submitted that, if new Chairman and Vice-Chairman are elected under R.33, they would remain in office for a period of two years. According to the respondents, this would mean that when the new Committee comes into existence, it will not be able to elect its Chairman and Vice-Chairman and this would lead to complications. In this connection, my attention was drawn to R.31 of the Rules, which provides for election of Chairman and Vice-Chairman of the Committee on its constitution. It is submitted that the Chairman and Vice-Chairman, who are elected on Sept. 19, 1985, continue to hold office until new Chairman and Vice-Chairman are elected and, therefore, it is not necessary to hold election of the Chairman and Vice-Chairman specially in view of the fact that complications are likely to arise when the new Committee comes into existence.

5. I do not see any substance in the

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contentions raised on behalf of the respondents, Under S.11(4)(b), the Committee continues to be in existence and this position, as already observed above, has not been disputed on behalf of the respondents. Under R.33, persons who are elected as Chairman and Vice-Chairman hold office for two years. In the instant case, the election of the Chairman and Vice-Chairman was held on Sept. 19, 1985 and, therefore, the term of two years has expired on Sept. 18, 1987. It was, therefore, necessary to hold fresh election of Chairman and Vice-Chairman. I fail to see as to how any complications will arise on account of the election or reconstitution of the Committee. Election of the Committee was held on Nov. 30, 1985, but it has not been reconstituted on account of the election disputes which are pending before various authorities. It is because the Committee has not been reconstituted, that the Committee of which the petitioner is member continues to be in existence. If the Committee continues to be in existence, there is no reason why it should not elect Chairman and Vice-Chairman every two years, as provided in the Rules. On the reconstitution of the Committee, R.31 of the Rules will come into operation and election of the Chairman and Vice-Chairman of the reconstituted Committee will have to be held. The term of office of the Chairman and Vice-Chairman of the Committee cannot extend beyond the term of the Committees. Therefore, even if the Chairman and Vice-Chairman are elected for a period of 2 years, their term will come to an end along with the term of the Committee. Therefore, the election of new Chairman and Vice-Chairman on the reconstitution of the Committee does not pose any problem, as urged on behalf of the respondents. It would appear that, though it is stated in the notice Annexure 'B' that the election of Chairman and Vice-Chairman is postponed on account of administrative reasons, the respondent No. 2 had decided not to hold the election of the Chairman and Vice-Chairman for the reasons stated in the affidavit-in-reply, which are of no substance. It is the duty of the respondent No. 2 to call the meeting of the Committee for the purpose of holding election of the Chairman and Vice-Chairman since the term of the existing Chairman and Vice-Chairman has already expired. The contentions which are raised on behalf of the respondents are, therefore, rejected.

6. In the result, this petition is allowed. Respondents are directed to take necessary steps immediately for holding the election of Chairman and Vice-Chairman of the Committee and complete the election within three weeks from the date of the receipt of the writ of this Court. Rule is made absolute with no order as to costs. Writ to be sent down forthwith.

Petition allowed.

AIR 1987 GUJARAT 33 "P. P. F. and S. B. K. V. S. Mandli Ltd. v. P.S.B. and F. F. etc. Mandli Ltd."

GUJARAT HIGH COURT

Coram : 2 B. K. MEHTA AND R. J. SHAH, JJ. ( Division Bench )

Patan Proper Fal and Shak Bhaji Kharid Vechan Sahakari Mandli Ltd., Patan, Appellant v. Pali Shak Bhaji and Fal Ful Adi Ugarnarao-ni-Kharid Vechan Sahakari Mandli Ltd., Mehsana, and others, Respondents.

Letters Patent Appeals Nos. 382, 430, 431, 442 443, 445 and 446 of 1985 D/- 27 -11 -1985.\*

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Gujarat Agricultural Produce Markets Act (20 of 1964), S.11 - Gujarat Agricultural Produce Markets Rules (1965), R.4, R.5, R.7, R.8, R.10, R.28 - AGRICULTURAL PRODUCE - WRITS - Writ jurisdiction - Interference with elections of Agricultural Produce Market Committee - Dispute as to inclusion voters' list - Preparation of voters' list is part of process of election under Gujarat Act - Remedy provided in Gujarat Act for resolving such dispute - Interference in writ jurisdiction not permissible.

Spl. Civil Appln. No. 5620 of 1985, D/-21-10-1985 (Guj), Reversed

Constitution of India, Art.226.

It is recognised on principle as well as in authority that where a right or a liability is created by a statute which gives a special remedy for enforcing it, only the remedy provided by that statute must be availed of, unless the impugned order is ultra vires or is a nullity as being ex facie without jurisdiction, and in matters of election dispute, the Court should refuse to exercise the jurisdiction under Art.226 of the Constitution when the statute conferring right to vote or stand at the election prescribes a statutory remedy embracing the disputes pertaining to all aspects of the entire process of election It is a matter of public importance that elections should be concluded as early as possible according to the time schedule and all controversial matters as well all disputes arising out of the elections should be postponed till after the elections are over so as to avoid an impediment or hindrance in the election proceedings. (Para 26)

Where in all the writ petitions against the proposed election to the Agricultural Produce Market Committee what was claimed by the petitioners was either the right to be included in the voters' list and for that matter right to vote or right to object to the inclusion of names of some persons as voters in the voters' list who, according to the objectors, are not qualified to be voters, writ jurisdiction could not be exercised because the right to vote and for that matter right to contest or right to object to the name of any person included in the voters' list is a right which is conferred by a special statute, and if this right pertains to election and consequently therefore to disputes arising pertaining to election, it can be ventilated and enforced by the machinery provided, if at all any, under that special Act The entire process of election under the scheme of election of the Market Committee in the Gujarat Rules 1965 is so integrated and revolves round the date of election that it is difficult to say that the preparation of the electoral roll is not a part of the election, and the election commences only with the declaration of the programme of election. When that is so. the question as to whether the roll should be modified at the instance of persons claiming to be voters or at the instance of persons objecting to the inclusion of the names of some persons in the voters' list is a matter relating to election and having regard to the fact that it is a right conferred under the Gujarat Act 1963 for which a special remedy has been provided the High Court should not exercise the writ jurisdiction in the matter since there is a provisional finality in the matters pertaining to various stages of election. Spl. Civil Appln. No. 5020 of 1485 D/-21-14-1985 (Guj), Reversed. (Paras 27, 28)

Cases Referred : Chronological Paras

AIR 1985 SC 1233 27

AIR 1982 Guj 163 1982 (1) 23 Guj LR 611 25

AIR 1980 SC 1612 25

AIR 1978 SC 851 25

AIR 1977 SC 1703 25

AIR 1977 Guj 113 : 18 Guj LR 714 25

AIR 1975 SC 2140 25

AIR 1955 SC 233 25

AIR 1952 SC 64 25, 27

S.K. Jhaven and Jayant M. Patel, for Appellant; K.G. Vakharia and M.A. Malik, Asstt. Govt. Pleader for Respondents.

\* Against judgement of N.H. Bhatt, J. in Spl. Civil Appln. No. 5620 of 1985, D/-21-10-1985.

Judgement

B.K. MEHTA, J. :- Since this group of seven Letters Patent Appeals relates to the elections of Agricultural Produce Market Committee, Patan, and a common question of law going to the root of the matter arises in these Letters Patent Appeals, we intend to dispose them of by this common judgement.

2. In order to appreciate the two broad contentions, which have been raised in each of the we appeals, we may set out

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shortly a few facts relevant and material for our purposes so as to enable us to appreciate these contentions in proper perspective.

L. P. A. No. 382/85

3. Respondent No. 1, which is a Cooperative Marketing Society. moved this Court by Special Civil Application No. 5620/85 for appropriate writs. orders and directions enjoining the Authorised Officer respondent No. 2 herein appointed for the purposes of elections of the Agricultural Produce Market Committee, Patan respondent No. 3 herein, to include the names of the members of the Managing Committee of the Petitioner-Society in the voters' list prepared for purposes of the said elections. It is common ground that the Petitioner Society was constituted on 31st August, 1985 and applied for inclusion of the members of its Managing Committee to the Authorised Officer-respondent No. 2 herein vide its application of September 24 1985 and furnished the particulars in the pro forma prescribed in that behalf. It is also common ground that the Petitioner Society was issued licence for the years 1984-85 and 1985-86 by the Market Committee-respondent No. 3 herein on September 27, 1985. There is some dispute as to precisely on what date the application was made for obtaining the licence by the Petitioner Society. It is also admitted on behalf of the Petitioner Society that the Managing Committee was constituted on September 15, 1985. Since the Petitioner Society was intimated by the Authorised Officer vide his letter of September 27, 1985. that in the pro forma application the particulars about the Petitioner Society having obtained the licence for 1984-85 have not been shown in the relevant column 7 thereof the names of the members of the Managing Committee of the Petitioner Society were not included in the voters' list, the Petitioner Society moved this Court for appropriate writs, orders and directions for enjoining the Authorised Officer to include the names of the members of the Managing Committee in the voters' list as required under S.11(i)(iii) of the Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to as "the Act").

4. Pursuant to the notice issued by this Court, another Co-operative Marketing Society. namely. Patan Proper Fal and Shak Bhaji Kharid Vechan Sahakari Mandli Limited - the appellant herein prayed vide its Civil Application No. 3966/85 to be joined as a party. which application was granted by the learned single Judge (Coram : N.H. Bhatt. J.) by his order of October 21, 1985, and directed that the said Society be joined as a party-respondent at its own costs and consequences. Unfortunately however, by inadvertence, the name of the said Society was not added in the cause title in the original memo of the main petition. We have, therefore directed the learned Advocate for the appellant-Society to make proper addition in the cause title of the memo of the petition by showing the appellant-Society as respondent No. 3 in the main petition.

5. The appellant-Society therefore resisted the petition by filing reply affidavit of the Chairman one Shri Bhudarbhai Chhaganbhai Patel to which an affidavit in rejoinder of Shri Dahyabhai P. Patel has been filed on behalf of the original petitioner respondent No. 1 herein. It should be noted that no reply affidavit has been filed on behalf of the Authorised Officer or the Agricultural Produce Market Committee who were original respondents Nos. 1 and 2 in the main petition. The petition has been resisted on behalf of the appellant-Society, inter alia, on two grounds : Firstly it was contended that the Court has no jurisdiction and/or in any case should not interfere at this stage when the election programme has been already declared since the Petitioner-respondent No. 1 could ventilate its grievances, if at all any, by resorting to the election petition under R. 28 of the Gujarat Agricultural Produce Markets Rules, 1965 (hereinafter referred to as "the Rules"). Secondly It was contended that having regard to the fact that the Petitioner Society was registered on August 31, 1985, it could not have convened any meeting before September 17, 1985 and constituted the Managing Committee and could not have started functioning. It could not have. therefore, made an application for licence which it is claimed by the Petitioner Society to have been made on 2nd September, 1985. or far that matter on 17th September, 1985 with the result that the Market Committee

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could not have granted the licence on such application. Consequently, the application made by the Petitioner Society on September 24, 1985 to the Authorised Officer was incomplete and, therefore, defective inasmuch as the particulars of the licence were not furnished in the relevant column of the application as in the very nature of things it could not have furnished since admittedly the Market Committee granted the licence on September 27, 1985. Therefore, it is contended in this fact situation that the members of the Managing Committee of the Petitioner Society were not eligible to be enrolled as voters in the voters' list since they were not qualified on the qualifying date, namely 3rd September, 1985 by which date the Director had called upon all the concerned Market Societies to furnish the particulars of the members of their Managing Committees. On these two grounds, therefore, the appellant-Society contended that the respondent-Petitioner Society was not entitled to all or any of the reliefs prayed for in the petition.

6. The learned single Judge, on consideration of the relevant pleadings and after hearing the learned Advocates for the parties at the notice stage disposed of the petition on merits with the consent of the parties. The learned single Judge was of the opinion that on the true interpretation of the relevant rules, inter alia. rules 7 and 8 of the Rules, the qualifying date for purposes of determining the eligibility of a person to be enrolled as a voter should be considered the date on which the final voters' list is published under the rules and, therefore, the Petitioner Society was well within bounds and entitled to enrolment of its members of the Managing Committee as voters in the voters' list for purposes of the elections to the Market Committee. He ruled out the objection raised on behalf of the appellant Society that the Petitioner Society can have recourse to the election petition as provided in Rule 28 and the Court should not arrest or interfere with the programme of election at that stage since in his opinion it cannot be said as a rule of law and it is more in the nature of rule of discretion which the Court should observe since the election is a costly process and should be allowed to have its own operation uninterrupted by any outside agency. He, therefore, allowed the petition and directed the Authorised Officer to include the names of the members of the Petitioner's Managing Committee as voters and made the Rule absolute. It is this order of the learned single Judge which is the subject-matter of appeal before us.

L. P. A. No. 430/85 :

7. This appeal is preferred by the original petitioners of Special Civil Application No. 5812/85 who are admittedly voters on the voters' list published for purposes of election to the Agricultural Produce Market Committee, Patan. It pertains to the traders' constituency under S.11(1)(ii) of the Act which prescribes four members to be elected from amongst themselves by the traders holding general licences for carrying on the trade in the market area of the Agricultural Produce Market Committee, Patan. The Petitioners had by their application of September 24, 1985 raised objection against inclusion of certain persons as voters in the said voters' list on the ground that they were not genuine traders. The grievance of the petitioners was that these persons against whom they were raising objections were either doctors or rickshaw drivers or Government employees or agriculturists and some of them Hamals and, therefore they could not be genuine traders. These objections were overruled by the Authorised Officer by his order of September 27, 1985 virtually on the ground that the information supplied by the concerned Market Committee is binding on him and, therefore, he has no option but to include their names in the voters' list. In effect, he overruled this objection without any inquiry worth the name. The Petitioners, therefore, moved this Court for appropriate writs, orders and directions to quash and set aside the said decision of the Authorised Officer and for enjoining him to hold an inquiry and decide the objections on merits.

8. It appears that Bhudarbhai Chhaganbhai Patel was not originally joined as a party to the petition. However, he was directed to be joined as a party vide the order of the learned single Judge dated November 1, 1985 on the application made by him being Civil Application No. 4180/85. The said respondent No. 3 filed his reply affidavit to

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which original petitioner No. 3 filed affidavit in rejoinder.

9. The petition was resisted by the said respondent No. 3 Shri Bhudarbhai Chhaganbhai Patal, inter alia, on the ground that the Court should not arrest or interfere with the election programme which has been declared which objection found favour with the learned single Judge who by his common order of November 5, 1985 rejected the petition on the short ground that he should not interfere with the election process. It is this order which is the subject-matter of this appeal.

L.P.A. No. 431 /85 :

10. This appeal is preferred by the original petitioners of Special Civil Application No. 5813/85 who claimed that they ought to have beer included in the voters' list prepared for the constituency of agriculturists under S.11(1)(i) of the Act which prescribes that eight agriculturists shall be elected by the members of the Managing Committees of the Co-operative Societies dispensing agricultural credit in the market area. The Petitioners claimed in effect that their names should be substituted in place of the erstwhile members of the Managing Committee of the respective Co-operative Credit Societies. The applications were made on 10th and 11th October, 1985. The grievance of the Petitioners was that no reply was given by the authorised Officer, and the final voters' lists were published without modifications as prayed for.

11. The Petition has been resisted, inter alia, on the ground that the Court should not interfere with or arrest the election programme which has been set in motion which objection found favour with the learned single Judge who by his common order of November 5, 1985 dismissed this petition also along with Special Civil Application No. 5812/85 as stated above.

L. P. A. No. 442/85 :

12. This appeal relates to the traders' constituency for the election to the Agricultural Produce Market Committee Patan under S.11(1)(ii) of the Act. The appeal is referred by the Market Committee. Four who are respondents Nos. 1 to 4 herein moved this Court for a writ of mandamus or a writ in the nature of mandamus directing the Agricultural Produce Market Committee, Patan; the Director of Agricultural Marketing and Rural Finance, and the District Registrar Election Officer for the election to the Market Committee, who are appellant and respondents Nos. 5 and 6, respectively, "to allow the persons, those who have applied for the renewal of licence for the year 1985-86 within time......to vote or to take part in the election as if their names are shown in the voters' list". They also prayed for interim relief in the nature of injunction enjoining, inter alia, the Election Authorities to treat all the applications for renewal of licences made before September 30, 1985 before the Market Committee to have been granted and the licences be treated to have been renewed for purposes of the election scheduled to be held on November 30, 1985, and restraining the Director of Agricultural Marketing and Rural Finance from interfering with their right of franchise to contest and vote at the ensuing election merely on the ground that their licences have not been renewed by the Market Committee.

13. The petition was resisted by the Market Committee and affidavit in reply of the Secretary of the Committee was filed. It was pointed out in the reply affidavit that the licence of respondent No. 1 herein who was Petitioner No. 1 was renewed for 1985-86 and the question of the grant of the licences to respondents Nos. 2, 3 and 4 herein who were petitioners Nos. 2 to 4 was under consideration before the Market Committee. The contention that the Court should not interfere with or arrest the programme of election since the remedy of election petition is available under R. 28 of the Rules was also raised.

14. The learned single Judge (Coram : A.P. Ravani, J.) by his order of November 19, 1985 dismissed the petition since in his opinion on the true interpretation and effect of R.6 of the Rules, the capacity of the licensed trader is not lost till his application for renewal of licence is finally rejected and inasmuch as the applications of respondents Nos. 2, 3 and 4 who were petitioners Nos. 2 to

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4 for renewal of their licences for 1985-86 were admittedly pending before the Market Committee, the apprehension of the said petitioners was unfounded that they would not be allowed to vote and to contest the election. It should be noted that these petitioners were allowed to file nominations under the order of the Court without prejudice to the rights and contentions of the parties, and accordingly their nominations have been accepted under the orders of the Court. It is this order which is the subject-matter of appeal at the instance of the Agricultural Produce Market Committee.

15. It should be noted that the original petitioners also feel themselves aggrieved by the order of the learned single Judge and they have accordingly preferred Letters Patent Appeal No. 445/85. Their grievance is that when the learned single Judge held that the capacity of the petitioners is not lost, he ought to have granted the relief in terms of the prayer made in relief Cl. (A).

L. P. A. 443/85 :

16. This is also an appeal by the Market Committee and it pertains to the constituency of the Marketing Society under S.11(1)(iii) of the Act which provides that two representatives of the Co-operative Marketing Society situate in the market area and holding general licences are to be elected from amongst the members of such society by the members of the Managing Committee of the Society. It appears that the licence of respondent No. 1-Society for the year 1984-85 expired on September 30, 1985. It applied for renewal of the licence by its application of September 21, 1985. The said application is under consideration of the Market Society. It further appears that Bhudarbhai Chhaganbhai Patel who happens to be the Chairman of the said Society is seeking election from this constituency to the Market Committee. The Market Committee kept the application for renewal of the licence under consideration since some traders objected to the genuineness of the society. In the circumstances, respondent No. 1-Society moved the Court for appropriate writs, orders and directions enjoining the Market Committee and the Election Officer to allow respondent No. 1-Society to take part in the ensuing election as if their application for renewal of the licence for 1985-86 has been granted and for that matter the licence is duly renewed. An interim relief has also been prayed for in the nature of injunction enjoining the respondent sand the Election Authorities to treat all applications for renewal of licences made before September 30, 1985 before the Market Committee to have been granted and to treat such applicants as persons having valid licences for the purposes of the election scheduled to be held on November 30, 1985.

17. Pursuant to the notice issued by this Court, the appellant Society filed a reply affidavit of its Secretary opposing the admission of the petition. One of the contentions raised in this petition was that the Court should not interfere with or arrest the programme of election which has been set in motion since the petitioners had remedy of election petition under R.28 of the Rules. The learned Judge (Ravani J.) by common order of November 19, 1985 for the self-same reasons which we have stated above on construction of R.6 held that the capacity of respondent No. 1-Society which was the petitioner was not lost since for all purposes it would be when the application for renewal of licence is finally rejected. It is this order which is the subject-matter of this appeal. It should be noted that the Petitioner-Society also being aggrieved by this order filed Letters Patent Appeal No. 446/85 on the very ground on which Letters Patent Appeal No. 446/85 has been preferred.

18. Broadly the following two questions arise in Letters Patent Appeals Nos. 382/85 and 431/85 :

1. Whether this Court has jurisdiction and/or can interfere in exercise of such jurisdiction under Art.226 of the Constitution of India, and consequently arrest the programme of election which has been declared in connection with the election of the Market Committee in question since the special right of being voters conferred on the eligible persons under the said Act can be enforced by the special remedy of election petition under R.28 of the Rules.

2. Whether the original petitioners are entitled to be enrolled as voters.

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19. Similarly the following two questions arise in Letters Patent Appeal No. 430/85

1. Whether this Court has jurisdiction and/or can interfere in exercise of such jurisdiction under Art. 226 of the Constitution of India. and consequently arrest the programme of election which has been declared in connection with the election of the Market Committee in question since the special right of objecting to the inclusion of the names of persons as voters conferred under the Act can be enforced by the special remedy of election petition under R.28 of the Rules.

2. Whether the Authorised Officer committed an error of law in overruling the objections raised by the original petitioners that the information supplied by the concerned Market Committee is binding on him and, therefore, he had no option but to include their names in the voters list without holding any sort of inquiry which he was obliged to under the Rules.

20. Similarly the following two questions arise in Letters Patent Appeals Nos. 442. 443, 445 and 446 of 1985 :

1. Whether this Court has jurisdiction and/or can interfere in exercise of such jurisdiction under Art. 226 of the Constitution of India, and consequently arrest the programme of election which has been declared in connection with election of the Market Committee in question since the right to vote conferred under the Rules on all qualified persons can be enforced by the special remedy of election petition under R.28 of the Rules.

2. Whether the original petitioners are entitled to seek appropriate writs. orders and directions that they should be treated for all purposes as qualification voters merely because their applications for renewal of licences for the year 1985-86 before the Market Committee were pending after the expiry of their respective licences for the year 1984-85.

21. Since the first question in all these appeals as formulated hereinabove is common question, we will take it up for consideration in all these appeals and decide the same in the first instance because, if it is answered in the negative, the Court may not be required to go into the second question of each of these appeals. Before we take up for consideration, this question, it would be profitable to shortly refer to the material provisions which are relevant for purposes of appreciating the various facets of the first question.

22. Section 11(1) of the Act prescribes the nature and the composition of the Market Committee. Shortly stated, the Market Committee comprises of :

(i) 8 agriculturist members

(ii) 4 trader-members

(iii) 1 or 2 representatives of the Cooperative marketing societies in the market area

(iv) 1 member representing the local authority and

(v) 2 members nominated by the State Government.

The first three categories of the members are to be elected by their respective constituencies to with 1 agriculturist members to be elected by the members of the Managing Committees of the co-operative credit societies; (2) trader members to be elected by the traders holding general licences, and (3) the representatives of the co-operative marketing societies to be elected from amongst the members of such societies by members of the Managing Committees thereof. It should be noted that in these appeals, we are concerned with all the aforesaid three constituencies. It should also be noted at this stage that in respect of the third category of the co-operative marketing societies' representatives, the number of the representatives depends upon the number of the co-operative marketing societies functioning in the market area. If the number of such societies does not exceed two, only one representative is prescribed. But if it exceeds two representatives are provided for. The Act has left it to the State Government under S.59 to frame Rules particularly in the matters specified in Sub-Sec. (2) which, inter alia includes the preparation and revision of list of voters for the purpose of any election under S.11, determination of dismisses arising in such

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election and payment of expenditure in connection with or incidental to such election. The material rules which are relevant for our purposes are Rules 4, 5, 6, 7, 8, 10, 11 and 28. Rule 4 provides for fixation of date of election. It enjoins the Director, whenever a general election to a Market Committee is to be held under S.15, to fix date of such election and publish such order by affixing a copy thereof in the office of the Market Committee and at a conspicuous place in the principal market yard in the market area. Under R.5, three voters' lists are to be prepared in respect of the aforesaid three constituencies prescribed under S.11(1)(i) to (iii) of the Act. R.6 which is important since it has come for interpretation in the special civil applications out of which Letters Patent Appeals Nos. 442 443, 445 and 446 of 1985 arise. It reads as under :

"6. Persons qualified to vote. - A person whose name is entered in a list of voters shall be qualified to vote at an election to which the list of voters relates, unless he has ceased to hold the capacity in which his name was entered in such list."

Rules 7 and 8 are important Rules which have a bearing in all these appeals and therefore, they are set out in extenso :

"7. Preparation of list of voters for general election.- (1) Whenever general election to a market committee is to be held :-

(i) every co-operative Society dispensing agricultural credit in the market area shall communicate the full names of the members of its managing committee together with the place of residence of each member;

(ii) the market committee shall communicate the full names of the traders holding general licences in the market area together with the place of residence of each such trader; and

(iii) every Co-operative Marketing Society shall communicate the full names of the members of its managing committee together with the place of residence of each such member.

to the authorised officer before such date as the Director may by order from that behalf :

Provided that the date to be so fixed shall not be later than sixty days before the date of the general election.

(2) The Authorised Officer shall within seven days from the date fixed under sub-rule (1) cause to be prepared the lists of voters as required by R.5 on the basis of the information received under sub-r. (1) and if necessary, after making such inquiry as he may deem fit.

(3) Every list of voters shall show the full name, place of residence and the serial number of each voter.

8. Provisional and final publication of lists of voters-

(1) As soon as a list of voters is prepared under R.5, it shall be published by the Authorised Officer by affixing a copy thereof at the office of the market committee and at some conspicuous place in the principal market yard in the market area along with a notice stating that any person whose name is not entered in the list of voters and who claims that his name should be entered therein or any person who thinks that his name or the name of some other person has been wrongly entered therein or has not been correctly entered, may within fourteen days from the date of the publication of the notice, apply to the authorised officer for an amendment of the list of voters.

(2) If any application is received under sub-rule (1) the Authorised Officer shall decide the same and shall cause to be prepared and published the final list of voters, after making such amendments therein as may be necessary in pursuance of the decision given by him on the application. The final list shall be prepared at least thirty days before the date fixed for the nomination of candidates for the election.

(3) Copies of the final list of voters prepared under this rule shall be kept open for public inspection at the office of the Authorised Officer and at the office of the Market Committee."

Rule 10 provides for fixation of stages of election. Sub-r. (1) thereof provides that an election shall held between such hours and on such dates and at such place or places

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as may be fixed by the Director. Sub-r. (2) again is important and, therefore, it has been set out hereinbelow :

"(2) Not less than 40 days before the date fixed for the election under R.4, the Director shall publish in Gujarati a notice stating-

(a) the number of persons to be elected by the respective electorate.

(b) the date on which, the place at which and the hours between which nomination papers shall be presented to the Election Officer such date not being earlier than 14 days from the date of the publication of the notice

(c) the date on which, the place at which and the hours between which the nomination papers shall be scrutinised.

(d) the date on which, the place or places at which and the hours between which the votes shall be taken,

(e) the date on which, the place at which and the hours between which the votes shall be counted."

Rule 11 provides for the nominations. Sub-r.(1) thereof provides for filing of the nomination papers on the date fixed in connection therewith before the Election Officer. Sub-r. (2) provides that such nomination paper is to be signed by the proposer and also by the candidate in token of his willingness to stand for election. How the nomination papers are to be endorsed and treated is prescribed in sub-rule (4). Sub-r. (5) prescribes that if the number of nominations signed by the same person as proposer exceeds the number of vacancies to be filled in, the nomination papers which have been received first in order of time up to the number of vacancies shall be deemed to be valid. Sub-r. (6) provides that the nomination papers received after the date and time fixed in that behalf would be rejected. R.12 provides for the deposit to be made along with the nominations. R.13 provides for verification of nominations by the Election Officer. R.14 provides for the publication of the list of nominations by the Election Officer of the persons validly nominated. R.15 provides for the scrutiny of the nominations on the date fixed in that behalf. R.16 provides for disposal of objections and rejection of nomination papers. R.17 provides for the withdrawal of candidature which should be made by the candidate by notice in writing subscribed by him and delivered either in person by the candidate himself or through his proposer to the Election Officer within three days of the date succeeding that fixed for the scrutiny of nominations. Sub-r.(2) of R.17 provides that the Election Officer shall prepare a list of persons whose nominations are accepted and who have not withdrawn their candidature and the same is to be affixed in some conspicuous place in his office, and in the office of the Market Committee not less than seven clays before the date fixed for the election. R.18 provides for the procedure of election. R.19 provides for the assignment of symbols. R.20 provides for the form of voting paper. R.21 provides for arrangements for the holding of election and R.22 provides for the number of votes every voter has in connection with the election. Rule 13 provides for addition of one vote in favour of candidate selected by lot in case of equality of votes in favour of the candidates at the poll. R.24 provides for procedure when there is a death of candidate before poll. Rule 25 provides for intimation of the name of the representatives of a local authority to the election Officer for purposes of S.11(1)(iv). Rule 27 provides for publication of the names of elected and nominated members of the Market Committee. Rule 28 which provides for determination of validity of election has an important bearing on the question in all these appeals and it is therefore stated in extenso :

"28. Determination of validity of election-

(1) If the validity of any election of a member of the Market Committee is brought in question by any person qualified either to be elected or to vote at the. election to which such question refers, such person may, within seven days after the date of the declaration of the result of the election, apply in writing-

(a) to the Director, of the election has been conducted by a person authorised by the Director, to perform the function of an Election Officer and

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(b) to the State Government if the election has been conducted by the Director as an Election Officer.

(2) On receipt of an application under sub-r.(1), the Director. or the State Government, as the case may be, shall, after giving an opportunity to the applicant to be heard and after making such inquiry as he or it, as the case may be, deems fit, pass an order confirming or amending the declared result of election or setting the election aside and such order shall be final. If the Director or the State Government, as the case may be, sets aside the election, a date shall be forthwith fixed, and the necessary steps be taken for holding a fresh election for filling up the vacancy of such member."

This is in short the scheme contained in the Act and the Rules in respect of the constitution and election of the Market Committee.

23. Before we discuss the legal position about the jurisdiction of the Court to interfere in election matters, we may shortly indicate the election programme as declared by the Director as well the dates prescribed and the steps taken by the Authorised Officer for preparation of the list of voters. Under R.4, the Director has, by his order dated 30th duly, 1985, fixed 30th November 1985 as the date of election. Under R.7 the Director by his order of August 24, 1985 called upon the concerned committee, namely Co-operative Credit Societies the Market Committees, and the Co-operative Marketing Societies to send the names of the members of the Managing Committee the names of the traders holding general licences in the market area, and the names of the members of the Managing Committee, respectively, to the Authorised Officer on or before September 3 1985 for preparation of voters' list. The Authorised Officer, under sub-r.(2), on September 10, 1985 published the list of voters prepared by him on the basis of the information received from the different committees as aforesaid. Objections to the voters' list by the aggrieved persons were to be filed within 14 days, that is, before September 24, 1985. The Authorised Officer published on September 27, 1985 the aforesaid primary voters' list after considering the objections, suggestions and amendments. by the persons concerned and invited objections against finalisation of the primary voters' list, and fixed October 16 1985 as the date on or before which such amendments, objections or suggestions were to be submitted by the concerned persons. Ultimately the final voters' list was published on October 16, 1985.

24. The stages of election fixed under sub-r. (2) of R.10 were as under :

November 18, 1985 Date for filing nominations under Section 10(2).

November 19, 1985 Date of scrutiny.

November 22, 1985 Date for withdrawal of the nominations.

November 22, 1985 Publication of the list of validly nominated candidates.

November 30, 1985 Date of election.

December 1, 1985 Counting of votes, and the publication of the result as soon as the counting was over.

It is in this backdrop that we have to consider the first question.

25. The legal position as to whether the Court has jurisdiction to interfere with the process of election in context of the elections to Municipalities and Panchayats in particular and the elections of other bodies in general, has been summed up by the Division Bench of this court in Ravjibhai v. Bilimora NagarPalika, 1982 (1) 23 Guj LR 611 : (AIR 1982 Guj 163). In that case the elections of two municipalities namely Bilimora Municipalty and Bulsar Municipality were under challenge. Bilimora Municipality's election was challenged by the defeated candidates in the elections of Bilimora Municipality on the ground that amendments, deletions and additions were made in the voters' list only a day prior to the date of the poll. The election of Bulsar Municipality was challenged by two residents and tax-payers residing within the limits of the said municipality and, therefore, claiming to be entitled to be included in the 'voters' list for purposes of election held in October, 1980. The elections were challenged

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also on the ground that the voters' lists were not prepared according to the Election Rules of the Municipality concerned. In that context, the Division Bench considered the scope and amplitude of the jurisdiction of the High Court under Art.226 of the Constitution. firstly, in the context of Art.329 of the Constitution after referring to a number of decisions of the Supreme Court, viz. N.P. Ponnuswami v. Returning Officer, AIR 1952 SC 64; Hari Vishnu Kamath v. Ahmed Ishaque, AIR 1955 SC 233; Nanhoo Mal v. Hira Mal, AIR 1975 SC 2140; K.K. Shrivastava v. Bhupendra Kumar Jain. AIR 1977 SC 1703 and Mohinder Singh Gill v. Chief Election Commr. New Delhi, AIR 1978 SC 851, and, secondly, after setting out the principles which have been enunciated that having regard to the important functions which the Legislature have to perform in democratic countries, it has always been recognised to be a matter of first importance that election should be conducted as early as possible according to the time schedule and all controversial matters and all disputes arising out of election should be postponed till after the elections are over so that the election proceedings may not be unduly retarded or protracted. This was, as laid down in N.P. Ponnuswami's case, in conformity with this principle that the scheme of election taw in India as well as in England is that no significance should be attached to anything which does not affect the 'election' : and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the election and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition, and not be made the subject of a dispute before any Court while the election is in progress. This principle has been enunciated in N.P. Ponnuswami's case is (supra) and approved in number of later decisions, of course rendered in the context of Representation of the People Act read in the perspective of Art.329(b) of the Constitution of India. The Division Bench, having noted this fact, rules that the principles enunciated and reiterated in those decisions have been projected by the Supreme Court, in those cases where the validity of the elections to the Municipality or the Bar Council or Panchayat were challenged. After referring to Nanhoo Mal's case, Shrivastava's case (both supra) and Bar Council of Delhi v. Surjeet Singh, AIR 1980 SC 1612, and also the Full Bench decision of this Court in Ahmedabad Cotton Mfg. Co. Ltd. v. Union of India. (1977) 18 Guj LR 714 : (AIR 1977 Guj 113), the Division Bench summed up the principles emerging from these various authorities as under.

"38. The following principles emerge from the various authorities cited above

(1) Though the extraordinary jurisdiction of High Court under Articles 226 and 227 of the Constitution is very wide the Court should be slow in exercising the said jurisdiction where an alternative efficacious remedy under the Act is available. However if the impugned order is an ultra vires order, or is a nullity as being ex facie without jurisdiction the question of exhausting the alternative remedy could hardly arise.

(2) It is well recognised on principle and in authority that where a right or liability is created by a statute which gives a special remedy for enforcing it, only the remedy provided by that statute must be availed of.

(3) The right to vote or stand as a candidate at the election is not a civil right but is a creature of a statute or a special law and must be subject to limitations imposed on it. If the legislature entrusts the determination of all matters relating to election to a special Tribunal and invests it with a new and unknown jurisdiction. that special jurisdiction alone could be invoked for enforcement of that right.

(4) In matters of election disputes. the Court should refuse to exercise jurisdiction under Article 226 of the Constitution of India when the statute conferring right to vote or stand at the election prescribes a statutory remedy embracing the disputes pertaining to all aspects of the entire process of election.

(5) Merely because the challenge is to the plurality of returned candidates or for that matter to the entire election, it is fallacious to urge that it can be only redressed by a writ petition.

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(6) It is a well recognised principle and a matter of public importance that elections should be concluded as early as possible according to the time schedule and all controversial matters as well as all disputes arising out of the elections should be postponed till after the elections are over so as to avoid an impediment or hindrance in the election proceedings. In other words, there is a provisional finality in matters pertaining to the various stages of elections.

(7) The bar of estoppel cannot be pleaded against a person challenging the election merely because he takes part in the said election by standing as a candidate or by exercise of his right of franchise therein especially when the impugned election is patently illegal and void ab initio due to the fact such as it being held pursuant to an ultra vires provision in a statute or the Rules. There is no question of approbation and reprobation in case of a person standing or voting at the election, nor is there any bar of laches if he does not challenge such void election at the initial stage and approaches the Court after the said election is over.

(8) Subject to the principle stated immediately hereinabove, if the entire conduct of a petitioner is so eloquent that he can be said to have acquiesced in the act which subsequently he has been complaining as a wrongful act, it maybe one of the factors which the Court exercising jurisdiction under Article 226 of the Constitution in a petition for a writ of quo warranto would bear in mind and may, in appropriate circumstances. refuse to exercise its extraordinary jurisdiction of granting a writ in the nature of quo warranto.

(9) The High Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution, is not required to examine the question when the election is challenged on the ground of it being vitiated at its inception due to the fact such as it being held in pursuance of or in accordance with an ultra vires provision of the statute or the Rules, as to whether the election of a returned candidate is materially affected at such election by operation of the ultra vires provision.

(10) Subject to the principles stated immediately hereinabove, in order to successfully challenge an election by a writ petition on the ground of breach of any mandatory provision contained in the Municipal Act or the Panchayat Act or the Rules thereunder, it must be established that the election of the returned candidate was materially affected thereby."

26. The Division Bench has recognised it on principle as well as in authority that where a right or a liability is created by a statute, which gives a special remedy for enforcing it, only the remedy provided by that statute must be availed of, unless the impugned order is ultra vires or is a nullity as being ex facie without jurisdiction, and in matters of election dispute, the Court should refuse to exercise the jurisdiction under Article 226 of the Constitution when the statute conferring right to vote or stand at the election prescribes a statutory remedy embracing the disputes pertaining to all aspects of the entire process of election. The Division Bench also emphasised that it is a matter of public importance that elections should concluded as earls as possible according to the time schedule and all controversial matters as well as all disputes arising out of the elections should be postponed till after the elections are over so as to avoid an impediment or hindrance in the election proceedings. The Court, therefore, recognisedthat there is a provisional finality in matters pertaining to the various stages of elections. It also ruled that merely because the challenge may be to the plurality of returned candidate or for that matter to the entire election, it cannot be urged successfully that this can be redressed only by a writ petition. It is in the fight of this settled legal position that we have to consider whether this Court has jurisdiction and or should exercise such jurisdiction and consequently interfere and arrest the programme of election when the right, which is clamed in the petition. can be enforced by the special machinery provided in the Act.

27. We are afraid that having regard to the entire context of the challenge in these matters, the respective petitioners cannot successfully invoke the jurisdiction of the Court under Article 226 of the Constitution.

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The reasons are obvious. In all these Petitions, what is claimed by the respective petitioners is either the right to be included in the voters' list and for that matter right to vote or right to object to the inclusion of names of some persons as voters in the voters' list who, according to the objectors, are not qualified to be voters. It cannot be gainsaid that the right to vote and for that mattes right to on test or right to object to the name of any person included in the voters' list is a right which is conferred on the members of the committee comprising of different constituencies or of persons who are entitled to be voters such as the traders having general licences in the market area. This is right which is not recognised in common law but a right conferred by a special statute, and if this right pertains to election and consequently therefore to disputes arising pertaining to election, it can be ventilated and enforced by the machinery provided, if at all any, under that special Act. The process of election is a recognised concept commencing from the stage of preparation of election Rolls to the actual polling though the questions as to whether it relates to the preparation of election rolls which was so far concluded by a seven Judges' Bench of the Supreme Court in N.P. Ponnuswami's case (AIR 1952 SC 64) (supra) in the context of the scheme of election contained in the Representation of People Acts, 1950 and 1951 is doubted to some extent by the latest decision of five Judges' Bench of the Supreme Court in Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman, AIR 1985 SC 1233. The doubt was cast on the position established by the decision in N. P. Ponnuswami's case (supra) that the word "election" is used in Article 329(b) in the wide sense of covering the entire process culminating in the election of the candidate. The doubt was cast in Lakshmi Charan Sen's case (supra) since the five Judges' Bench took the view that the peparation and revision of electoral roll under the Representation of People Act, 1950 is a continuous process not connected with any particular election. The Bench, therefore, found it difficult consistently with that view to hold that the preparation and revision of electoral roll is a part of election within the meaning. of Article 329(b). However, in the light of the conclusion recorded by the Bench that the petitioners before it have not made out any case for grant of the relief claimed by them, it was unnecessary for the Court to decide the question whether the word "election" which occurs in Article 329(b) comprehends the preparation and publication of the Electoral rolls. In other words, the question was kept open so far as it related to the meaning of the word, "election" in Article 329(b) of the Constitution. The Bench, however, expressed its opinion that when such a question arises in general, the facts of each individual case may have to be considered for determining the question whether any particular stage case be said to be part of election process in, that case, and it would not be feasible to formulate a strait-jacket formula which would apply to all cases alike. In support of the new expressed as aforesaid. the Supreme Court relied on one of the passages digested from Halsbury's Laws of England, 2nd Edn. p. 227 which has been extracted and referred to in the judgement of Justice Fazal Ali in N.P. Ponnuswami's case (supra). In spite of our efforts, we have not been able to trace this precise passage in the later editions. The principle digested from Halsbury's laws of England, (2nd Edition) which is to be found under the heading 'Commencement of Election' is in the following terms :

"It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is 'reasonably imminent'. Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any criterion."

On behalf of those petitioners who were canvassing for the view that the Court can exercise jurisdiction under Article 226 of the Constitution in the matters which pertain to electoral roll, this decision in Lakshmi Charan Sen's case (supra) has been pressed into service, and it has been urged on the basis thereof that the preparation of electoral roll cannot necessarily be said to be a part of the election since to determine the question as to whether the Court has jurisdiction or that the Court should exercise the jurisdiction in such cases, we have to look to the scope and

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amplitude of the special remedy provided under the Act, namely, election petition. Now, rule 28 which we have set out above is a provision of a widest amplitude where the validity of the election can be challenged on any ground. The learned Advocate for the petitioners who were praying before the Court for appropriate writs, orders and directions to amend the voters' list as claimed by them, has urged before us that the preparation of the voters' list cannot be said to be a part of the process of election as laid down in Lakshmmi Charan Sen's case (supra). We do not think that Lakshmi Charan Sen's case lays down a general proposition of law as canvassed on behalf of the Petitioners seeking modification of the rolls. No doubt, the Supreme Court in lakshmi Charan Sen's case (supra) found it difficult to hod consistently with the view which they have taken that preparation and revision of the electoral roll was a continuous process not connected with any particular election, that the preparation of electoral roll is a process of election. Even then, the Supreme Court kept that question open in the light of the conclusion reached on the other questions before it. The Supreme Court also expressed the view that when such a question crops up before the Court, it is a question of fact which is to be determined on the facts and in the circumstances of the case. We have, therefore, to examine in the Court instance what is the scheme of the election of the Market Committee under the Act and the Rules.

28. The effect of the conjoint reading of Section 11(1) of the Act with Rules 4, 5, 7, 8 and 10 of the Rules is that there is no escape from the conclusion that the prescribed authorities have to carry out their obligations within the time schedule which is related to the actual date of polling. On plain reading of rule 4, which is the first provision in the Chapter in Part III of the Rules pertaining to the election of Market Committee the Director is obliged to fix the date of election. This is necessary because the preparation of the primary lists of voters for the different constituencies as envisaged under Section 11(i) to (iii) for tile purposes of such a general election to a Market Committee is linked up clearly with the date of election.

To recapitulate, after the date of election is fixed by the Director under rule 4, the Director has to fix a date before which the particulars as specified in Rule 7 for preparation of primary voters' list in respect of the three constituencies as envisaged under Section 11(1)(i) to (iii) are to be furnished to the Authorised Officer, and such date is not to be later than 60 days before the date of general election. The Authorisad Officer is thereafter required to publish the primary list within seven days from the date fixed as aforesaid by the Director. The persons seeking modifications of the voters' list so published have to file their objections within 14 days from the date of the notice publishing the primary voters' list inviting objections in that behalf. The final list prepared on consideration of these objections is also linked up with the date fixed for nomination, and accordingly the final list is to be prepared at least 30 days before the date fixed for the nomination of the candidates for the election. The date of nomination in turn cannot be earlier than 14 days from the date of publication of the notice declaring the stages of election. The election programme which is to be declared under Rule 10 specifying the number of persons to be elected by the respective constituencies, the date on which the nominations are to be filed, the date of scrutiny of the nominations, and the time, date and place or places at which polling would be held and the votes cast therein would be counted, are to be fixed by the Director by publishing a notice in Gujarati which should be not less than 40 days before the date fixed for election. The Conspectus of these rules shows that the entire process of election under the scheme of election of the Market Committee in the Rules is so integrated and revolves round the date of election that it is difficult to agree with the view canvassed on behalf of the petitioners' seeking modification of the electoral roll that the preparation of the electoral roll is not a part of the election, and the election commences only with the declaration of the programme of election. To state it at the cost of repetition, the first stage contemplated under the scheme of election is the declaration, of the date of election by title Director, and having regard to the detailed scheme which

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we have referred to above, it cannot be otherwise since all the different stages of election have been linked up with the date of election. In that view of the scheme of the Act, we are of the opinion that the preparation of electoral roll is an integral part of the process of election. If that is so, the question as to whether the roll should be modified at the instance of persons claiming to be voters or at the instance of persons objecting to the inclusion of the names of some persons in the voters' list is a matter relating to election, and having regard to the fact that it is a right conferred under the Act for which a special remedy has been provided, the Court should not exercise the jurisdiction in the matter since there is a provisional finality in the matters pertaining to various stages of election and. therefore, having regard to the recognised principle in the matter of public importance that election should be concluded as early as possible according to the time schedule and all controversial matters as well as disputes arising out of the election including the right to vote or stand as a candidate should be postponed till after the elections are over so as to avoid impediment or hindrance to the election process, does not arise. In that view of the matter therefore we are of the opinion that this Court should not exercise the jurisdiction under Article 226 of the Constitution by interfering at this stage with the election process. In the view which we have taken on this first question it is not necessary to go into the second question of each of these appeals.

29. We should be consistent with our view and reiterate that if the Court on principle and authority should not exercise the jurisdiction in such matters, pertaining to elections it is proper not to express and opinion on the construction of a rule since the question as to whether a particular person is a voter or not, or continues to be a voter, or is entitled to be included in the voters' list, or entitle to object to inclusion of the names of some persons who, according to the objector are ineligible for being included, are questions which are pre-eminently fit to be decided by the competent election, authorities.

30. In that view of the matter we pass the following orders :

L.P.A. No. 382/85

For the reasons aforesaid, Letters Patent Appeal No. 382 of 1985 is allowed and the original petition being Special Civil Application No. 5620/85 is dismissed. There should be no order as to costs in this appeal.

Interim relief granted by this Court is also vacated and the authorities shall take appropriate action in the matter in the light of this decision.

In view of the above, no order on Civil Application No. 4092, 85 filed in this appeal.

L.P.A. Nos. 430 and 431 of 1985

For the reasons aforesaid, the appeals are dismissed and the orders of the learned Single Judge are confirmed. No order as to costs in these appeals. In view of the above, no orders on Civil Applications Nos. 4328 and 4327 of 1985 filed in these appeals respectively.

L.P.A. Nos. 442, 443, 445 and 446 of 1985

For the reasons stated in this order, and not for the reasons which weighed with the learned Single Judge, the order of the learned Single Judge dismissing the main petitions being Special Civil Applications Nos. 6212/85 and 6213/85 is confirmed Interim relief granted is vacated and the election authorities may take appropriate action in the light of the decision rendered by us in these appeals.

Letters Patent Appeals Nos. 442 and 443 of 1985 are to that extent allowed with no order as to costs.

Letters Patent Appeals Nos. 445 and 446 of 1985 are accordingly dismissed with no order as to costs.

In view of the above, no orders on Civil Applications Nos. 4410/84, 4417/85 and 4418/85.

Order accordingly.

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AIR 1985 GUJARAT 38 "Dalsukhbhai Pitambardas and Co. v. Agrl. Produce Market Committee"

GUJARAT HIGH COURT

Coram : 2 N. H. BHATT AND S. A. SHAH, JJ. ( Division Bench )

Dalsukhbhai Pitambardas and Co. and others, Petitioners v. Agricultural Produce Market Committee and another, Respondents.

Special Civil Appls. No. 2841 of 1979, 476 of 1983. D/- 12 -8 -1983.

Gujarat Agricultural Produce Markets Act (20 of 1964), S.6(1) and S.6(5) - AGRICULTURAL PRODUCE - PRECEDENT - SUPREME COURT - Notification u/s.6(5) - Requirement of publication in Gujarati in newspaper declared mandatory by Supreme Court, and non-compliance held to invalidate notification - State legislature amending S.6(1) and (5) - S.3 of Amending Act, providing that notification issued under unamended S.6(5) shall not be deemed to be illegal merely for non-publication in Gujarati - Held, S.3 of Amending Act was invalid as being ultra vires.

Gujarat Agricultural Produce Market (Amendment and Validation) Act (3 of 1979), S.3

Constitution of India, Art.141.

Precedents - Supreme Court decision - Binding nature.

A notification issued u/S.6(5) of the Gujarat Agricultural Produce Markets Act 1964, was declared invalid by the Supreme Court on the ground of non-publication in Gujarati in a newspaper in the concerned area. The Supreme Court held that the requirement of publication of the notification in Gujarati in a newspaper was mandatory, and non-compliance thereof rendered the notification invalid. Pursuant to the decision of the Supreme Court, the State legislature, through the Gujarati Agricultural Produce Markets (Amendment and Validation) Act 1978, amended S.6(1) and (5) of the principal Act, so as to make the law clear regarding the mandatory requirement of publication of S.6(5) notification in Gujarati in a newspaper in the concerned area, thereby bringing the law in line with the law enunciated by Supreme Court. While amending S.6(1) and (5) in accordance with the judgment of the Supreme Court S.3 of the Amending Act, however, in contravention of the Supreme Court decision, specifically provided that the notification issued earlier under the unamended S.6(5) would not be deemed to be invalid merely for want of publication in Gujarati in a newspaper in the concerned area.

Held that S.3 of the Amending Act which sought to validate the notification which had been declared invalid by the Supreme Court, was ultra vires for the following reasons. The amendment of S.6(1) and (5) had not amended the law in any way whatsoever. On the contrary, it had made the law clear in conformity with the Supreme Court's judgment. In other words, the Legislature had respected what the Supreme Court had said in respect of the requirement of a notification to be published in Gujarati in a newspaper having circulation in the area. There was no alteration in the law and there was no change in the conditions on which the Supreme Court judgment was based. Much less there was fundamental alteration to such an extent that had this amended law been before the Supreme Court the Supreme Court would not have given that decision. In the circumstances, there was no alternative, but to hold that S.3 of the Amending Act was beyond the legislative competence and was therefore, required to be declared ultra vires, AIR 1970 SC 192 Relied on. AIR 1976 SC 2250, Refd. (Para 6)

Cases Referred : Chronological Paras

AIR 1976 SC 263 : 1975 Cri LJ 1993 2, 3, 5

AIR 1976 SC 2250 : 1976 Lab IC 1446 6

AIR 1970 SC 192 6

H.L. Patel in Spl. Civil Applns. No. 2841 of 1979 and 476 of 1983 for Petitioner, S.K. Zaveri (for No. 1). R.R. Shah, Asstt. Govt. Pleader i/b M/s. B.K. and G. (for No. 2) (in Spl. Civil Appl No. 2841 of 1979), and K.G. Vakharia (in Spl Civil Appl No. 476 of 1983), for Respondents.

Judgement

BHATT, J.:- These two Special Civil Applications dealing with a common question of law can be taken up together and disposed of by this common judgment.

2. In order to understand the central question of law agitated by the learned counsel appearing in these two matters, a few facts are required to be stated. The statute which has been called for consideration here is the Gujarat Agricultural Produce Markets Act, 1963, hereinafter referred to as the Act, the successor of the corresponding law of the

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erstwhile State of Bombay, being the Bombay Agricultural Produce Markets Act, 1939. The Commissioner of Baroda division lawfully entitled to exercise the powers conferred on him by sub-s.(3) of S.4-A of the 1939 Act, was pleased to declare the area within the limits of the Godhra Municipality and the further area within the radius of 5 Miles of Godhra taluka as the Market proper. By the notification dated 16th September 1979 issued under the provision of sub-s.(1) of S.5 of the Act the competent Authority, namely the Director of Agricultural Marketing and Rural Finance, Gujarat State, Ahmedabad, was pleased to declare his intention to regulate the purchase and the sale of some more agricultural produces namely, chillies, ginger, onion, etc. in the said market area. By issuing a notification in the official Gazette and publishing it in Gujarati also in a newspaper having circulation in the area and in other manner prescribed by the Rules, he had declared his intention as required under S.5(1) of the present Act. After considering the objections, if any were received he on 16-2-1968 in exercise of powers conferred on him by sub-s.(5) of S.6 of the Act, declared that with effect from the day of publication of the said notification in the official gazette, the Act would apply also in respect of chillies (both dry and green), onion, ginger, etc. Now, it so happened that this notification under S.6(5) of the Act was not published in Gujarati in a newspaper having circulation in the said area and so, the petitioner of the first of the two petitions, Dalsukhabhai Pitamberdas and Company and 11 others ignored the said Notification and did not obtain necessary licence under the Act The respondent No. 1-Market Committee, therefore, had passed its Resolution No. 2 dt. 7-4-1969 to file complaints against those persons for operating in the area without the licence under S.8 of the Act. In all such 12 complaints were filed in the Court of the Competent Judicial Magistrate First Class, Godhra, who was pleased to acquit all of them on the ground that the said notification was abortive in regard to the inclusion of chillies ginger, onion, etc., for want of its being not published in Gujarati in a newspaper having circulation in the said area. Obviously, the Market Committee was not satisfied with this of the learned Magistrate and therefore, carried the matter to this High Court by preferring the Criminal Appeal No. 219 of 1979 filed against one of those 12 persons, namely Govindlal Chhaganlal. They wanted to have it as a test case. This High Court held that the requirement to publish the notification also in a Gujarati newspaper having circulation in the area was only directory and not mandatory. By its judgment dated December 3, 1971, this High Court, therefore, was pleased to allow the said appeal and convict the said Govindlal Chhaganlal and fine him Rs. 10/- or in default to undergo imprisonment for seven days. Said Govindlal Chhaganlal, however, took the matter to the Supreme Court obviously contending that the said provisions regarding publication were mandatory. We have the reported decision of the Supreme Court in that matter. It is the case of Govindlal Chhaganlal v. Agriculture Produce Market Committee, AIR 1976 SC 263. The Supreme Court discharged with the view expressed by the Gujarat High Court and held on interpretation of the relevant provisions of S 6 of the Act that the notification in question was required to be published in Gujarati also in a newspaper having circulation in the said area.

3. The Gujarat Legislature intervened and purported to undo what the Supreme Court had done in the form of declaration law as per Art.141 of the Constitution of India. Ss.6(1) and 6(5) of the Act were amended and there was S.3 of that Amending Act also specifically provided for. In order to understand what the controversy is, we shall reproduce below the unamended Sections, the amended Section and Statement of Objects and Reasons, together with S.3 of that Gujarat Agricultural Produce Markets (Amendment and Validation) Act 1978. For convenience, we shall put these statutory provisions side by side.

Unamended Section Amended Section

6. Declaration of market areas,-

(1) After the expiry of the period specified in the notification issued under S.5 (hereinafter referred to in this section as the said notification) and after considering the objections and suggestions received before the expiry and holding such inquiry as may be necessary, the Director may, by notification in the Official Gazette, declare the area specified in the said notification or any portion thereof to be a market area for the purposes of this Act in respect of all or any of the kinds of agricultural produce specified in the said notification. A notification under this sectionshall also be published in Gujarati in a newspaper having circulation in the said area and in such other manner, as may be prescribed. (1) After the expiry of the period specified in the notification issued under S.5 (hereinafter referred to in this section as "the said notification"), and after considering the objections and suggestions received before its expiry and holding such inquiry as may be necessary, the Director may, by notification in the Official Gazette, declare the area specified in the said notification or any portion thereof to be a market area for the purposes of this Act in respect of all or any of the kinds of agricultural produce specified in the said notification, a notification (under this sub-section) shall also be published in Gujarati in a newspaper having circulation in the said area and in such other manner, as may be prescribed.

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(5) After declaring in the manner specified in S.5 his intention of so doing, and following the procedure therein, the Director may, at any time by notification in the Official Gazette, exclude any area from a market area specified in a notification issued under sub-s. (1) or include any area therein and exclude from or add to the kinds of agricultural produce so specified any kind of agricultural produce.

(Emphasis Supplied) (5) After declaring in the manner specified in S.5 his intention of so doing, and following the procedure therein, the Director may, at any time by notification in the official gazette, exclude any area from a market area specified in a notification issued under sub-s.(1) or include any area therein and exclude from or add to the kinds of agricultural produce so specified any kind of agricultural produce. (A notification under this sub-section shall also be published in Gujarati in a newspaper having circulation in the said area and in such other manner as may be prescribed). (underlined portion - amendment)

Section 3 of the amending Act. Notwithstanding any judgment, decree or order of any Court no notification issued under sub-s.(5) of S.6 of the principal Act before the commencement of this Act shall be deemed to be or ever to have been invalid merely on the ground that such notification was not also published in Gujarati in a newspaper and in other prescribed manner as required by sub-s.(1) of that section and accordingly no exclusion of any area from a market area or inclusion of any area in a market area or exclusion from or addition to the kinds of agricultural produce, any kind of agricultural produce, made before such commencement by such notification shall be deemed to be ever to have been, illegal merely on the ground that such notification was not published in Gujarati in a newspaper and in the other prescribed manner, as required by sub-s.(1) of S.6 of the principal Act"

" Statement of Objects and Reasons"

In Govindlal Chhaganlal v. Agricultural Produce Market Committee, reported in AIR 1976 SC 263, the Supreme Court has held Government notification No. BNN/77/ D dated the 16th February 1968 issued by the Director of Agricultural Marketing and Rural Finance, Agricultural Produce Market Act 1983 adding "Ginger" as an additional agricultural produce to the kinds of agricultural produce in respect of market area of Godhra Shetra Taluka of Panchamahals District to be invalid on the ground that the said notification was not published also in Gujarati in a newspaper as required by sub-s.(1) of S.6 of that Act. It is therefore, considered necessary to validate the said notification and other notifications issued under the said sub-s.(5) which might not have been published also in Gujarati in a newspaper and in the other prescribed manner, and also to amend S.6 of that Act to provide that a notification under sub-s.(5) of the said S.6 shall be published also in a Gujarati newspaper and in the other prescribed manner."

4. Thus there is above mentioned S.3 which purports to validate the notification which was issued earlier as per the unamended S.6(5) of the Act The petitioner of the first of these two petitions, namely, the Special Civil Application No. 2341/79, therefore prays that the Gujarat Agricultural Produce Markets (Amendment and Validation) Act 1978 be declared ultra vires, null and void and the writ of mandamus should be issued restraining the

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any action against the petitioner under the provision of the said Amending Act No. 3 of 1979. In the second of the two petitions, namely, the Special Civil Application No. 476 of 1983, the same conditions are there, but challenge is to the notice Annexure A issued by the very Market Committee on 15-1-1983 calling upon the petitioners on that petition, 10 in number, to procure licence because the earlier Notification issued under S.6(5) of the Act in the case of this Agricultural Produce Market Committee was sought to be validated by the State Legislature and it was assumed that because of that validation, the trafficking in those goods added in the list of agricultural produce covered by the Act was prohibited unless a licence under the Act was procured.

5. Mr. H. L. Patel for the petitioner in both the petitions urged that the Validation Act was invalid, but he made it clear that what was being challenged by the petitioner was only S.3 of the Amending Act which has been reproduced above. As far as the amendment of Ss.6(1) and 6(5) is concerned there is no scope for any challenge, because the legislature has tried by those respective amendments to put the law in line with the law enunciated by the Supreme Court in the case of Govindlal Chhaganlal (AIR 1976 SC 263) (supra). Even a bare look at the above two columns reproducing the amended and unamended Section would show that the Supreme Court interpreted unamended Ss.6(1) and 6(5) to mean that a notification in Gujarat was required to be published in a newspaper having circulation in the area. The word "Section" (as contradicted with the word "Sub-section (1))" was interpreted by the Supreme Court in the case to mean covering the notification both under the Ss.6(1) and 6(5). By the amendment the Legislature accepts this position and puts the law in line with the law enunciated by the Supreme Court. In other words, what was treated by the Supreme Court as implicit has been made explicit by the State Legislature, but it is to be remembered that these amendments are not made retroactive, either expressly of by necessary implication they are brought forth on the statute book as amendments, pure and simple and so, the normal and natural inference that could be drawn would be that according to the State Legislature also, a notification under S.6(5) was required to be published in Gujarati in a newspaper having circulation in the area. That was exactly what the Supreme Court also said in its judgment in the case of Govindlal Chhaganlal. That is why we say that what was implicit as per the interpretation placed on S.6(5) by the Supreme Court has been made explicit by the State Legislature. In other words, there is appreciable or substantial change effected in the provisions of S.6(5). Prior to the amendment a notification under S.6(5) was not purportedly required to be published in Gujarati in newspaper having circulation in the area as per the law declared by the Supreme Court. On and from the date of amendment it will be required to be published so as per the amended portion added to sub-s.(5) of S.6. There is nothing to show that the Legislature tried to amend S.6(5) retroactively. That is why we say that the Supreme Court's interpretation of the law has been given legislative recognition and that is so because what is expected to be done in a system where three wings of Government are expected to function in the respective fields here with mutual regard for one another is done by the Legislature.

6. This brings us to S.3 of the amending Act and here we find that the Legislature seems to have been not properly assisted and its attempt to achieve its objective has unfortunately failed. We have already elaborated above that the law in respect of S.6(5) prior to the amending Act has been retained in the Act. The law about legislature's competence to undo the effects of a valid binding judgment is too well entrenched to call for any elaboration. The Supreme Court in the case of Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality, AIR 1979 SC 192 in para 4 has made the position expressly clear. Though before the Supreme Court there was a taxation statute, the Supreme Court has examined the question on general principles. The following words are reproduced by us below in order to place succinctly the ratio in this case.

"..........A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances............Some times this is done by re-enacting retrospectively a valid and legal taxing provision..............."

We have elaborated above that the amendment of S.6(5) has not amended the law in any way whatsoever. On the contrary, it has made the law clear in conformity with the Supreme Court's judgment. In other words, the Legislature has respected that the Supreme Court had said in respect of the requirement

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of a notification to be published in Gujarati in a newspaper having circulation in the area. There is no alteration in the law and there is no change in the conditions on which the Supreme Court judgment was based. Much less there is fundamental alteration to such an extent that had this amended law would have been before the Supreme Court, the Supreme Court would not have given that decision. We are therefore, having no alternative but to say that S.3 of the Amending Act which is impugned in the first of these two petitions, is beyond the legislative competence and is, therefore, required to be declared ultra vires, but before we say so we would like to examine one argument advanced by Mr. Zaveri on behalf of the respondent-Market Committee. Mr. Zaveri slated that the legislature by amending S.6(1) by putting the word sub-s.(1)" instead of the word "section" clarified its intention and, therefore, it should be understood that according to the legislature, from the date of the enactment the word "Section" was to be read as" sub-s.(1)". It is for the court of law to read the mind of the legislature and it is not for the legislature retroactively to say what was in its mind there in the past. The only way the legislature can do this is to amend the law retroactively. If the legislature wanted to do so this, it could have very well said that the word "section" was to be read as "sub-s.(1)" right from the beginning i.e. from the stage of the enactment had they done so the purpose sought to be achieved by these abortive attempts would have been certainly achieved, but it is not for us to advise the legislature because it is up to them to do what they think fit. Mr. Zaveri had invited our attention to the judgment of the Supreme Court in the case of I. N. Saksena v. State of Madhya Pradesh AIR 1976 SC 2250. The law is only reiterated there and what is reiterated is what we have observed above and not what Mr. Zaveri wanted us to have. Even in this judgment the Supreme Court has said that the validity of the validating law is to be judged by three tests, one of which is whether by validation the legislature has removed the defect which Court had found in the previous law. In the case on hand the Supreme Court said that the word "Section" occurring in S.6(1) was meant to cover not only S.6(1), but S.6(5) also. The legislature by amendment also says that same thing, namely, the requirement of issuance of a notification in Gujarati in a newspaper having circulation in the area. It is because of that we have said that the legislature has acknowledged the requirement found by the Supreme Court.

7. In above view of the matter we allow both the petitions. In the Special Civil Application No. 2841/79 we allow the petition to the extent that S.3 of the Gujarat Agricultural Produce Markets (Amendment and Validation) Act 1978 is invalid. As a consequence the prayer (b) of para 10 of the said petition stands granted. Rule is accordingly made absolute in that petition with costs.

8. In the Special Civil Application No. 476/83 we make the rule absolute by granting the prayer (a) of para 10 of the petition. Rule is accordingly made absolute in that petition also with costs.

Order accordingly.

AIR 1985 GUJARAT 204 "V. A. P. M. Committee v. Vyara Nagar Panchayat"

GUJARAT HIGH COURT

Coram : 1 M. B. SHAH, J. ( Single Bench )

Vyara Agricultural Produce Market Committee, Vyara, Petitioner v. Vyara Nagar Panchayat, Vyara and another, Respondents.

Special Civil Appln. No. 82 of 1979, D/- 20 -9 -1984.

(A) Gujarat Gram and Nagar Panchayats Taxes and Fees Rules (1964), R.2(c) and R.7(2)(a) - PANCHAYAT - AGRICULTURAL PRODUCE - WORDS AND PHRASES - 'Local authority' in R.7(2)(a) - Restricted meaning given under R.2(c) applies - Extended definition under S.3(26) in Bombay General Clauses Act, 1904, does not apply - S.10(2), Gujarat Agricultural Produce Markets Act, deeming a Market Committee thereunder to be a 'local authority' as defined in the General Clauses Act was of no effect - It could not claim exemption from tax under R.7(2) for its houses and lands - However, it can do so, as statutory Corporation.

Bombay General Clauses Act (1 of 1904), S.3(26).

Gujarat Agricultural Produce Markets Act (20 of 1964), S.10(2).

For claiming the benefit of exemption from tax on lands and houses under R.7(2)(a) Gujarat Gram and Nagar Panchayats Taxes and Fees Rules, 1964, the entity owning such lands and houses, inter alia, shall be a 'local

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authority' within the restricted meaning given to that expression by R.2(c) of the said Rules. The fact that it accorded with the extended meaning given to the term in S.3(26), Gujarat General Clauses Act, 1904, was not material. The other conditions laid for entitling the benefit were (1) that they must be used or intended to be used solely for a public purpose and (2) not used or intended to be used for purposes of profit. In this case the Markets Committee constituted under the Gujarat Agricultural Produce Markets Act and deemed to be a 'local authority' as defined by S.3(26), Gujarat General Clauses Act, by virtue of S.10(2) of the former Act was held not entitled to the benefit because the Markets Committee did not fall within the restricted meaning of the term specifically given to it by the said Rule. However, it being a statutory Corporation, it will be entitled to claim exemption if other conditions are satisfied. (Paras 4, 5, 6)

(B) Constitution of India, Art.226 and Art.227 - HIGH COURT - AGRICULTURAL PRODUCE - WRITS - Lands and houses owned by statutory Corporation - Exemption from tax under R.7(2)(b)(2), Gujarat Gram and Nagar Panchayats Taxes and Fees Rules - Condition as to sole user for public purpose and not for profit - Satisfaction of, not probed into in writ petition.

Gujarat Gram and Nagar Panchayats Taxes and Fees Rules (1964), R.7(2)(b)(2).

Satisfaction of the condition of user of the lands and houses owned by a statutory corporation for public and non-profit purposes which entitled it to exemption from tax under R.7(2), Gram and Nagar Panchayats Taxes and Fees Rules, being a question of fact it could not be probed in a proceeding under Art.227 of the Constitution. In the interests of justice a direction to enquire into the question after giving the Corporation an opportunity to adduce evidence in that behalf was given. (Para 7)

S.K. Zaveri, for Petitioner; D.U. Shah, (for No. 1) and, M.B. Gandhi, Asstt. Govt. Pleader, (for No. 2.), for Respondents.

Judgement

ORDER :- The petitioner Vyara Agricultural Produce Market Committee has filed this Special Civil Application against the judgment and order D/-8-12-1978 passed by the Additional Commissioner, Gujarat State, Gandhinagar, in Revision Application No, 182/77 under S.305 Gujarat Panchayats Act, 1961, holding that the petitioner is not entitled to have exemption from tax levied by the Vyara Nagar Panchayat, Vyara - respondent 1.

2. The petitioner-Market Committee was paying tax to the Nagar Panchayat in respect of its buildings and lands as the market yard was within the limits of Vyara Nagar Panchayat. It is the contention of the petitioner that Vyara Nagar Panchayat failed to give facility of public lights within the market yard. Thereafter when the Nagar Panchayat issued bills for taxes for buildings and lands of the petitioner Market Committee, the petitioner refused to pay the taxes and entered into correspondence with the authorities.

3. The Chairman of the Nagar Panchayat thereafter issues a warrant on 20-4-1977 for attachment of the property of the Market Committee for recovery of tax amounting to Rs. 705.35p. and Rs. 55/- as cost of notice of demand. Some property of the petitioner was attached. The petitioner thereupon filed an appeal before the District Panchayat which was numbered as Appeal No. 13/77. The Appellate Committee of the District Panchayat, Surat, by its order D/- 13th July, 1977, allowed the said appeal and held that under R.7, Gujarat Gram and Nagar Panchayats Taxes and Fees Rules, 1964, the buildings of the petitioner Market Committee were exempt from taxation and, therefore, the Nagar Panchayat was directed to refund the tax recovered from the petitioner Market Committee. Against the said order, respondent 1 Vyara Nagar Panchayat preferred a revision application before the Development Commissioner, Gujarat State. After considering R.7(2) and S.10(2), Gujarat Agricultural Produce Markets Act, the Additional Development Commissioner held that the Agricultural Produce Market Committee was not entitled to have exemption as it is not a 'local authority' as defined under R.2(c) Gujarat Gram and Nagar Panchayats Taxes and Fees Rules, 1964.

4. Therefore, the question which requires decision in this case is whether the petitioner - Vyara Agricultural Produce Market Committee is entitled to claim exemption

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under R.7(2), Gujarat"/> Gram and Nagar Panchayats Taxes and Fees Rules, 1964. The said rule is set out below :

"7(2) The following buildings and lands shall be exempted from the levy of tax under sub-r.(1), namely : -

(a) buildings and lands belonging to a local authority and used or intended to be used solely for a public purpose and not used or intended to be used for purposes of profit;

(b)(1) buildings and lands belonging to-

(i) the Gujarat State Road Transport Corporation, and

(ii) the Gujarat State Electricity Board;

(2) buildings and lands belonging to any other statutory corporation used or intended to be used solely for a public purpose and not used or intended to be used for purposes of profit;

(c) buildings and lands belonging to Government whether or not used or intended to be used for purposes of profit;

(d) buildings and lands used solely for religious, educational or charitable purpose;

(e) buildings and lands the capital value of which is less than rupees 100/- or annual letting value of which is not more than Rs. 6/-;

(f) buildings and lands belonging to a Ruler of Indian State as defined in cl.(22) of Art 366 of the Constitution not used or intended to be used for purposes of profit, situated within the limits of the gram or nagar which formed part of such Indian State immediately before the date on which any covenant or agreement referred to in cl.(1) of Art.291 of the Constitution was entered into by such Ruler and in respect of which exemption from a tax on houses and lands was enjoyed by such Ruler immediately before the aforesaid date;

(g) buildings and lands belonging to a member of the personnel of the United States Technical Co-operation Mission not used or intended to be used for purposes of profit;

(h) buildings and lands selected for development under village housing projects scheme;

(i) house sites set apart for landless agricultural workers;"

Sub-rule (2) gives an exhaustive list giving exemption to buildings and lands owned by various bodies. Sub-rule (2)(a) states that buildings and lands belonging to a local authority and used or intended to be used solely for a public purpose and not used or intended to be used for purposes of profit shall be exempted from the levy of tax under sub-r.(1). Therefore, for getting exemption for building and lands it must be (1) of local authority, (2) it must be used or intended to be used solely for a public purpose, and (3) not used or intended to be used for purposes of profit. Now, in this case it is the contention of the Nagar Panchayat that the petitioner is not a local authority and secondly the buildings and lands are not used for the public purpose but they are used for purposes of profit.

5. Rule 2(c) defines the word "local authority" as under : -

"2(c) "Local authority" means-

(1) a Corporation constituted under the Bombay Provincial Municipal Corporation Act, 1949.

(2) a Municipality constituted under-

(i) the Bombay Municipal Boroughs Act, 1925 (Bombay XVIII of 1925),

(ii) the Bombay Municipal Boroughs Act, 1925 (Bombay XVIII of 1925) as adopted and applied to the Saurashtra area and as extended to the Kutch area of the State of Gujarat.

(iii) the Bombay District Municipal Act, 1901 (Bombay III of 1901);

(iv) the Bombay Municipal Act, 1901 (Bombay II of 1901) as adapted and applied to the Saurashtra area of the State of Gujarat, or

(v) any other corresponding law.

(3) a Cantonment Board constituted under the Cantonments Act, 1924 (II of 1924);

(4) A taluka Panchayat or a district panchayat constituted under the Gujarat Panchayats Act, 1961 (Gujarat VI of 1962);"

From this definition it is clear that the agricultural produce market committee is not included within the definition of 'local authority'. The definition prescribed in this rule nowhere states that the word 'local authority' would mean 'local authority' as defined in S.3(26) Bombay General Clauses

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Act, 1904. The definition"/> of 'local authority' is restricted by the rules only to the authorities which are specified in this rule. Therefore, it cannot be said that an extended meaning should be given to the word 'local authority' as defined under S.3(26), Bombay General Clauses Act.

6. Section 10(2), Gujarat Agricultural Produce Markets Act, in terms states that a market committee shall be deemed to be a local authority within the meaning of cl.(26) of S.3, Bombay General Clauses Act, 1904. But under the rules framed under the Panchayats Act for levying taxes and fees R.2(c) gives precise meaning to the word "local authority". As per the said definition, only Municipal bodies constituted under different Acts, Cantonment Board constituted under the Cantonments Act and taluka Panchayats or district panchayats constituted under the Gujarat Panchayats Act would be included. Therefore, even if the market committee constituted under the Gujarat Agricultural Produce Markets Act is deemed to be a local authority within the meaning of cl.(26) of S.3 of the Bombay General Clauses Act, 1904, yet it would not be a local authority for the purposes of taxes and fees levied under the Gujarat Gram and Nagar Panchayats Taxes and Fees Rules. Further, an exhaustive list of the corporate bodies owning buildings and lands within the gram or Nagar Panchayats under R.7(2) clearly indicates that the Legislature intended to give exemption only to those bodies specified in that rule. This rule nowhere states that for the purposes of taxes and fees the local authority would mean the 'local authority' as defined under S.3 cl.(26), Bombay General Clauses Act. Only a restricted meaning is given to the word 'local authority' under R.2(c) of the Rules. Therefore, no extended meaning can be given to the word 'local authority' meaning thereby that it would include all other bodies which would be a local authority within the meaning of cl.(26), S.3 Bombay General Clauses Act. For the purpose of these Rules, 'local authority' would mean only those authorities which are included under the said rule. It is only Municipal bodies, Cantonment Boards or taluka panchayat or district panchayat.

7. The learned advocate for the petitioner further contended that under S.10, Gujarat Agricultural Produce Markets Act, the petitioner is a corporation sole having a perpetual succession and a common seal and, therefore, under R.7(2) the petitioner would be entitled to claim exemption as any other statutory Corporation which uses or intends to use solely for a public purpose and not uses or intends to use for the purposes of profit the buildings and lands belonging to it. There cannot be any doubt that the petitioner is a statutory Corporation. S.10(1) in terms provides that every market committee shall be a body corporate by such name as the Director may specify by notification in the Official Gazette and it shall have perpetual succession and a common seal. It can sue and be sued in its corporate name. Still, however, the question would be whether the buildings and lands belonging to the petitioner are used or intended to be used solely for a public purpose and not used or intended to be used for purposes of profit and this being a question of fact it cannot be considered in this petition which is filed under Art.227 against the judgment and order passed by the Additional Development Commissioner. The Additional Development Commissioner had not decided whether the buildings and lands belonging to the petitioner are used or intended to be used solely for a public purpose and are not used or intended to be used for purposes of profit. As this question is left open and as it was not raised before the District Development Officer that the petitioner is a Corporation which is entitled to claim exemption under R.7(2)(b)(2) it would be in the interest of justice to direct the District Development Officer to decide the matter afresh after giving an opportunity to the petitioner and to the Panchayat to lead necessary evidence on the question whether the buildings and lands belonging to the petitioner are used or intended to be used solely for a public purpose and are not used or intended to be used for purposes of profit.

8. In the result, the petition is partly allowed. The judgment and order at Annexure "B" passed by the Additional Development Commissioner and also the order at Annexure "A" passed by the Appeal Committee, District

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Panchayat, Surat, are quashed and set aside and the matter is remanded back to Appeal Committee, District Panchayat, Surat, for its fresh decision in accordance with law in the light of the observations made above. As the matter is a very old one, the Appeal Committee, District Panchayat, Surat, is directed to decide the matter as far as possible within three months from the receipt of the writ of this Court. Rule made absolute to the aforesaid extent. There will be no order as to costs.

Petition partly allowed.

AIR 1983 GUJARAT 54\* "Z. S. S. Mandali Ltd. v. B. Narsinhaman"

GUJARAT HIGH COURT

Coram : 1 S. B. MAJMUDAR, J. ( Single Bench )

Zandala Seva Sahakari Mandali Ltd. and others, Petitioners v. B. Narsinhaman and others, Respondents.

Special Civil Appln. -No. 543 of 1981, D/- 21 -6 -1982.

(A) Gujarat Agricultural Produce Markets Rules (1965), R.7, R.4, R.8, R.11 and R.28(1) - AGRICULTURAL PRODUCE - ELECTION - CO-OPERATIVE SOCIETIES - Preparation of voters' list under R.7(2) - No duty is cast on Authorised Officer to invite co-operative societies to communicate names of their managing committee members for inclusion in voters' list - Held, even assuming otherwise voters' list and elections were not invalidated, as said societies could have got names included in voters' list under R.8(1) or their candidates could have contested elections as agriculturists under Section 11 (1) of Act Without being voters.

Gujarat Agricultural Produce Markets Act (20 of 1964), S.11(1)(i) r/w. S.2(ii) and S.14.

In the settings of Rules 4 and 7, no statutory duty is cast on the authorised Officer by rules themselves to invite the concerned societies dispensing agricultural credit in the market area to communicate to him the full names of the members of their managing committees so that he can prepare the list of voters wherein he can include their names. Moment the concerned societies come to know about the date of general election as fixed by Rule 4 and moment they come to know the date fixed by the Director as per Rule 7, for communication of the names of their managing committee members for inclusion in the voters' list to be prepared by the authorised officer, it is for the concerned societies to move in the matter. They are not expected to wait for an invitation from the authorised officer to despatch such names. This type of a statutory obligation on the part of the authorised officer cannot be culled out from the express language of R.7.

Held, even assuming that the Authorised Officer ought to have seen that the circular issued by him did reach the petitioners, it would not advance the case of the petitioners. The only effect of the non-receipt of the circular was that the petitioners-societies did not know the last date by which they had to communicate the names of their managing committee members to the authorised officer for being included in the list of voters. But they had still locus poenitentiae under Rule 8. The petitioners had ample opportunity under R.8 to apply to the authorised officer to get the names of their managing committee members included in the provisional voters' list on the ground that these names were wrongly left out while preparing the provisional voters' list. The names of the managing committee members of the petitioner-societies did not find place in the final list prepared by the authorised officer only because the petitioner societies were negligent in the matter and did not comply with the requirements of Rules 8 (1) and 8 (2) and lost the opportunity granted to them by these provisions. Even on that ground, the petitioners could not be permitted to challenge the result of the election on the allegation that there was any technical flaw or procedural error at the end of the authorised officer in complying with R.7 of the Rules. (Para 13)

Further, so far as candidates from the agriculturists' constituency were concerned, any agriculturist could have put forward his claim to be elected from that constituency. Merely because his name was not included in the voters" list, he could not have been prevented

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from offering his candidature from the agriculturists' constituency having regard to the provisions of Section 11 (1) (i) r/w. Section 2 (ii), Section 14 and Rr.11 and 28. Therefore, taking the grievance of the petitioners at the highest, members of their managing committee could not get their names included in the voters' list and lost their right of franchise. But nobody prevented them from offering contest as candidates from the agriculturists' constituency even though they were not shown to be voters. Thus, even if the petitioners' contention was accepted and it was held that their managing committee members were wrongly excluded from the voters' list, the result of election from the agriculturists' constituency would not be affected at all as the aforesaid flaw or error in preparation of the voters' list would have no effect whatsoever on the uncontested election of 8 agriculturists from the agriculturists' constituency. As there were 8 seats and 8 candidates and as no other candidate came forward to contest, there was no question of holding any election. Consequently, there arose no occasion for any voter to exercise his franchise. In the peculiar facts of the case, therefore, the alleged technical flaw in the preparation of the final voters' list for agriculturists' constituency had no effect whatsoever much less any material effect on the result of the election from the agriculturists' constituency, which results were sought to be challenged on the alleged technical flaw. (Para 14)

(B) Gujarat Agricultural Produce Markets Rules (1965), R.7(1), Proviso - AGRICULTURAL PRODUCE - ELECTION - Compliance - Date of elections fixed on 15-2-81 and 25-11-80 fixed for communication of names of members of managing committees of concerned societies - Held, as more than 60 days were available between the 2 dates, proviso, which prescribed minimum 60 days, was complied with - Proviso did not prescribe that date of communication of names should fall within 60 days of date of elections. (Para 15)

Miss K.M. Shah, for Petitioners; V.H. Bharaviya for M/s. Bhaishanker Kanga and Girdharlal, (for Nos. 1 to 3), for Respondents.

\* Only portions approved for reporting by High Court are reported here.

Judgement

ORDER :- In this petition, two co-operative societies through their respective Chairman have challenged the general elections to agricultural produce market committee, Varahi, dist, B'kantha from agriculturists' constituency as contemplated by Section 11 (1) (i) of the Gujarat Agricultural Produce Markets Act, 1963, (hereinafter referred to as 'the Act'). The present petition is filed under Article 226 of the Constitution of India.

2. In order to appreciate the grievance of the petitioners, it is necessary to note a few relevant facts leading to the present petition. The petitioners claim to be Seva Sahkari Mandalis falling under the category of co-operative societies dispensing agricultural credit in the Varahi market area in Santalpur taluka of Banaskantha district The petitioners are duly registered under the provisions of the Co-operative Societies Act, 1961. Respondent No. 4 herein is agricultural produce market committee duly registered under the said Act. It is also required to function as per the statutory provisions of the Act and the rules framed thereunder which are named and styled as the Gujarat Agricultural Produce Markets Rules, 1965 (hereinafter referred to as 'the Rules'). The term of the 4th respondent was to expire in 1980. As per Section 10 (1) of the Act, every market committee shall be a body corporate by such name as the Director may specify by a notification in the official gazette. As the term of the 4th respondent was coming to a close, general elections were required to be held as provided by Section 15 of the Act. The petitioners-societies claim to be entitled to vote at the said general elections to 4th respondent from the agriculturists' constituency as provided by Section 11 (1) (i) of the Act which lays down that "Every market committee shall consist at the following members, namely (i) 8 agriculturists who shall be elected by members of managing committees of co-operative societies (other than co-operative marketing societies) dispensing agricultural credit in the market area." According to the petitioners, as they were co-operative societies dispensing agricultural credit in the market area of the 4th respondent, they were entitled to vote at the ensuing general elections for electing 8 agriculturists from that constituency to be members of the proposed newly constituted market committee. According to the petitioners, formerly general elections of 4th respondent were to be held somewhere in beginning months of 1980, but thereafter the said elections were postponed. The Director of Agriculture Marketing and Rural Finance, Gujarat

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State, respondent No. 1 herein subsequently fixed fresh date of general elections to respondent No. 4, committee and the said date was fixed as on 15-2-1981 and for that purpose, time table laying down the various stages leading to the general elections was duly published by the first respondent. The contention of the petitioners is that as per the provisions of the relevant election rules, the authorised officer had to inform the concerned voters like the petitioners to communicate full names of the members of their managing committees with the place of residence of each member to the authorised officer so that he can prepare provisional voters' list. According to the petitioners, the authorised officer who is present respondent No. 3 did not inform the petitioners about the last date by which they were to send details of names of their managing committee members as required by Rule 7 (1) of the rules, with the result that the petitioners were deprived of the opportunity to send this information to the authorised officer and as a corollary thereof, names of the managing committee members of the petitioner-societies did not get included in the provisional voters' list or for that matter in final voters' list as prepared by the authorised officer under the provisions of the relevant rules. Consequently, the members of the managing committees of the petitioner-societies were deprived of their fight of franchise which otherwise they would have exercised as voters for electing 8 agriculturists from the agriculturists' constituency as laid down by Section 11 (1) (i) of the Act. The petitioners further state that the date for filing up nomination forms was fixed by the Director as 1-2-1981 while the date of scrutiny of the forms was fixed on 3-2-1981. The last date for withdrawal of nomination forms was fixed as 6-2-1981. That by that time, various agriculturists in the taluka who could have contested could not fill up their nomination forms as per the aforesaid time schedule as on the date fixed for filling up the nomination forms that is on 1-2-1981, elections were held in Santalpur taluka for electing members to the Taluka Panchayat and District Panchayat. The result was that for 8 seats of agriculturists, only 8 candidates effectively offered their nomination forms and in any case on 6-2-1981, which was the last date for withdrawal of nomination forms, only 8 agriculturists remained in the field contesting for 8 seats. Therefore, there was no contest and all these 8 candidates who are present respondents Nos. 5 to 12 were declared elected uncontested as per the provisions of Rule 18 (2) of the rules from the agriculturists' constituency.

3 to 5. xx xx xx xx

6. Miss K.M. Shah, learned Advocate for the petitioners raised the following contentions in support of the petition.

(1) As per Rule 7 (1) (i) of the rules, the authorised officer was duty bound to inform the petitioner-societies to communicate to him the full names of the members of the managing committees of the petitioner-societies so that the petitioner-societies could send those names to be included in the provisional voters' list to be prepared under Rule 5 of the rules. She submitted that in the present case, even though the authorised officer issued a circular dated 14-11-1980 a copy of which is annexed as Annexure-'A' to the petition which purports to have been addressed to all agricultural credit societies working in Santalpur taluka, so far as the petitioner-societies, and also five other societies whose names are mentioned in para 6 of the petition, are concerned, they were never informed of or served with such circular. Consequently, they never knew that they had to send names of the members of their managing committees by a particular time to get their names included in the voters' list for being voters at the agriculturists' constituency as required by Section 11 (1) (i) of the Act. Consequently, the provisional voters' list as prepared by the authorised officer suffers from a patent error of law. Final voters' list equally suffers from the same infirmity, and hence, the alleged uncontested elections of respondent Nos. 5 to 12 from the agriculturists' constituency was liable to be quashed and set aside as null and void on account of these vital technical flaws on the part of the authorised officer.

(2) As a result of the aforesaid infirmity in following the mandatory procedure of Rule 7, all the subsequent stages of election got vitiated and hence, the result of the election has been materially affected with the consequence that the election has been rendered a nullity,

(3) It was further contended by Miss Shah that as per proviso to Rule 7 (1) (i) of the rules, the date to be fixed for inviting

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the concerned co-operative societies dispensing agricultural credit in the market area to communicate full names of the managing committee members was required to be so fixed as not to be later than 60 days from the date of the general elections to the 4th respondent committee and in the present case, this statutory provision of the proviso had been violated by the first respondent as well as by the third respondent and hence the election to the 4th respondent committee from agriculturists' constituency was null and void on this additional ground.

7 to 11. x x x x

12. So far as the first contention raised by Miss Shah is concerned, it centres round the correct interpretation of the relevant rules. Rule 4 of the rules provides for fixation of date of election and states that wherever a general election to a market committee or a by-election under Section 15 is to be held, the Director shall, by an order in writing, fix a date of such election and publish such order by affixing a copy thereof in the office of the market committee and at a conspicuous place in the principal market yard in the market area. It is, therefore, obvious that a statutory duty is enjoined upon the Director to pass an order in writing fixing the date of general election or bye-election as the case may be and the said order is to be published in manner prescribed by Rule 4. Moment this is done, Rule 7 springs into action. It states -

"(1) Whenever general election to a market committee is to be held -

(i) every co-operative society dispensing agricultural credit in the market area shall communicate the full names of the members of its managing committee together with the place of residence of each member;

(ii) The market committee shall communicate the full names of the traders holding general licences in the market area together with the place of residence of each such trader and

(iii) every co-operative marketing society shall communicate the full names of the members of its managing committee together with the place of residence of each such member.

To the authorised officer before such date as the Director may by order fix in that behalf".

It is, therefore, obvious that once the date of general election to the market committee is duly published under Rule 4, the concerned co-operative society dispensing agricultural credit in the market area has to supply requisite information to the authorised officer and that has to be done before the specified date for the purpose as may be fixed by the Director by his order. It is true that so far as such order to be passed by the Director is concerned, no provision for its publication has been laid down in Rule 4, as Rule 4 merely deals with publication of the order passed by the Director in writing fixing date of election. The said rule is silent about the publication of order of the Director fixing the date by which the concerned society dispensing agricultural credit in the market area has to supply the requisite data to the authorised officer. But it is obvious that no order passed by the officer and which requires compliance by the concerned party can be permitted to remain in secret confines of the files of such officer. In order that such requisition by the Director is properly complied with by the parties for whom it is meant, such order has got to be conveyed to them. It is, therefore, obvious that while fixing the date of general election or even subsequently, the Director exercising his power under Rule 7 has to pass an order fixing the date by which the concerned co-operative societies dispensing agricultural credit in the market area have to supply requisite information as required by Rule 7(1)(i) to the authorised officer. Such an order has got to be communicated to the concerned societies by any well recognised permissible mode. In the present case, it is Miss Shah's contention that the said date as fixed under Rule 7 by the Director was tried to be communicated to the concerned societies by the authorised officer, respondent No. 2 herein by issuing a circular dated 14-11-1980 a specimen whereof is annexed at Annexure-'A' to the petition. A mere look at the said circular shows that copies of the said circular were sent to all the co-operative societies dispensing - agricultural credit in the market area in Santalpur taluka as the very first endorsement below the caption "copies sent with compliments' at Annexure-'A' shows. But Miss Shah's contention is that even though this circular was meant to be sent to all the cooperative societies dispensing agricultural credit in the market area in Santalpur taluka, so far as the petitioner-societies are concerned, they were not

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called upon by the 2nd respondent to supply details. In short, her contention is that even though efforts, were made by respondent No. 2 to serve the circular at Annexure-'A' to the concerned societies, so far as the petitioner-societies were concerned, they were not served the aforesaid circular, meaning thereby that the circular did not reach the petitioners' end. The aforesaid averments made in para 6 of the petition have stood uncontroverted on the record of this case, as the respondents have not filed any affidavit in reply. It must, therefore, be taken as an undisputed fact on the record of this case that so far as the petitioners are concerned, they were not served with copies of the circular at Annexure-'A'. Even the letter written by one of the petitioner-societies on 3-1-1981 addressed to the District Registrar of co-operative societies, Banaskantha, Annexure-'B' shows that a grievance was made to the aforesaid effect by the concerned societies. But even taking this fact as well established fact, the question remains whether it has any nullifying consequence on the result of the election. The only challenge on this score in the petition proceeds on the basis that as per Rule 7 a mandatory duty is cast on the authorised officer to invite the concerned co-operative societies to communicate full names of the members of their managing committees so that these names can be included in the voters' list which the authorised officer has to prepare as per Rule 7 (2) read with Rule 5 of the rules. Be it noted that it is not the contention of the petitioner societies that the date fixed by the Director for requiring the concerned societies dispensing agricultural credit in the market area to communicate the data as for Rule 7 (1) (i) was not conveyed to the concerned societies or was otherwise not known to them. The case of the petitioners is that there was a mandatory duty on the part of the authorised officer to inform the concerned co-operative societies to send the data as required under Rule 7 (1)(i) by the time fixed by the Director. In the settings of Rule 7 (1), the said contention appears to be misplaced. Rule 7 (1) nowhere enjoins upon the authorised officer to call upon the co-operative societies dispensing agricultural credit in the market area to communicate to him full names of the members of the managing committee as required by Rule 7 (1) (i). On the contrary, reading. Rule 4 in juxtaposition with Rule 7 (1), it appears clear that the moment date of general election is published as per Rule 4, the concerned cooperative societies which are expected to get knowledge of the date of general election as per the publication made under Rule 4, have to communicate full names of their members as laid down by Rule 7 (1) (i). It is not for the authorised officer to call upon them to furnish such names by a particular time. It is, however, to be noted that so far as the date before which the said communication is to be made to the authorised officer by the concerned societies as per Rule 7 (1) (i) is concerned, it has got to be fixed by the Director and the said date must be brought to the knowledge of the concerned societies. It is not possible to agree with the submission of Mr. Zaveri for respondent No. 1 that it would be due compliance with Rule 7 (1) by the Director it he fixes the last date before which the concerned societies have to communicate full names of their managing committee members to the authorised officer and that such order need not be brought to the notice of the societies by the Director. As already observed by me earlier, the said order is required to be complied with by third parties and before they can be called upon to comply with the said order, they must know the last date fixed by the Director for the purpose. Thus, it would be for the Director to fix such date by an order as required by Section 7 (1) of the rules and it would be for him to devise proper machinery by which the said order is communicated to the concerned societies. But so far as the authorised officer is concerned, there does not appear to be any statutory obligation on his part independently of the directions of the Director to invite the concerned cooperative societies dispensing agricultural credit to send to him the names of their managing committee members. To recapitulate, it is not the contention of the petitioner-societies that the Director failed to discharge his statutory obligation of bringing his order fixing the date for communication of the names of the managing committee members of the co-operative societies to the knowledge of the petitioner societies, instead, their contention is that the authorised officer was duty bound to do so and as he failed to do so, the result of the election is

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materially affected, Even leaving aside the question whether the result of the election is materially affected or not, which will be examined a little later by me, so far as the first contention of Miss Shah is concerned, it must be rejected only on the limited ground that in the settings of Rules 4 and 7, no statutory duty is cast on the authorised officer by rules themselves to invite the concerned societies dispensing agricultural credit in the market area to communicate to him the full names of the members of their managing committees so that he can prepare the list of voters wherein he can include their names. Moment the concerned societies come to know about the date of general election as fixed by Rule 4 and moment they come to know the date fixed by the Director as per Rule 7, for communication of the names of their managing committee members for inclusion in the voters' list to be prepared by the authorised officer, it is for the concerned societies to move in the matter. They are not expected to wait for an invitation from the authorised officer to despatch such names. This type of a statutory obligation on the part of the authorised officer cannot be culled out from the express language of Rule 7. The only obligation which has been cast on the authorised officer under Rule 7 (2) is to the effect that within 7 days from the date fixed under the said Rule 7 by the Director for the purpose of communication of the name of the managing committee members by the concerned societies, the authorised officer has to cause to be prepared the list of voters as required by Rule 5 on the basis of the information supplied to him by such societies and if necessary, he can make such inquiry as he may think fit. Thus, the authorised officer's role comes into action after he is supplied all the necessary data by the concerned societies and within 7 days of the date fixed for receipt of such data, he has to start preparation of provisional voters' list. In view of the aforesaid clear provisions of Rule 7, it is not possible to agree with Miss Shah that Rule 7 casts an obligation on the authorised officer to invite the concerned societies to send names of the members of their managing committees to be included in the provisional list of voters. As already seen earlier, the obligation of the Director to fix a date for calling upon the concerned societies to send the aforesaid data to the authorised officer concerned and to communicate such date to the concerned societies can easily be culled out from the settings of Rule 7, When the petitioner-societies have not contended that the Director has failed to discharge his statutory obligation under Rule 7, I need not dilate on this aspect any further. However the first contention of Miss Shah seeking to cart a statutory obligation on the authorised officer to inform the concerned societies and to invite them to send the names of their managing committee members has got to be repelled on the express language of Rule 7.

13. But even otherwise, it appears clear that the petitioners cannot advance their case an inch further even on the assumption that the authorised officer ought to have seen that the circular issued by him did reach the petitioners' end. In the background of the pleadings between the parties, it may be taken for granted for the purpose of this petition that the circular at Annexure 'A' in fact did not reach the petitioners. But that by itself is neither here nor there. The only effect of the aforesaid fact is that the petitioners-societies did not know the last date by which they had to communicate the names of their managing committee members to the authorised officer for being included in the list of voters. But they had still locus poenitentiae under R.8. It provides -

"(1) As soon as a list of voters is Prepared under Rule 5, it shall be published by the authorised officer by affixing a copy thereof at the office of the market committee and at some conspicuous place in the principal market yard in the market area along with a notice stating that any person whose name is not entered in the list of voters and who claims that his name should be entered therein or any person who thinks that his name or the name of some other person has been wrongly entered therein or has not been correctly entered, may within fourteen days from the date of the publication of the notice, apply to the authorised officer for an amendment of the list of voters".

Sub-rule (2) of Rule 8 Provides -

"If any application is received under sub-rule (1), the authorised officer shall decide the same and shall cause to be prepared and published the final list of voters after making such amendments therein as may be necessary in pursuance

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of the decision given by him on the application. The final list shall be prepared at least thirty days before the date fixed for the nomination of candidates for the election."

The aforesaid Rule 8 makes it clear that moment the authorised officer prepares provisional list of voters; he has to publish it in the manner provided by Rule 8. That publication would be the necessary notice to the concerned parties who have anything to say about the legality of the said list. If the petitioners' contention is that they could not send the names of their managing committee members to the authorised officers because circular at Annexure-'A' did not reach them and even accepting their contention to be true in the background of the pleadings between the parties, the petitioners had ample opportunity under R.8 to apply to the authorised officer to get the names of their managing committee members included in the provisional voters' list on the ground that these names were wrongly left out while preparing the provisional voters' list. It is not the case of the petitioners that the authorised officer had not followed the legal requirements of Rule 8 and had not published the provisional voters' list in the manner required by Rule 8. Even otherwise, the presumption under Sec.114 of the Evidence Act can arise in such a case, therefore, it is obvious that the petitioners were negligent. They never cared to get inspected the provisional voters' list prepared by the authorised officer. Otherwise, they would have immediately detected the flaw in the provisional voters' list which according to them did not include the names of their managing committee members and they could have promptly applied within 14 days for correction of the voters' list as per Rule 8 (1), and if they had done so, the authorised officer was duty bound under Rule 8 (2), to get provisional voters' list duly corrected. This locus poenitentiae available to the petitioners was lost by them due to their own negligence. Thereafter, they cannot now turn round and make a grievance to the effect that because of non-communication of the date fixed for forwarding names of the managing committee members to the authorised officer under Rule 7 (1), they could not get these names included in the voters' list prepared at the end of the authorised officer, if at all any one is to be blamed for this predicament, the petitioners themselves are to be blamed. For their negligence, they cannot hold others responsible and cannot urge on that ground that the result of the election should be set aside. The names of the managing committee members of the petitioner-societies did not find place in the final list prepared by the authorised officer only because the petitioner-societies were negligent in the matter and did not comply with the requirements of Rules 8 (1) and 8 (2) and lost the opportunity granted to them by these provisions. Even on that ground, the petitioners cannot be permitted to challenge the result of the election on the allegation that there was any technical law or procedural error at the end of the authorised officer in complying with R. 7 of the rules

14. That takes me to the consideration of the second contention raised by Miss Shah for the petitioners. She submitted that if her first contention is accepted, and if it is held that the authorised officer had committed breach of the mandatory duties cast upon him by Rule 7 and as a result, the petitioners were deprived of their opportunity to get the names of the managing committee members included in the final voters' list, it must be held as a logical corollary that these voters lost an opportunity to exercise their franchise in the election and consequently, the result of the election is materially affected. As submitted by Miss Shah, in all 67 such voters who were managing committee members of 7 agricultural credit co-operative societies in Santalpur taluka did not know about the issuance of the circular at annexure-'A' and could not communicate the names of their managing committee members to the authorised officer for getting them included in the voter's list. This contention of Miss Shah assumes that there was any procedural error or technical flaw at the end of the authorised officer in preparing the voters' list. I have already shown above while discussing point No. 1 that in fact, there was no such technical error or flaw on the part of the authorised officer in preparing the final voters' list and the error it any, in preparation of the final voters' list squarely rests at the doors of the petitioner-societies. Hence, strictly speaking, consideration of the second contention does not arise for decision. But even assuming that it arises and even accepting for the sake of argument that there was any procedural

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flaw on the part of the authorised officer in preparing the final voters' list as a result of which the managing committee members of the petitioners societies lost their right of franchise, it is still to be seen whether the result of the election from the agriculturists' constituency is in any way thereby materially affected. It is obvious that if the result is not materially affected, it cannot be set aside merely on the ground of such alleged technical flaw in the preparation of the voters' list. Under section 11 of the Act, constitution of market committee has been provided for. Sub-section (1) of Section 11 provides :

"(1) Every market committee shall consist of the following members, namely :-

(i) eight agriculturists who shall be elected by members of managing committees of co-operative societies (other than co-operative marketing societies) dispensing agricultural credit in the market area".

We are not concerned with other constituencies. So far as agricultural constituency is concerned, 8 agriculturists can get elected to the market committee, from the said constituency and for that, electoral college consists of representatives of marketing committees of cooperative societies dispensing agricultural credit in the market area and which are other than marketing societies. The petitioners claim to be such co-operative societies dispensing agricultural credit in the market area and contend that the members of their managing committees could have legitimately been included in the electoral college of voters who could have voted for candidates contesting for the seats of 8 members and could have exercised their franchise for electing them to the market committee. Sub-section (ii) of Sec.2 defines 'agriculturist' to mean "a person who ordinarily by himself or who by his tenants or hired labour or otherwise is engaged in the production or growth of agricultural produce, but does not include a trader or broker in agricultural produce although such a trader or broker may also be engaged in the production or growth of agricultural produce". Reading Section 11 (1) (i) with Section 2 (ii), it is obvious that any agriculturist who answers the requirements of Section 2 (ii) can contest for one of the 8 seats of agriculturists from the agriculturists' constituency and for getting elected therefrom to the market committee. It is not necessary for such an agriculturist to be a member of the managing committee of the concerned co-operative society. Even though he is not such a member and even though he is not a voter included in the electoral college envisaged by Section 11 (1) (i), if he is an agriculturist, he can contest the election from that constituency, only requirement to be a candidate from this constituency is that he should be an agriculturist as required by S.2 (ii). As per Section 3, when a question arises whether or not any person is an agriculturist for the purposes of the Act, the Director shall decide the matter, subject to an appeal to the State Government under Section 3 (2). The aforesaid statutory provisions, therefore, show that for being elected as a member to the market committee from the agriculturists' constituency, the concerned candidate need not himself be a voter for the said constituency and all that is required of him is to show that he is an agriculturist so as to get qualified to be a candidate from the agriculturists' constituency, section 14 of the Act also points out in the same direction. The said section concerns with disabilities from continuing members. Sub-sec.(1) thereof provides :-

"An elected or nominated member shall cease to hold office as such member if -

(i) he ceases to be a member of the electorate by which he was elected; or

(ii) he being a member of the class specified in clause (i) of sub-section (1) of Section 11 is granted a general licence under this Act : or

(iii) he being a member nominated by a local authority, ceased to be a councillor, or as the case may be a member of local authority, or is granted a general licence under this Act".

The aforesaid provisions of Section 14 indicate that if a member has been elected from the agriculturists' constituency contemplated by Section 11 (1) (i), he will cease to hold his office as a member if he is granted a general licence under the Act as laid-down by Section 14 (1) (ii). It is not required of him to cease to be a member of the electorate by which he is elected to incur such disability. Section 14 (1) (i) on the other hand contemplates those members who are voters in the electorate from which they are elected. They obviously refer

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to the constituencies contemplated by Section 11 (1) (ii) and (iii) which provides for four members to be elected in the prescribed manner from amongst themselves by the traders holding general licences and two representatives of the co-operative marketing societies situated in the market area and holding general licences, to be elected from amongst the members (other than nominal, associate or sympathiser members) of such societies by the members of the managing committees of such societies. It is, therefore, obvious that in order to contest from the traders' constituency, as laid down by Section 11 (1) (ii) or from the constituency of co-operative marketing societies, as laid down by S.11 (1) (iii), the concerned candidate has to be a voter in the said constituency. But so far as the agriculturists' constituency is concerned, it stands on its own and in order to be a candidate in such a constituency, all that is required of him is to answer the test of an agriculturists as laid down by section 2 (ii) of the Act read with Section 11 (1) (i), and that is why, while laying down disabilities from continuing as a member of the marketing committee, the legislature in Section 14 has maintained a clear distinction between the members elected from agriculturists' constituency on one hand and members elected from other constituencies as provided by Sections 11 (1) (ii) and 11 (1) (iii) on the other. The aforesaid statutory provisions leave no room for doubt that so far as agriculturists are concerned, they can stand at the election for being members of the market committee from the agriculturists' constituency without themselves being voters from the said constituency. The same legislative intention is further highlighted by the relevant rules. Rule 11 (1) may be noted in this connection. Rule 11 (1) states :-

"Each candidate for election shall, on the date fixed under clause (b) of sub-rule (2) of Rule 10 deliver to the election officer a nomination paper in form I".

Sub-rule (2) of rule 11 states :-

"Every nomination paper shall be signed as proposer by a person qualified to vote at the election and the candidate shall sign a declaration on it expressing his willingness to stand for election." Sub-rule (2) clearly distinguishes between a candidate and a proposer. A proposer is required to be a voter at the election; while a candidate may not be a voter at the election. As seen above, the legislature itself has contemplated that out of three constituencies from which members can be elected to a market committee, for one constituency of agriculturists members, the candidate concerned may not be a voter at the said constituency and still, if he is an agriculturist, he can contest elections from the said constituency. Form No. 1 which prescribes the form of the nomination paper also clearly indicates that so far as proposer is concerned, his number in the voters' list is to be mentioned in the nomination paper as per clause 9. But so far as a candidate is concerned, there is no such requirement of mentioning his name in the voters' list for the obvious reason that form No. 1 is a general form which can be availed of by prospective candidates from different constituencies for being elected to the market committee and at least for one constituency, viz. agriculturists' constituency, the candidate concerned may not be a voter at the said constituency. Rule 28 is another rule which also sheds light on this question. As per rule 28 (1) :-

"If the validity of any election of a member of the market committee is brought in question by any person qualified either to be elected or to vote at the election to which such question refers such person may, within seven days after the date of the declaration of the result of the election apply in writing." On the express language of Rule 28 (1), it appears clear that any person who is qualified either to be elected or to vote at the election can file election application challenging the result of the election from the concerned constituency. Thus, he need not be a voter at the concerned constituency. Still, if he can show that he is qualified to be elected from the constituency, he can challenge the result of the election from that constituency. An agriculturist even though not a member of the electorate and, therefore, not a voter in the agriculturists' constituency can contest the election from that constituency and can stake his claim for one of the eight seats of agriculturists and for any reason if he fails, he can maintain election petition under Rule 28 by an application that he is a person qualified to be elected from that constituency even though he may not be a voter in the constituency. If the legislature had contemplated that only a

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voter can contest election from a given constituency, Rule 28 would have provided that only a voter from the given constituency would be eligible to maintain election application. But in view of the legislative intention to the contrary as reflected by the aforesaid relevant statutory provisions, Rule 28 had to fall in line and had to provide a locus poenitentiae to a non-voter also to maintain election petition provided he establishes his contention that he is qualified to contest from a given constituency even if he is not a voter at that constituency. This discussion obviously will be applicable only to the agriculturists, constituency as laid down by Section 11 (1)(i) and not to the rest of the two constituencies envisaged by Section 11 (1)(ii) and (iii). So far as the facts of the present case are concerned, petitioners challenge the election of the market committee only from the agriculturists' constituency and not from any other constituency. Therefore, their challenge will have to be considered in the light of the aforesaid legal position which emerges on the record. It must, therefore, be held that for contesting election from the agriculturists' constituency, it was not necessary for any one to be voter in the said constituency. In the present case, the admitted facts are that the date of the election was fixed as 15-2-1981. The last date for filing the nomination forms was fixed on 1-2-1981. The date of scrutiny of forms was fixed as 3-2-1981 and the last date for withdrawing the nomination forms was fixed on 6-2-1981. It is an admitted position that for 8 seats from agriculturists' constituency, after the last date for withdrawal of the forms was over, there remained only 8 candidates in the field. Consequently, these 8 candidates were declared elected uncontested from the agriculturists' constituency on 6-2-1981 itself. Once this happened, it is obvious that there was no question of holding any election for agriculturists' constituency whereat any voter could exercise right of franchise. That occasion never arose for any of the voters from the agriculturists' constituency in view of the aforesaid peculiar facts. So far as candidates from the agriculturists' constituency were concerned, any agriculturist could have put forward his claim to be elected from that constituency. Merely because his name was not included in the voters' list, he could not have been prevented from offering his candidature from the agriculturists' constituency, in the light of the legal position discussed by me earlier. Therefore, taking the grievance of the petitioners at the highest, members of the managing committee could not get their names included in the voters' list and lost their right of franchise. But nobody prevented them from offering contest as candidates from the agriculturists' constituency even though they were not shown to be voters. Thus, even if the petitioners' contention is accepted and it is held that their managing committee members were wrongly excluded from the voters' list, the result of election from the agriculturists' constituency would not be affected at all as the aforesaid flaw or error in preparation of the voters' list would have no effect whatsoever on the uncontested election of 8 agriculturists from the agriculturists' constituency. As there were 8 seats and 8 candidates and as no other candidate came forward to contest, there was no question of holding any election. Consequently, there arose no occasion for any voter to exercise his franchise. If the existing voters from the agriculturists' constituency had no occasion to exercise their franchise, those who were left out from the voters' list cannot urge that they lost anything thereby for the simple reason that even if their names were included in the voter's list and there was no technical flaw in preparation of the list, even then they could have got no occasion to exercise their franchise as the candidates from the agriculturists' constituency had been returned uncontested. In the peculiar facts of this case, therefore, the alleged technical flaw in the preparation of the final voters' list for agriculturists' constituency had no effect whatsoever much less any material effect on the result of the election from the agriculturists' constituency, which results are sought to be challenged by Miss Shah on the alleged technical flaw. Therefore, the second contention raised by Miss Shah has got to be rejected.

15. That leaves out the third contention raised by her on the merits of the petition. She contended that as per proviso to Rule 7, a date to be fixed by the Director for requiring the concerned societies to communicate full names of members of their managing committees, should not be later than 60 days before the date of the general election and in

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the present case, the aforesaid provisions have been committed breach of by the concerned authorities. In order to appreciate the aforesaid contention centering round the construction of the proviso to Rule 7 (1), it is necessary to note the relevant dates. The date of election was fixed by the Director on 15-2-1981. Counting 60 days backwards from the said date will take us to 17-12-1980; while as per Annexure-'A', the date fixed by the Director for communication of the names of the managing committee members by the concerned societies was 25-11-1980. The question is whether this date viz., 25-11-1980, complies with the requirement of the proviso to Rule 7 (1) or it flies in the face of the proviso. The aforesaid proviso clearly lays down that the date to be fixed by the Director for that purpose should not be later than 60 days from the date of the general election. 60 days from the date of general election takes us to 17-12-1980 as shown above. Therefore, the date for communication of the names of the members of the managing committees by the concerned societies to the authorised officer could not be so fixed as to be later than 17-12-1980. 25-11-1980 was obviously not later than 17-12-1980 but it was prior to 17-12-1980. Miss Shah submitted that on the proper construction of the wordings of the said proviso, the date fixed for communication of the names should be between the date of the general election and the upper limit of 60 days backwards from that date meaning thereby that the date of communication of the names should fall within 60 days of the date of general election. With respect, such a construction would seem quite contrary to the express language of the proviso. If Miss Shah's construction was correct, the proviso would have been differently worded and would have stated that date so fixed would not be earlier than 60 days prior to the date of the general election. Then, she could have urged with emphasis that 60 days prior to from the date of general election is the fixed point beyond which the Director cannot travel for fixing the date of communication of the names of the members of the concerned societies. But in the present case, the express language of the proviso indicates that a clear mandate has been enacted to the effect that the aforesaid date must be so fixed as not to be later than 60 days before the date of the general election, meaning thereby that at least clear 60 days prior to the date of the election must be available between the date fixed for communication of the names of the members of managing committee of the concerned societies to the authorised officer and the ultimate date of election so that within that period, the procedural requirements of Rule 8 onwards can be complied with. As 25-11-1980 is the date fixed as per Annexure-'A' for communication of the names, it has clearly provided for more than 60 days between the date fixed for communication of the names and the ultimate date of the general election. Hence it cannot be said that the requirements of the proviso have been, in the present case, committed breach by the Director in fixing the date of communication of names of the members of the concerned societies to the authorised officer. The third contention of Miss Shah, therefore, fails and has got to be repelled.

Petition dismissed.

AIR 1982 GUJARAT 298 "Mahesh Harilal v. B. N. Narasimhan"

GUJARAT HIGH COURT

Coram : 1 S. B. MAJMUDAR, J. ( Single Bench )

Mahesh Harilal Khamar, Ahmedabad, Petitioner v. B.N. Narasimhan and another, Respondents.

Special Civil Appln. No.3613 of 1981, D/- 3 -3 -1982.

(A) Gujarat Agricultural Produce Markets Act (20 of 1964), S.27(5) - Limitation Act (36 of 1963), S.5and S.29 - LIMITATION - AGRICULTURAL PRODUCE - LICENSE - General Commission Agent Licence - Fresh Licence refused - Appeal to Director under S.27(5) - Delay in filing appeal can be condoned - S.5, Limitation Act applies.

The delay in filing an appeal to the Director of Agricultural Marketing and Rural Finance under Section 27(5) of the Act against an order refusing to grant a licence as General Commission Agent, can be condoned by invoking Section 5 of the Limitation Act. S.5 of the Limitation Act applies to these proceedings by virtue of S.29(2) of that Act. (Case law discussed). (Para 7)

For the applicability of Section 29(2) of the Limitation Act what is required to be found out is whether any special or local law prescribes a different period of limitation for any suit, appeal or application. It cannot be gainsaid that Section 27(5) of the Gujarat Act does provide a period of 30 days for preferring an appeal and it is certainly a period different from the one prescribed in the Schedule of the Limitation Act, 1963 which does not provide any period for preferring any such appeal. Once that conclusion is reached, the consequences laid down by Section 29(2) must follow. Accordingly S.3 of the Limitation Act would automatically apply as if such period was prescribed by the Schedule of the Limitation Act. Section 3(1) of the Limitation Act itself provides that its operation is subject to Sections 4 to 24. Consequently if the provisions of Sections 4 to 24 are

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made applicable, they would necessarily override and superimpose themselves upon, the operation of Section 3(1) of the Limitation Act. In other words, the legislative mandate under S.3(1) has to be read subject to Ss.4 to 24 following the section. Section 5 is necessarily included in the conspectus of Ss.4 to 24. This is the logical effect of the applicability of Section 29(2) of the Limitation Act and hence the question whether the concerned authority is a Court within the strict meaning of the term as envisaged by the Limitation Act itself, would necessarily pale into insignificance. (Para 5)

Under these circumstances when a statutory authority having quasi-judicial functions enforces the given period of limitation under a special or local law as the case may be, by the combined operation of Section 29(2) read with Sections 4 to 24 of the Limitation Act, Section 5 of Limitation Act clearly gets attracted to such proceedings. (Para 6)

(B) Gujarat Agricultural Produce Markets Act (20 of 1964), S.27(5) - Constitution of India, Art.226 and Art.227 - AGRICULTURAL PRODUCE - WRITS - HIGH COURT - LICENSE - LIMITATION - General Commission Agent Licence - Fresh licence refused to petitioner - Petitioner without filing appeal to Director under S.27(5) filing writ petition - Petitioner permitted to withdraw petition on ground of availability of alternative remedy - Interim reliefs continued for two weeks - Appeal filed by petitioner dismissed on ground of delay on erroneous view that S.5 Limitation Act did not apply to proceedings - Held, that the petitioner had made out sufficient ground for condoning delay and the appellate authority had committed patent error of law in not exercising judicial discretion. (Para 8)

Cases Referred : Chronological Paras

AIR 1975 SC 282 6

AIR 1969 SC 1335 : 1969 Lab IC 1538 6

ILR (1968) Guj 348 7

AIR 1964 SC 260 : 1964 (1) Cri LJ 152 7

M. B. Gandhi, for Petitioner; A. J, Patel, Asst. Govt. Pleader (for No.1) and K. G. Vakharia for B. B. Oza, (for No.2) for Respondents.

Judgement

ORDER :- This petition raises a short question about the period of limitation for filing an appeal before the Director of Agricultural Marketing and Rural Finance, respondent No.1 herein, under the provisions of Section 27, sub-sec.(5) of the Gujarat Agricultural Produce Markets Act, 1963, hereinafter referred to as the 'Act'. It also raises the question as to whether respondent No.1 has the power and authority to condone the delay in preferring an appeal before him. In order to appreciate the nature of controversy posed for my consideration in the present petition, it is necessary to have a look at few relevant facts.

2. The petitioner had applied for grant of licence as General Commission Agent for the year 1980-81. The said application was given to respondent No.2 Market Committee which is registered under Section 9 of the Act and which is having its office in the city. Up to April, 1980 the wholesale business in the vegetables was carried on at Bhagubhai's Vanda situated in Dhalgarvad, in the city. The said wholesale market has been shifted to the new market situated outside Jamalpur gate known as "Sardar Patel Market". The petitioner had a licence of General Commission Agent at the time when the wholesale business was carried on at Bhagubhai's Vanda. As stated above, the petitioner had applied for grant of a fresh licence as General Commission Agent for the year 1980-81 to the respondent No.2 Market Committee. Under Section 27, sub-sec.(1) of the Act the concerned Market Committee subject to the rules made in that behalf can grant or renew a general licence or a special licence for the purpose of any specific transaction or transactions to a trader, general commission agent, broker, weighman, surveyor, warehouseman or any person to operate in the market area or part thereof, or after recording its reasons therefor, refuse to grant or renew any such licence. The petitioner had accordingly given his application to the 2nd respondent invoking its power under Section 27(1) for granting the said licence to the petitioner. The said 2nd respondent Market Committee by its resolution passed at its meeting on 25th April, 1981 refused the petitioner's prayer for grant of a licence for the year 1980-81 on the ground that he had violated the bye-laws

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of the Agricultural Produce Market Committee and the conditions of licence held by him. I am not at all concerned with the merits of the said refusal and hence, I do not dilate on that question any further. The decision of the 2nd respondent Market Committee refusing to grant the requisite licence to the petitioner for the year 1980-81 was communicated to the petitioner by a letter of the Secretary of the Market Committee dated 6-5-1981. It appears that the said letter was received by the petitioner on 8-5-1981. The aforesaid order of the second respondent refusing to grant the requisite licence to the petitioner as General Commission Agent is appealable to the first respondent Director under S.27(5) which provides that any person aggrieved by an order refusing to grant or renew a licence or suspending or cancelling any licence may, appeal within thirty days from the date of the communication of the order to him. Once an order was made by the Market Committee under the Act as in the present case, it becomes appealable to the respondent No.1 herein within 30 days from its communication to the petitioner. Accordingly the normal period of limitation of 30 days would have expired on 7-6-1981, and by that time the petitioner was required to prefer an appeal before the first respondent Director of Agricultural Marketing and Rural Finance, but in the meanwhile the petitioner preferred a writ petition being Civil Application No.1844 of 1981 on 19th May, 1981 in this High Court. He challenged the decision of the second respondent Market Committee refusing to grant him the requisite licence for the year 1980-81 and he also challenged some of the provisions of the Gujarat Agricultural Produce Markets Act and the Rules. This petition came to be dismissed as withdrawn on 13th July, 1981, before a Division Bench of this Court. B.J. Divan, C.J. and N.H. Bhatt, J., allowed the petitioner to withdraw his aforesaid petition on 13th July, 1981. Notice was ordered to be discharged but the ad interim relief granted on 22-5-1981 was allowed to continue for two weeks from 13-7-1981 to enable the petitioner to approach the appellate authority. The aforesaid order of this Court is placed at Annexure-'A' to the petition. This order clearly postulates that the petitioner's aforesaid writ petition was not entertained by this Court as the petitioner was relegated to the alternative remedy of appeal to the first respondent Director and two weeks' time was given to the petitioner to approach the appellate authority, during which time ad interim relief was extended. Thereafter the petitioner preferred the statutory appeal provided under Section 27(5) of the Market Act before the first respondent on 21st July, 1981 i.e. within 8 days of the withdrawal of his petition before this Court.

3. When this appeal came up for hearing before the first respondent, an objection was raised on behalf of the Market Committee that the appeal was barred by limitation. On behalf of the petitioner it was contended before the first respondent Director that he was all throughout agitating the same question about the legality of the order of the Market Committee refusing to grant the requisite licence to him for the year 1980-81 by preferring writ petition in the High Court and when the High Court refused to entertain the petition on the ground that the petitioner had alternative remedy of appeal, he preferred appeal before the Respondent No.1 Director and consequently no question of limitation would arise. But in any case, if appeal is found to be barred by limitation the delay deserved to be condoned in the interest of justice. A contention was raised on behalf of the Market Committee to the effect that Section 5 of the Limitation Act would not apply to the proceedings before the first respondent Director and hence the first respondent will have no jurisdiction to condone the delay. This contention was repelled by the first respondent by holding that Section 5 of the Limitation Act would be applicable on account of the fact that Section 29(2) of the Limitation Act 1963 and the provisions of Sections 4 to 24 of the Limitation Act would apply to any special law which provides a period of limitation different from the one that was provided in the Limitation Act that as Gujarat Agricultural Produce Market Act was providing for a different period of limitation, it was a special law within the meaning of Section 29(2) of the Act and consequently, the provisions of

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Section 5 of the Limitation Act did apply, but thereafter the first respondent curiously held that the petitioner had made out no case whatsoever for condoning the delay and, therefore, dismissed the appeal as time barred. The aforesaid order of the first respondent is dated 31st August, 1981. It has brought the dissatisfied petitioner to this Court by way of the present proceedings under Article 226 of the Constitution for issuance of a suitable writ for quashing and setting aside the impugned appellate order of the Director at Annexure-'B' to the petition. The petitioner has also prayed for a writ of mandamus directing the respondent No.2 Market Committee to grant licence to the petitioner for the year 1980-81. But it is obvious that if the petitioner succeeds in getting his first prayer regarding quashing of the impugned appellate order Annexure-'B' granted, the appeal will have to be sent back to the first respondent for decision on merits. Consequently, the said decision of the Appellate authority cannot be pre-empted by seeking the grant of any final relief at this stage as prayed for in prayer 'B' of the petition. I will have therefore to consider the main and the only relevant question which is posed for my consideration in the present proceeding as to whether the appeal preferred before the first respondent by the petitioner could have been dismissed as time barred or was required to be decided on merits.

4. The aforesaid re'sume' of facts and events leaves no room for doubt that the petitioner was all throughout actively prosecuting his grievance against the order of the Market Committee by which it refused to grant him licence as General Commission Agent for the year 1980-81. Even by a remotest chance he cannot be alleged to have indulged in inaction or indolence. It is true that within 30 days instead of going to the first respondent in appeal he straightway came to this Court for getting the very relief for quashing and setting aside the decision of the second respondent Market Committee refusing to grant him the requisite licence and this Court ultimately found that the petitioner was required to be relegated to the alternative remedy of appeal.

5. Under these circumstances, two questions would squarely arise for consideration viz., (1) whether the first respondent could invoke the powers under Section 5 of the Limitation Act and (2) whether this was a fit case in which he ought to have entertained the appeal on merits by condoning the delay on the part of the petitioner in preferring appeal before him. So far as the first question is concerned, the first respondent has already held in favour of the petitioner namely that Section 5 of the Limitation Act can be pressed in service by the petitioner for getting the delay in preferring the appeal condoned. But Mr. Vakharia the learned Advocate appearing for respondent No.2 Market Committee submitted before me that the aforesaid view of the first respondent is patently erroneous. Mr. Vakharia contended that Section 5 of the Limitation Act 1963 can apply to courts and court, proceedings as its very language suggests and that the first respondent-Director of Agricultural Marketing and Rural Finance though acting as an appellate authority was not a Court stricto sensu and consequently Section 5 of the Limitation Act could never apply to the appellate proceedings before him as envisaged in Section 27(5) of the Act. In order to appreciate the aforesaid contention of Mr. Vakharia it is first necessary to have a look at the necessary statutory provisions. Section 29(2) of the Limitation Act, 1963 provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as and to the extent to which, they are not expressly excluded by such special or local law. For the applicability of S.29(2) of the Limitation Act what is required to be found out is whether any special or local law prescribes a different period of limitation for any suit appeal or application. It cannot be gainsaid that Section 27(5) of the Gujarat Agricultural Produce Market

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Act 1963 does provide a period of 30 days for preferring appeal and to that extent the Agricultural Produce Market Act 1963 is a special law providing for different period of limitation. The period of 30 days for preferring appeal under Section 27(5) of the Act is certainly a period different from the one prescribed in the Schedule of the Limitation Act, 1963 which does not provide any period for preferring any such appeal. Therefore, it must be held that special law namely the Gujarat Agricultural Produce Market Act, 1963 does provide a different period of limitation. Once that conclusion is reached, the consequences laid down by Section 29(2) must follow. Accordingly Section 3 of the Limitation Act would automatically apply as if such period was prescribed by the Schedule of the Limitation Act. Now it is necessary to note that Section 3(1) of the Limitation Act states that subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Thus the appeal preferred by the petitioner beyond 30 days would be liable to be dismissed on the ground of limitation even though such a defence may not have been urged, as laid down by Sec.3(1) of the Act. It is obvious that when special law provides for the period of limitation different from that provided by the Limitation Act and once Section 3 of the Limitation Act gets attracted by virtue of Section 29(2) to the proceedings before the concerned authority acting under the Special Law which has to enforce the period of limitation, said authority will have to apply the provisions of Section 3 of the Limitation Act to the proceedings presented before it under the provisions of the concerned special law or the local law as the case may be. It cannot be disputed for a moment that 30 days' period of limitation is provided for appeal to the first respondent under Section 27(5). Therefore, It is for the first respondent to apply Section 3 of the Limitation Act and to dismiss the concerned appeal if it is found to be barred by time. If the injunction prescribed by Sec.3(1) has to operate by virtue of Sec.29(2) the said injunction must necessarily bring in its wake all the rest of the provisions of the said sub-section (1) of Section 3. As stated above, Section 3(1) of the Limitation Act itself provides that its operation is subject to Secs.4 to 24. Consequently if the provisions of Sections 4 to 24 are made applicable, they would necessarily override and superimpose themselves upon, the operation of Section 3(1) of the Limitation Act. In other words, the legislative mandate under Section 3(1) has to be read subject to Ss.4 to 24 following the said section. S.5 is necessarily included in the conspectus of Sections 4 to 24. It is trite to say that if Section 3 applies to the first respondent acting under Section 27(5) of the Act then it must follow as a necessary corollary that Section 5 of the Limitation Act would equally apply by virtue of S.29(2) read with of S.3(1) of the Limitation Act. It cannot be urged for a moment that Section 3(1) of the Limitation Act would apply but Section 5 thereof would not apply to the first respondent's proceedings because he is not a Court. While Section 29(2) is attracted the entire machinery of Sections 3 to 24 of the Limitation Act gets imported and would automatically apply to the proceedings before the concerned authorities exercising powers under the given special or local law. If the concerned authority under the given special or local law has to enforce the period of limitation for any appeal or application before such authority, implicit in the power would be the power to condone the delay which would get imported as part and parcel of the entire machinery of Sections 3 to 24 of the Limitation Act that would apply by virtue of Section 29(2) of the Limitation Act to such proceedings before the concerned authorities acting under the special or local law. This is the logical effect of the applicability of Section 29(2) of the Limitation Act and hence the question whether the concerned authority is a Court within the strict meaning of the term as envisaged by the Limitation Act itself, would necessarily pale into insignificance.

6. Mr. K.G. Vakharia, the learned Advocate appearing for the respondent No.2 Market Committee heavily relied

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upon the decision of the Supreme Court in the case of Kerala Electricity Board, Trivandrum v. T.P. Kunhaliumma, AIR 1977 SC 282, to support his contention that Section 5 of the Limitation Act would apply only to proceedings before a Court as such and not before any other statutory authority exercising statutory powers. In order to appreciate the nature of the controversy before the Supreme Court in the aforesaid case and the ratio of the said decision, it is necessary to note at the outset the relevant facts which came up for consideration before the Supreme Court in the aforesaid decision. The respondent before the Supreme Court had filed a petition under Sections 10 and 16(5) of the Telegraph Act 1885 read with Section 51 of the Indian Electricity Act 1910 claiming compensation against Kerala Electricity Board which was the appellant before the Supreme Court. The Kerala Electricity Board was constituted under Section 5 of the Electricity (Supply) Act, 1948. The Board had cut and removed some trees standing on the property of the respondent for the purpose of laying electric line from Calicut to Cannanore. The Board assessed the compensation at Rs. 1619.90. Being aggrieved by the decision of the Board the respondent before the Supreme Court had filed a petition before the District Judge, Tellicherry under Section 16(3) of the Telegraph Act, 1885 claiming an enhanced compensation of Rs. 19,367.60. The Kerala Electricity Board raised several objections. One of the objections was that the petition before the District Judge, Tellicherry was barred by limitation under Article 137 of the Limitation Act. The Board had contended that the notice intimating the fixing of the compensation was served on March 4, 1969, to the concerned respondents and, therefore, the concerned respondents were required to file their petition for compensation before the District Judge under Article 137 of the 1963 Limitation Act within three years from the accrual of the right to apply and their petition which was filed beyond three years of 4th March, 1969, was barred by limitation. The respondent contended before the District Judge in that case that Art.137 of the 1963 Limitation Act did not apply to applications to the District Judge under the Telegraph Act but that contention was negatived by the learned District Judge and the respondent's application for compensation was dismissed as time barred. The respondent carried the matter in revision to the High Court of Kerala and also applied for condonation of delay in filing the revision petitions in the High Court of Kerala. The High Court condoned the delay in filing the revision application and thereafter set aside the order of the District Judge and remitted the matter back to the Court for disposal in accordance with law. The said decision of the Kerala High Court was challenged before the Supreme Court by the Electricity Board. The contention of the respondent before the Supreme Court was that Article 137 of the 1963 Limitation Act would not apply to proceedings before the District Judge under Section 16(3) of the Telegraph Act. They relied upon the earlier decision of the Supreme Court in the case of Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli, AIR 1969 SC 1335, which had taken the view that Art.137 of the Limitation Act 1963 would be confined to applications contemplated in Civil Procedure Code only. The said earlier view of the Supreme Court was in terms dissented from by a larger Bench of the Supreme Court in Kerala State Electricity Board (supra). It was held in the aforesaid decision that Article 137 of the Limitation Act 1963 would apply to any petition or application filed under any Act to a Civil Court. The petition in that case before the Supreme Court was to the District Judge as a Court. The petition was one contemplated by the Telegraph Act for judicial decision. Therefore, that petition squarely fell within the scope of Article 137 of the 1963 Limitation Act and consequently three years' period of limitation was applicable, and hence the respondent's application for enhanced compensation was barred by limitation. While taking the aforesaid view A.N. Ray, C.J., speaking for the Supreme Court observed that any other application as mentioned in Article 137 of the Limitation Act would be petition or any application under any Act. But it has to be an application to a Court for the reason

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that Sections 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when Court is closed and extension of prescribed period if applicant or the appellant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application during such period. Article 137 will apply to any petition or application filed under any Act to a Civil Court. It is not confined to applications contemplated by or under the Civil P.C. only. Mr. Vakharia placed strong reliance on the aforesaid observation of Ray C.J., and submitted that the Supreme Court has ruled that Sections 4 and 5 of the Limitation Act contemplate applications to Court only and, therefore in case of a quasi-judicial authority functioning under any statute, if it is not a Court as such, application of Sections 4 and 5 of Limitation Act to such authority would be squarely ruled out. It is not possible for me to accept the aforesaid contention of Mr. Vakharia. It may be noted that in the aforesaid decision before the Supreme Court no question of applicability of Section 29(2) ever arose for consideration. The Supreme Court was not called upon to decide the question as to whether an authority functioning under the Statute when called upon to decide a matter in a quasi-judicial manner and when enjoined by the Statute to enforce the given period of limitation can have the power to condone delay in a given proper case. In such a contingency the applicability of Section 29(2) of the Limitation Act would clearly be attracted. The Supreme Court was not concerned with any such contingency. It was concerned with the applicability of Article 137 of the Limitation Act which is found in the schedule to the Limitation Act itself. It is therefore, obvious that the Supreme Court was not called upon to consider the further question as to whether on the applicability of Section 29(2) of the Limitation Act a statutory authority exercising quasi-judicial functions and powers under the Special Law while enforcing the period of limitation, can fall back upon the provisions of S.5 of the Limitation Act via Section 29(2) of the Act. It is pertinent to note that under Article 137 of the Limitation Act no question of applicability of Section 29(2) would ever arise for consideration. The case before the Supreme Court was one in which the period of limitation was directly provided by the Limitation Act itself as found in Article 137 of its schedule. In such a case, Section 5 or for that matter any other sections of the Limitation Act would get attracted by the mere applicability of the Limitation Act itself and not via S.29(2) through which any special or local law can get equipped with the machinery provided by Sections 4 to 24 read with Section 3 of the Limitation Act. It is therefore not possible to accept the contention of Mr. Vakharia that the Supreme Court has held that even in a case in which a statutory authority exercises quasi judicial function under Special Law or local law and when such an authority enforces the period of limitation for filing appeals or applications under the special statute, such authority unless it is a Court as such, cannot invoke Section 5 of the Limitation Act. Such question not having been posed for the consideration of the Supreme Court, the ratio of the Supreme Court decision in Kerala Electricity Board's case (supra) cannot by implication be extended to cover cases of present type. It is obvious that once Article 137 of the Limitation Act directly applies to a given proceedings before a Court, the applicability of Ss.4 and 5 in the form in which they are couched would squarely arise for consideration. In that light the aforesaid ratio of the Supreme Court decision will have to be understood and appreciated. It is further pertinent to note that before the Supreme Court there was no controversy or contest as to whether the District Judge exercising his powers under Section 16(3) of the Telegraph Act, 1885 was a Court or not. On the contrary, it was an admitted position that the District Judge was a Court. The Supreme Court has also in terms held in para 22 of the aforesaid judgment that the petition was filed before the District Judge as a Court. The petition was one contemplated by the Telegraph Act for judicial decision and hence the petition was an application falling within the scope of Article 137 of the 1963 Limitation Act. Under these circumstances, no real assistance can be derived from the Supreme

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Court decision relied upon by Mr. Vakharia. As already discussed earlier by me, once the question of applicability of Section 5 arises in the context of the operation of Section 29(2) of the Limitation Act to any special or local law, the principles of Sections 4 to 24 get attracted by necessary implication by the very force of Section 29(2). Under these circumstances when a Statutory authority having quasi judicial functions enforces the given period of limitation under a special or local law as the case may be, by the combined operation of Section 29(2) read with Sections 4 to 24 of the Limitation Act, Section 5 of Limitation Act clearly gets attracted to such proceedings before the statutory authority exercising quasi judicial powers under the concerned special or the local statute.

7. As shown above, the aforesaid Supreme Court judgment nowhere touches this question and hence no assistance can be derived by Mr. Vakharia from the aforesaid decision. On the contrary on this very point there is a direct judgment of a Division Bench of this Court. In Special Civil Appln. No.404 of 1967 decided on 29th August, 1967\*, by the Division Bench of this High Court consisting of P.N. Bhagwati Ag. C.J., as he then was, and Vakil, J., as he then was, a similar question was posed for their consideration. The Special Land Acquisition Officer exercising power under Sec.18 of the Land Acquisition Act had refused to make a reference for enhanced compensation on the ground that the application for reference was received beyond time prescribed by Section 18 of the Land Acquisition Act. The question that arose in the aforesaid context was as to whether the Land Acquisition Officer being the statutory authority exercising his powers under S.18 of the Land Acquisition Act has powers to condone the delay on the part of the claimant in making the reference application before it. The Special Land Acquisition Officer rejected the application on the ground that he had no authority to condone the delay and once the time prescribed by clause (1) of the proviso to Section 18 of the Land Acquisition Act expired nothing further could be done in the matter. The aforesaid view of the Special Land Acquisition Officer was up-turned by the High Court in the aforesaid decision. Vakil, J., speaking for the Division Bench held that Section 18 of the Land Acquisition Act is a special or local law prescribing a period of limitation different from the period prescribed by the Schedule and as none of Sections 4 to 24 is expressly excluded by the Land Acquisition Act, there was no manner of doubt that Section 29(2) of the Limitation Act would apply and consequently, Sec.5 of the Limitation Act which authorises the Court to condone the delay in certain circumstances would apply to the application made to the Special Land Acquisition Officer and he has the authority to condone the delay and extend the period if he is satisfied that the concerned applicant has sufficient cause for not preferring the application within the period prescribed under the proviso of Section 18. For coming to the aforesaid conclusion the Division Bench placed reliance on the decision of the Supreme Court in the case of Kaushlya Rani v. Gopal Singh, AIR 1964 SC 260. In the aforesaid Supreme Court decision Section 417 of the Criminal P.C. was held to be a special law which prescribed a period of limitation different from the period prescribed by the Schedule and therefore it came within the ambit of Sec.29(2) of the Limitation Act. The principle laid down by the Supreme Court was made applicable to the facts of the case before the Division Bench. The aforesaid decision of the Division Bench clearly shows that the provisions of Section 5 were made applicable via Section 29(2) of the Limitation Act to the proceedings before the statutory authorities acting under the Special Laws when they were called upon to apply a given period of limitation as prescribed by the concerned statute. It is obvious that the Land Acquisition Officer functioning as Collector under the Land Acquisition Act was not acting as a Court in the full sense of the term and still Section 5 of the Limitation Act was made applicable to the proceedings before him wherein he had to merely offer the amount of compensation of the concerned

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claimant. The ratio of the Division Bench decision therefore squarely applies to the facts of the present case and negatives the contention of Mr. Vakharia that Section 5 of the Limitation Act cannot apply through the aid of Section 29(2) of the Limitation Act to a proceeding before the Statutory authorities on the ground that they are not Courts in the strict sense of the term. Mr. Vakharia in this connection submitted that no argument was made before the Division Bench of this Court in the aforesaid decision that the Special Land Acquisition Officer is not a Court. That really makes no difference, so far as the applicability of the ratio of the aforesaid Division Bench Judgment is concerned. It may be noted at this stage that the aforesaid Division Bench judgment has been followed consisently by this Court in a series of later judgments of different Division Benches and as I have already shown above, while applying the provisions of Section 29(2) to the proceedings of a given statutory authority functioning under the Special Law, provisions of Section 5 would apply via Sec.29(2) and hence the question whether that statutory authority acts as a Court in its strict sense or not, does not remain a german consideration at all. It must therefore be held that first respondent Director was right when he took the view that Section 5 of the Limitation Act would apply to the facts of the present case by virtue of Section 29 (2) of the Limitation Act.

\* Reported in ILR (1968) Guj 348

8. Then remains the further question as to whether the respondent No.1 was justified in throwing out the appeal of the petitioner as time barred and in refusing to condone the delay. Mr. Vakharia submitted that the first respondent on the facts of this case had exercised its discretion in not condoning the delay and this Court exercising powers under Article 226 or 227 of the Constitution would not be justified in interfering with the said discretion exercised by the respondent No.1. If the matter would have stood in the realm of mere discretion exercised by the respondent No.1, the situation would have been different, but in the present case it has been found that the first-respondent has arbitrarily and without applying his mind to the main question before him, has thrown out the appeal as time barred and has refused to condone the delay without considering all the relevant facts on the record of this case. The sequence of events as chronologically mentioned in the earlier part of this judgment leaves no room for doubt that the petitioner was agitating his grievance against the order of the second respondent Market Committee all throughout till he filed his appeal before the first respondent. It may be recapitulated that the order of the second respondent was communicated to the petitioner on 8th May, 1981. He could have filed his appeal before the second respondent Director within the time prescribed. Instead he came to this Court in revision on 19th May, 1981 by way of Special Civil Application which ultimately was dismissed on the ground of alternative remedy by the Division Bench of this Court on 13th July, 1981. It is thereafter that the petitioner filed his appeal before the first respondent on 25th July, 1981. It must therefore be held that all throughout the petitioner acted vigilantly and pursued his remedy against the order of the second respondent actively and diligently. In view of the aforesaid admitted facts that emerge on the record of this case and especially in view of the decision of the Division Bench of this Court, which permitted the petitioner to withdraw his Special Civil Application for pursuing alternative remedy and continued the interim reliefs for two weeks more from 13th July, 1981, it must be held that the appeal as filed by the petitioner before the first respondent on 21st July, 1981 was required to be decided on merits by condoning the delay. Period spent by the petitioner between 19-5-1981 and 13-7-1981 before this Court in Special Civil Application No.1844 of 1981 was required to be excluded not strictly under S.14 of the Limitation Act but in the light of Section 14 read with Section 5 of the Limitation Act. In any case the said circumstance indicated a strong ground in favour of the petitioner for condoning delay in preferring appeal before the first respondent. This relevant consideration has been by-passed by the first respondent when he arbitrarily and even almost mechanically refused to condone the delay by not giving due consideration to the telltale facts on

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the record and thus failed to exercise his jurisdiction vested in him under Section 5 of the Limitation Act as well as under Section 27 of the Gujarat Agricultural Produce Market Act. It must therefore be held that the first respondent had committed a patent error of law in not condoning the delay in exercise of his judicial discretion in the light of the aforesaid telltale circumstances and in throwing out the appeal of the petitioner as barred by limitation. It must be held that the petitioner had made out sufficient ground for condoning the delay. As the first respondent failed to decide the matter on merits, the order at Annexure-'B' is required to be quashed and set aside. The first respondent is directed to restore to his file the said appeal of the petitioner and to decide the same on merits in accordance with law upon hearing the concerned parties after issuing notices to them about the date of hearing. Rule is accordingly made absolute to the aforesaid extent by granting prayer 16(A) of the petition. There is no question of granting prayer 16(B) as no such question arises for the decision in this Court at this stage. Rule is made absolute to the aforesaid limited extent with no order as to costs in the circumstances of the case. As the matter is a long delayed one the first respondent is directed to decide the appeal of the petitioners on merits at the earliest preferably within a period of six weeks from the receipt of writ from this Court at his end.

Order accordingly.

AIR 1980 GUJARAT 6 "Husseinbhai v. P. V. Bhatt"

GUJARAT HIGH COURT

Coram : 1 N. H. BHATT, J. ( Single Bench )

Husseinbhai Ibrahimbhai Malek, Petitioner v. P. V. Bhatt and others, Respondents.

Special Civil Appln. No. 470 of 1976, D/- 8 -3 -1979.

(A) Gujarat Agricultural Produce Markets Act (20 of 1964), S.11(1) - AGRICULTURAL PRODUCE - ELECTION - Constitution of market committee - Voting rights - One co-operative society can have voting rights in more than one constituency.

There is no rule of law or logic that one man who is a voter in one constituency in one capacity cannot be a voter in another constituency in another capacity. In the first constituency of agriculturists, all the members of the Managing Committee of the Cooperative society dispensing agricultural credit for the market area are made voters individually. As far as the second constituency of traders is concerned, the very co-operative society dispensing agricultural credit in the market area is to be there in its capacity as the society as one individual trader and would have only one vote. As far as the first category is concerned, every co-operative society of that type would have as many votes as there are members of the Managing Committee of it. It is, therefore, not true to say that the very society would have a double representation. (Para 8)

(B) Gujarat Agricultural Produce Markets Act (20 of 1964), S.2(v) - AGRICULTURAL PRODUCE - WORDS AND PHRASES - CO-OPERATIVE SOCIETIES - 'as such' - Words 'as such' mean as a co-operative marketing society. (Para 9)

S.K. Zaveri for Petitioner; R.M. Christie, Asstt. Govt. Pleader (for No. 1) and H.M. Mehta (for No. 3) for Respondents.

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Judgement

JUDGEMENT :- This is a petition by a member of the Vyara Agricultural Produce Market Committee, challenging the voters' lists prepared for the election of the Committee to be held on 16-4-1976.

2. Initially there was one common Market Committee for talukas, Songadh and Vyara, but the Government took a decision to establish two separate committees for these two different areas of Songadh and Vyara talukas and this decision was made operative from 22-1-1974. On this decision being implemented, the earlier Market Committee, which was for the composite market area of two talukas, stood dissolved and the first Market Committee for Vyara taluka came to be appointed by the Government by nominating members. The petitioner was one of such nominee of the Government and in that capacity he was the member of the Market Committee.

3. As said above, the first election to elect the members of the Market Committee was to take place on 16-4-76 and one of the preliminaries required to be undergone for the purpose was preparation of three lists. Section 11 of the Gujarat Agricultural Produce Markets Act, 1963 deals with the constitution or composition of Market Committees. Eight agriculturists as defined in cl.(ii) of Section 2 of the Act constitute the first category of members. These agriculturists are to be elected by the members of the Managing Committees of Co-operative Societies (other than co-operative marketing societies) dispensing agricultural credit in the market area. The second category of members, four in number, are to be elected from amongst themselves by the traders holding general licenses and as the definition of the word 'trader' occurring in cl.(xxiii) of S.2 of the Act, even a co-operative society, which carries on the business of buying or selling of agricultural produce or of processing of agricultural Produce for sale also can be a trader. The third category of members, two in number, are to be elected from amongst the members of co-operative marketing societies and they are to be the representative of such co-operative marketing societies. The word 'co-operative marketing society' is defined in cl.(v) of S.2 of the Act.

4. The petitioner's contention was that the voters lists that were prepared for the purpose of ensuing election were objected to by him and others. The foremost contention of the petitioner was that various co-operative societies having traders' license and therefore, finding place in the second constituency of traders for the purpose of traders representative had wrongly been given place through the members of their managing committees in the list of persons, who were entitled to elect 8 agriculturists, to represent the interests of Agriculturists on the committee. It was further contended by the petitioner that 24 societies set out by him in paragraph 7 of his petition were as a matter of fact all co-operative marketing societies because they were engaged in the business of buying and selling of agricultural produce and were holding, a general license for the purpose and so their proper place was in the third constituency of representatives of cooperative marketing societies and not even in the traders' constituency or in the agriculturists' constituency. For the purpose of convenience, I shall refer to the three constituencies as the Agriculturists constituency, Traders' constituency and co-operative marketing societies' constituency. As the petitioner's objections were overruled and the Directors of Agricultural. Marketing and Rural Finance, the respondent No. 2, who is the head executive officer dealing with agricultural produce committees throughout the State did not heed the representations made to him, the petitioner had moved this Court for quashing of the three lists of voters published by the respondent under Rule 8 of the Gujarat Agricultural Produce Market Rules, 1965. Annexure A, and to direct the respondents to exclude from the list of voters of the agriculturists' constituency, members of the Managing Committees of those co-operative societies, which held license under the Act and to include the members of the managing committees of those societies into the list No. 3 regarding Marketing Societies and exclude representatives of the said societies from the list No. 2 of traders' constituency.

5. This petition was admitted and the election was stayed. So, till today the old nominated committee has been

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managing the affairs of the Vyara Agricultural Produce Market Committee. The special civil application, though expedited, could not be taken up earlier because of the heavy work of this court.

6. The only material question that is formulated by Mr. Zaveri and that arises for determination in this petition is whether a co-operative society, dispensing agricultural credit, but holding a traders' general license under S.29 of the Act is entitled to enroll itself as a voter only in the list of Co-operative Marketing 'Society and whether the members of the managing committees of these societies could be the voters in the agriculturists' constituency and/or in the traders' constituency.

7. Mr. Zaveri, the learned advocate for the petitioner placed the matter very elaborately and fairly before me. S.11(1) of the Act in the relevant part reads as follows :-

"11(1) Every market committee shall consist of the following members, namely,

(i) eight agriculturists who shall be elected by members of managing committees of co-operative societies (other than co-operative marketing societies) dispensing agricultural credit in the market area :

(ii) four members to be elected in the prescribed manner from amongst themselves by the traders holding general licenses.

(iii) two representatives of the co-operative marketing societies situate in the market area and holding general licenses, to be elected from amongst the members (other than nominal, associate or sympathiser members) of such societies by the members of the managing committees of such societies.

Provided that where the number of co-operative marketing societies so situate does not exceed two, only one representative shall be so elected."

We are presently concerned with Cl.(i) of Sec. 11(1). The petitioner's contention is that as a matter of general principle, one and the same person either a living person or a juristic person, could not have representation in more than one constituency. Mr. Zaveri in this connection submitted that the paramount idea of establishing the market Committee and as a matter of fact in enacting the Agricultural Produce Markets Act, 1963, was to regulate buying and selling of agricultural produce so that the down trodden agriculturists were not exploited to great economic detriment of theirs by shrewd and organised traders. He, therefore, submitted that the Legislature had made a provision for having as many as eight agriculturists on the committee whereas it had reserved only four seats for the traders' representatives. Mr. Zaveri's argument, therefore, was that one and the same body as a matter of principle cannot have representation in more than one constituency. Whatever may be the basic concept and principle, the courts of law in the first instance are to be guided by the text of the law and aid of the possible or probable intention of the Legislature is to be had if and only if the text of the statute is in any way susceptible of wider or narrower connotation. In other words, a court of law is bound to gather the intention of the Legislature only from the text of the words used and unless repugnant to the text, the words read in the comity of all provisions, should have their natural and ordinary meaning inhabited by any such high flown considerations. Keeping this well entrenched principle of interpretation in mind, I propose to examine the scope and ambit of S.11(1), (i)(ii) and (iii) as quoted above.

8. The idea of the Legislature is that any eight agriculturists as defined in Cl.(ii) of S.2 of the Act, that is, any, person ordinarily engaged in the production or growth of agricultural produce, but not doing trader's or a broker's business in the agricultural produce, offer himself to be elected from that category. The voters are said to be members of the Managing Committees of the Co-operative Societies dispensing agricultural credit in the market area with the exception of the co-operative marketing society as defined in Cl.(v) of S.2 of the Act for the obvious reason that such co-operative marketing societies are given a separate representation. Any co-operative society dispensing agricultural credit in the market area and which is not a co-operative marketing society as defined in Cl.(v) of S.2 of the Act is entitled to have the members of its Managing Committee to compose the first constituency, entitled to elect eight agriculturists. The Legislature even in the year 1963 when this bill was introduced

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in the Gujarat Legislature and when it passed the law in the year 1964 was not oblivious of the fact that good many co-operative societies in the State dispensing agricultural credit in the market area were holding traders' license. The 1963 Act had at its precursor the 1939 Act, styled as the Bombay Agricultural Produce Market Act, 1939. Still the Legislature in its wisdom did not specifically state in Cl.(i) above, that the agricultural co-operative societies dispensing agricultural credit in the market area will not be entitled to have their member of Managing Committee in the voters' list, if they were holding general license. Mr. Zaveri wants as to read Cl.(i) with the added phrase "and not holding general licenses" on the strength of the assumed intention of the Legislature, to keep the three constituencies in water-tight compartments. If the Legislature had in its mind the intention attributed by Mr. Zaveri to it, there was nothing to prevent the Legislature from saying so expressly. The first argument of Mr. Zaveri, therefore, that the agricultural co-operative societies (other than cooperative marketing societies) dispensing agricultural credit in the market area, but holding general license are to be excluded from the first category is difficult to be upheld. To me it appears that there is no rule of law or logic that one man who is a voter in one constituency in one capacity cannot be a voter in another constituency in another capacity. In the first constituency of agriculturists, ail the members of the Managing Committee of the Co-operative Society dispensing agricultural credit for the market area are made voters individually. As far as the second constituency of traders is concerned, the very co-operative society dispensing agricultural credit in the market area is to be there in its capacity as the society as one individual trader and would have only one vote. As far as the first category is concerned, every co-operative society of that type would have as many votes as there are members of the Managing Committee of it. It is, therefore, not true to say that every society would have a double representation. In the first category, the members of the Managing Committee because of their membership of the Managing Committee are individual voters, but in the second category of traders' constituency, society qua society is one' voter. It is therefore, difficult to say that there is double representation for one and the same body of a co-operative society. The first argument of Mr. Zaveri, therefore, that various co-operative societies holding general licenses were wrangler given representation in the first constituency through the members of their managing committee is untenable.

9. Mr. Zaveri's second contention was that the various societies enumerated by the petitioner in paragraph 7 of his petition, were co-operative marketing societies, because they were fulfilling the requisites of a co-operative marketing society as defined in Cl.(v) of S.2 of the Act. I reproduce below that clause for ready reference :-

"(v) "Co-operative marketing society" means a society registered or deemed to be registered as such under the Gujarat Co-operative Societies Act, 1961 and engaged in the business of buying or selling of agricultural produce or of proceeding of agricultural produce and holding a license. (emphasis is supplied by me)".

The above definition of a co-operative marketing society with the emphasis as indicated by me above calls for three requisites of a co-operative marketing society. The first requisite is that it must be a society registered or deeded to be registered under the Gujarat Cooperative Societies Act, 1961. Its registration must be "as such" meaning thereby as a co-operative marketing society. Mr. Zeveri submitted that the two words "as such" mean that the society must be registered under the Gujarat Co-operative Societies Act or must be deemed to be registered as such, that is, as a co-operative society under the Gujarat Co-operative Societies Act. Mr. Zaveri's submission is not right. The meaning which he wants to derive can be had even without the words "as such". Had the Legislature wanted that the society should be a society registered under the Co-operative Societies Act, 1961 or deemed to be registered under the Gujarat Co-operative Societies Act, 1961, the use of the words "as such" is not necessary. Therefore, it is inevitable to hold that the Legislature has used the words "as such" not redundantly or by way of tautology but with a specific purpose The word "such" is a demonstrative

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pronoun. When we replace the pronoun by a noun, we have to read the words "as such" to mean as a co-operative marketing society.

10. In this connection Mr. Zaveri urged that S.9 of the Co-operative Societies Act, which deals with registration does not deal with registration categorywise or classificationwise. It is no doubt true that S.9 which speaks of registration does not speak of the society's categorisation, but the protons of law are to be read, not divorced of the context, S.12 that follows soon thereafter is to be read in conjunction with S.9 and S.12 itself lays down that the Registrar has to classify all societies into such manner and into such classes as he thinks fit and the classification of a society under any head of classification by the Registrar shall be final. The classification obviously is to be made at the time of registration, soon after registration. Rule 4 of the Gujarat Co-operative Societies Rules enjoins on the Registrar to maintain a register under S.10 of the Act and it shall be in form B. It is obvious that this register is to be prepared and an entry is to be made therein soon on the registration of the society. The Form B itself has a column 6 captioned as follows :

"Class of society as per Section".

Mr. Zaveri in this connection urged that there was no Section in the Act, Which directly refers to the class of society, and, therefore, column is redundant. It is not so. The act fact under S.10 the register is to be kept, the fact that S.10 follows the footsteps of S.9, the fact that form B is a part of the Rules which have statutory force and the fact that S.12 following soon thereafter speaks of the classification by the Registrar go to show that class of society as per Section its column 6 of Form B is 'classification given' to it by the Registrar under S.12. Mr. Zaveri, however, in this connection urged that it was open to the Registrar to on changing the classification. This is not true, because S.12 itself says that classification once given shall be final. It is, therefore, evident that a co-operative society can be gives the classification of a co-operative marketing society at the time of its registration and, therefore, the first requirement of co-operative society as occurring in Cl.(v) of S.6 clearly Provides that a co-operative marketing society in order to be labelled as a co-operative marketing society must have that label given to it soon on its birth by the Registrar by virtue of powers conferred on him by Section 12, which power once exercised are final. Mr. Zaveri's contention that there is no provision in the Act to register a society as a co-operative society is not the correct submission. The 24 societies enumerated in paragraph 7 of his petition admittedly are not registered se co-operative marketing societies and, therefore, the first of the three essentials is lacking in that regard. If it be so, the petitioner's contention that those societies would have a place only in the third category falls through.

11. In this connection, the respondent No. 1 relied upon his notification Annexure I, appended to the affidavit-in-reply filed by the respondent No. 1. However, the said notification is not happily worded. The Registrar of Co-operative societies, who classifies societies under S.12 does so in his capacity qua Registrar under the Co-operative societies Act. He has not to bother with the provisions of the Agricultural Produce Markets Act, 1963. Factually what has been stated in Annexure I may be true, but to classify a society for the purpose of S.11 of the Agricultural Produce 'Markets Act is not a happy way of expressing the things, in the legal way. However, I am not required to pronounce any opinion on the validity or otherwise of that Annexure-I.

12. I have interpreted clauses (i), (ii) and (ii) of S.11(1) of the Act above for the purpose of guidance of the authorities and the would-be election for the purpose of Vyara Agricultural Produce Market Committee is to be carried out in accordance with it.

13. As far as the petition is concerned, the prayer that is set out in the petition cannot be granted. The petition is, therefore, liable to be dismissed and is hereby dismissed. Rule is accordingly discharged with no order as to costs.

Rule discharged.

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AIR 1978 GUJARAT 130 "Gunvatray v. Director, Agrl Marketing"

GUJARAT HIGH COURT

Coram : 1 N. H. BHATT, J. ( Single Bench )

Gunvatray Manilal Desai, Petitioner v. The Director of Agricultural Marketing and Finance Gujarat State, Ahmedabad and others, Respondents.

Special Civil Application No. 32 of 1978, D/- 6 -2 -1978.

Gujarat Agricultural Produce Markets Act (20 of 1964), S.4(2) - AGRICULTURAL PRODUCE - APPEAL - DELEGATION OF POWER - Gujarat Agricultural Produce Markets Rules, 1965, R.28 - Power of Director to hear appeals under R.28 - Delegation of, to Joint Director by State Government - Validity.

Whatever powers are exercised by the Joint Director and whatever functions and duties that are performed by the Joint Director as per the delegated authority, are to be exercised and performed by him "subject to the control of the Director". The judicial powers or quasi-judicial powers cannot be exercised subject to the control of any one or subject to the control of the highest officer. It is, therefore, clear that the Legislature while enacting sub-s. (2) of S. 4 clearly contemplated delegation only of those powers and functions and duties which could be exercised or performed by the delegate "subject to the control of the Director". If judicial powers cannot be subject to such a control, it is to be assumed as a matter of natural corollary that the powers contemplated to be delegated under S. 4 (2) cannot be judicial powers. Consequently, delegation by the State Government of powers of Director under R. 28 to hear appeals, which is a quasi-judicial power, to Joint Director is invalid. The fact that the delegating authority is the State Government would not make any difference. Special Civil Application No. 662 of 1968 and other allied petitions, D/-27-10-1969 (Guj), Rel. on. (Paras 2, 5, 6)

Cases Referred : Chronological Paras

(1969) Spl. Civil Application No. 662 of 1968, D/- 27-10-1969 (Guj) 4

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S.K. Zaveri, for Petitioner; S.J. Joshi (for Nos. 3 to 10) and R.M. Christie, Asstt. Govt. Pleader (for Nos. 1 and 2) for Respondents.

Judgement

ORDER :- This is a petition by a citizen of India, claiming to be an agriculturist in Bulsar District and also claiming to be a voter in his capacity as a member of the Managing Committee of one co-operative society. The dispute which has been raised pertains to the election of 8 agriculturists to the Agricultural Produce Market Committee, Valsad. The term of the Committee was to expire somewhere in June 1976 and so 3-6-1976 was fixed as a date for general elections of the said Market Committee. For the purpose of S. 11 of the Gujarat Agricultural Produce Markets

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Act, 1963, hereinafter referred to as the Act, a voters list of the members of the managing committee of co-operative societies (other than co-operative marketing societies) dispensing agricultural credit in the market area was required to be prepared. One authorised person was appointed and he had prepared the list and had published it on 28-3-1976. In that list, 469 voters were notified. They were as per S. 11 (1) clause (i) members of managing committees of cooperative societies dispensing agricultural credit in the market area. Objections were invited and a final list was published on 12-4-1976. In this final list, there were 57 newly added voters. Then the nominations were filed and the petitioner and respondents Nos. 3 to 17 had filed their nomination papers, which were found in order. The election had taken place on 3-6-1976 and respondents Nos. 3 to 10 were successful. The petitioner and others had lost. The petitioner thereafter moved the Director under R. 28 of the Gujarat Agricultural Produce Markets Rules, 1965, which reads as follows:-

"28. Determination of validity of election.- (1) If the validity of any election of a member of the Market Committee is brought in question by any person qualified either to be elected or to vote at the election to which such question refers such person may, within seven days after the date of the declaration of the result of the election, apply in writing.

(a) to the Director, if the election has been conducted by a person authorised by the Director, to perform the function of an Election Officer and

(b) to the State Government if the election has been conducted by the Director as an Election Officer.

(2) ... ... ... ... ..."

The petitioner's appeal had come to be admitted by the Director and stay was granted. The result was that the petitioner, who was a member in the erstwhile market committee, and who had unsuccessfully fought the election, continued to be the member of the market committee along with his old colleagues. The Director then transferred this appeal to his Joint Director by virtue of the power of delegation, which the State Government has exercised as per the special order as per Government's Order No. GH-KH-153-APM-1072/24508-D dated 15-7-1972. This election application filed by the petitioner then came to be heard by the Joint Director by virtue of the above-mentioned delegated authority and he rejected the application only on two counts: (1) the petitioner had taken part in the election and had acquiesced in the process; and (2) that the petitioner was not able to show how the alleged irregularity in the conduct of the election had materially affected the election. The result was that the said election application came to be dismissed. There being no other alternative remedy available to the petitioner, he moved this Court by filing the present petition.

2. At the outset Mr. Zaveri had raised the contention that under Rule 28 quoted above, the State -Government in the exercise of its delegated legislative power had laid down that the appeal lay to the Director after the election had been conducted by a person authorised by the Director to perform the functions of an Election Officer and this being essentially a judicial or at any rate a quasi-judicial power, it could not delegated by the State Government by virtue of powers conferred under Section 4 (2) of the Act. The power under Section 4 (2), Mr. Zaveri submitted, was essentially the executive power of the Government, whereas the powers, exercised by the Government while framing Rules were legislative in character. When the Govrnment while exercising the delegated legislative powers had laid down as a matter of binding law that only the Director could be the quasi-judicial authority to entertain and conduct the election petition, the Government on its administrative or executive side could not say that the said judicial powers would stand delegated to the Joint Director as seems to have been done by the above-quoted notification of the Government dated 15-7-72. He also urged that under Section 4 (2) of the Act, what is contemplated to be delegated is only executive power and not the judicial power and in support of this submission of his, he tried to derive help from the phrase "subject to the control of the Director". Mr. Zaveri submitted that this clause clearly showed the legislator's intention itself that under Sec. 4 (2) the only powers of the Director that could be delegated to the Joint Director, or Deputy Director would be only executive and administrative powers and not the quasi-judicial powers. There is considerable force in this submission, which is accepted by me for the reasons that follow hereafter.

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It cannot be gainsaid that Rule 28 of the Rules has been framed by the State Government in exercise of the powers conferred by the State Legislature on the Government under Section 59 of the Act. Rule 2 of the Rules is deemed to be, by a legal fiction, a part and parcel of the Act itself. In other words, they are deemed to be the expression of legislative will of the State. The very legislature itself while enacting Section 4 (2) of the Act had also made provision for delegating to the Joint or Deputy Director the powers of the Director under the Act, as the State Government may by general or special order direct. The Legislature, however, made an important condition that the State Government could delegate the powers to the Joint or Deputy Directors, but "subject to the control of the Director." In other words, the State Legislature wanted to retain the overall control of the Director, the highest functionary under the Act, on all such powers functions and duties under this Act vested in the Director and with this clear intention, it has been provided in Section 4 (2) of the Act that the Joint or Deputy Directors so authorised by the State Government by a general or special order are to exercise such powers and to perform such of his functions and duties under the Act "subject to the control of the Director." In other words, whatever powers are exercised by the Joint Director and whatever functions and duties that are performed by the Joint Director as per the delegated authority, are to be exercised and performed by him "subject to the control of the Director." The judicial powers or quasi-judicial powers cannot be exercised subject to the control of anyone or subject to the control of the highest officer. It is, therefore, clear that the Legislature while enacting subsection (2) of Sec. 4 of the Act clearly contemplated delegation only of those powers and functions and duties which could be exercised or performed by the delegate "subject to the control of the Director." If judicial powers cannot be subject to such a control, it is to be assumed as a matter of natural corollary that the powers contemplated to be delegated under Sec. 4 (2) cannot be judicial powers.

3. In this connection, Mr. Joshi for the successful candidates and Mr. Christle for the Director and others urged that the order of delegation referred to above did not speak of any such control. However, this does not matter. If the delegation is under Sec. 4 (2), as a matter of necessity, it is "subject to the control of that Director." That is the clear intention of the Legislature.

4. In above view of mine, I am supported by the judgment of the Division Bench of this court in the special civil application No. 662 of 1968 and other allied petitions decided on 14, 21, 22, 23, 24 and 27 of Oct., 1969 (Guj) the Bench consisting of the then Chief Justice P. N. Bhagwati and N. K. Vakil JJ. The question that was before the Division Bench pertained to the disputes concerning the rateable value and the amount of tax deduction under Rule 18 of the Municipal Rules. In that case, the following pertinent observations were made:-

"Rule 18 confers power and it also imposes duty on the commissioner to investigate and decide complaints made by assessees against the initial entries in the assessment book. The exercise of the power results in an order being made determining amongst other things the rateable value of the premises......... This quasi-judicial power involving exercise of a large measure of personal judgment and vitally affecting the property rights of citizens has been conferred by the Legislature upon the Commissioner who is the highest executive officer under the Act. The question is : whether such a power is within the contemplation of Section 49 : Can it be deputed to another under that Section.

We do not think so. No judicial or quasi-judicial power can be deputed to another by an officer to whom it is entrusted under the statute unless the law expressly or by necessary implication permits it." (emphasis supplied by me). After referring the judgment of the Supreme Court in the case of Bombay Municipal Corporation v. Dhondu, AIR 1965 SC 1486 and other authorities, the Division Bench further held as follows:-

"If the principle is well founded that a judicial or quasi-judicial power cannot be delegated unless the law expressly or by clear implication allows it, it must equally hold true that such a power cannot be deputed without a clear expression of legislative will to that effect."

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The question that was specifically put for the consideration of the court was in respect of Sections 49 and 69 of the Bombay Provincial Municipal Corporation Act, 1949. Section 69 before it was amended by Gujarat Act No. 5 of 1970 provided as follows:-

"Subject to the provisions of sub-sections (2) and (3), any of the powers, duties or functions conferred or imposed upon or vested in the commissioner or the Transport Manager by or under any of the provisions of this Act may be exercised, performed or discharged, under the control of the Commissioner or the Transport Manager, as the case may be, and subject to his revision and to such conditions and limitations, if any, as may be prescribed by rules, or as he shall think fit to prescribe in a manner not inconsistent with the provisions of this Act or rules, by any municipal officer whom the Commissioner or the Transport Manager generally or specifically empowers by order in writing in this behalf; and to the extent to which any municipal officer is so empowered the word "Commissioner" and the words "Transport Manager" occurring in any provisions in this Act, shall be deemed to include such officer."

Section 49 before its amendment read as follows:-

"49 (1) A Deputy Municipal Commissioner or Assistant Municipal Commissioner shall, subject to the orders of the Commissioner, exercise such of the powers and perform such of the duties of the Commissioner as the Commissioner shall from time to time depute to him:

Provided that the Commissioner shall inform the Corporation of the powers and duties which he from time to time deputes to a Deputy Municipal Commissioner or Assistant Municipal Commissioner." (2) All acts and things performed and done by Deputy Municipal Commissioner or Assistant Municipal Commissioner during his tenure of office and by virtue thereof shall for all purposes be deemed to have been performed and done by the Commissioner."

The Division Bench then posed a question as follows:

"We must, therefore, turn to inquire whether Section 49 contains any provision, express or by necessary implication, permitting deputation of the quasi-judicial power under Rule 18.

We find that far from containing any such provision then is within Section 49 inherent evidence to show that the Legislature never intended that judicial or quasi-judicial power should be deputable by the Commissioner to the Deputy Municipal Commissioner. Section 49 says that the powers and duties deputed by the Commissioner under the section are to be exercised and performed by the Deputy Municipal Commissioner "subject to the orders of the Commissioner". The orders may be general or specific and they may be issued from time to time or at any time and at any stage of the proceeding before the Deputy Municipal Commissioner. The section thus enable the Commissioner to control the exercise and performance of the powers and duties by the Deputy Municipal Commissioner at any and every stage. It makes it obligatory on the Deputy Municipal Commissioner to follow whatever orders the Commissioner may make, while taking decisions in exercise of the power and performance of the duty deputed to him. Now, it is impossible to conceive of interference and control by one officer in the performance of a quasi-judicial function by another. Such interference and control except by way of appeal is inherently inconceivable in the field of judicial or quasi-judicial decision. It is in fact a contradiction or negation of judicial or quasi-judicial power. If such interference and control were permissible, it would make one officer ostensibly responsible for the decision of another: nay more, it would compel an officer in the exercise of his judicial function to act according to the dictates of another, even if he is not satisfied about the correctness of the course dictated by that other. That would be wholly inconsistent with exercise of judicial or quasi-judicial power. The words "subject to the orders of the Commissioner" are appropriate only in relation to deputation of administrative functions. They are singularly inappropriate in relation to deputation of judicial or quasi-judicial functions. These words are clearly indicative of the legislative intent that judicial or quasi-judicial functions of the Commissioner are not intended to be deputed and it must therefore be held that the deputation of the quasi-judicial power under Rule 18 was not within the contemplation of Section 49." (Emphasis furnished by me.)

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5. It is to be recalled here that because of this judgment, Sections 49 and 69 came to be retrospectively amended by Gujarat Act No. 5 of 1970, with the result that judicial powers were held to be debatable but were held to be exercisable not under the control of the Commissioner. By enacting Gujarat Act No. 5 of 1070, the Gujarat Legislature accepted the interpretation placed by the Division Bench of this court on Section 49 of the Bombay Provincial Municipal Corporation Act, 1949, which interpretation even on its own stands on a firm footing. Applying the ratio of that case to the facts of the case on hand, it is crystal clear that the Legislature while enacting Section 4 (2) of the Act, could not have intended that judicial or quasi-judicial functions, which were required to be performed by the Director under this Act, were such as could be delegated. The phrase "subject to the control of the Director", occurring in sub-sec. (2) of Sec. 4 of the Act, therefore, clearly shows that only executive powers could be delegated.

6. The learned Advocates Mr. Joshi and Mr. Christie, however, urged that in the case before the Division Bench, the delegation was by the Municipal Commissioner himself whereas in the case on hand, delegation is by the State Government. This, however, makes little difference as far as the basic principle is concerned. Section 4 (2) of the Act, as framed by the Legislature, is susceptible of one meaning, namely, the competence of the State Government on its executive side to delegate executive functions to the Joint Director or Deputy Director. The Rule 28 of the Rules as it stands speaks only of the Director. The result would be that the handling of the election petition by the Joint Director would be an act without authority and on that count the petition will be required to be allowed and the matter to be remanded to the Director, who had after admitting the election petition, transferred it to the Joint Director for disposal. The Director, therefore, will be required to entertain the said petition presented by the petitioner and dispose it of in accordance with law. Rule is accordingly made absolute with no order as to costs.

7. Many facets over and above the one urged by the petitioner in his memo of election petition were canvassed by Mr. Zaveri for the petitioner before me. On behalf of all the respondents, important pleas like the acquiescence of the petitioner in the election process, namely, the petitioner's non-objecting to the provisional list and his having participated in the election and the petitioner's prospects even otherwise not being improved were pressed into service. As the matter is going back to the Director for disposal in accordance with law, I do not propose to deal with those questions. It will be open to both the sides to raise suitable contentions that may be open to them.

8. Before I part with this matter, I would express my concern over the prolongation of the control of the market committee, Bulsar by the petitioner and others who have lost credentials. About two years are over since this situation started persisting. It will be for the Government to see to it that it takes such steps as are necessary in the facts and circumstances of the case. At any rate, the election petition as filed by the petitioner before the Director would be disposed of in accordance with law. This is by way of suggestion and not by way of direction. I also would like to bring to the notice of the Government the want of any Rules in respect of the election petitions and election process. If the rules are framed on the lines of similar provisions in municipal laws, much controversy could be avoided.

Writ petition allowed.

AIR 1972 GUJARAT 78 (V. 59 C 15) "Fulabhai v. K. D. T. M. Committee"

GUJARAT HIGH COURT

Coram : 2 B. J. DIVAN AND S. H. SHETH, JJ. ( Division Bench )

M/s. Fulabhai Govindbhai Bhadran and others, Applicants v. The Kaira District Tobacco Market Committee and others, Opponents.

Spl. Civil Applns. Nos.460 and 1242 of 1969, D/- 9 -2 -1970.

(A) Gujarat Agricultural Produce Markets Act (20 of 1964), S.6 - AGRICULTURAL PRODUCE - Exercise of power conferred by a statute cannot be objected to on vague grounds in the absence of plea that such exercise was a fraud upon the law.

Gujarat Agricultural Produce Markets Act (20 of 1964), S.7.

AIR 1956 Bom 21, Followed. (Para 16)

Held, (i) as there was no plea of fraud, the notifications issued under Bombay Agricultural Produce Markets Act (22 of 1939) (repealed by the Act) declaring Kaira District Market-Area, Market-Yard and Market-Proper for sale and purchase of tobacco could not be challenged on the ground that the notified market area was very wide. (Para 16)

(ii) Since the scheme of the Central Excises and Salt Act and the Act are different there is no question of the scheme of the Bombay Act or the Gujarat Act becoming unworkable because of the provisions of the Central Act and the rules framed thereunder. (Para 14)

(iii) It cannot be said that in the absence of the location of a market by the market committee the Act does not operate in the market-area so declared. (Para 17)

(B) Gujarat Agricultural Produce Markets Act (20 of 1964), S.60 - AGRICULTURAL PRODUCE - LICENSE - Licence and Market fees charged by the Kaira District Tobacco Market Committee under its bye-laws and the rules framed under the Act are validly charged for services rendered by it notwithstanding that u/S.34 a portion of its fund may be utilized for aiding other bodies.

Gujarat Agricultural Produce Markets Act (20 of 1964), S.34.

Gujarat Agricultural Produce Markets Rules (1965), R.48.

Gujarat Agricultural Produce Markets Act (20 of 1964), R.57.

Case law discussed. (Paras 20, 23, 24, 25)

(C) Gujarat Agricultural Produce Markets Rules (1965), R.58 - AGRICULTURAL PRODUCE - FREEDOM OF TRADE - RIGHT TO PROPERTY - R.58 and R.59 are not ultra vires rule making power.

Gujarat Agricultural Produce Markets Rules (1965), R.59.

Gujarat Agricultural Produce Markets Act (20 of 1964), S.59.

Gujarat Agricultural Produce Markets Rules (1965), S.60.

Gujarat Agricultural Produce Markets Rules (1965), S.28, Proviso .

Gujarat Agricultural Produce Markets Rules (1965), S.27.

Constitution of India, Art.19(1)(g).

Constitution of India, Art.31. (Para 26)

Bye-laws 21, 24, 57 and 32 of the Kaira District Tobacco Market Committee. Forms 2, 6, 8 and 9 and conditions Nos.3, 5, 10 and 18 of the licence are not ultra vires the powers of the Market Committee. Neither they amount to unreasonable restrictions to carry on trade nor are they violative of Art.31 of the Constitution. (Para 26)

In view of Section 27(2) the Committee can prescribe terms and conditions of licence by making bye-laws under Section 60. So it can lay down that the different licensees should collect the market fee from the different sellers.

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Though under proviso to Section 28 it has power to appoint agent for collecting market fee it is not obligatory on it to appoint agents. The fact that the market fees are collected under the bye-laws through the licensees does not mean that such licensees become agents of the Committee as contemplated by proviso to Section 28. Thus, the bye-laws, the rules and the sections are all part of a corelated scheme for collecting the market fee and utilization thereof ultimately for the benefit of agricultural producers. (Para 26)

(D) Gujarat Agricultural Produce Markets Act (20 of 1964), S.35 - AGRICULTURAL PRODUCE - RIGHT TO PROPERTY - Prohibition as to recovery of trade allowances in S.35 forms part of the machinery for regulation of buying and selling agricultural produce - It is not unreasonable restriction within Art.19(1)(g) of the Constitution.

Constitution of India, Art.19(1)(g). (Para 29)

(E) Gujarat Agricultural Produce Markets Rules (1965), R.48, Expln. - AGRICULTURAL PRODUCE - Explanation is not ultra vires the rule making power - It is merely a safeguard against the possible evasion of the regulatory provisions regarding the marketing of agricultural produce.

Gujarat Agricultural Produce Markets Act (20 of 1964), S.59. (Para 30)

(F) Gujarat Agricultural Produce Markets Act (20 of 1964), S.6 - AGRICULTURAL PRODUCE - DELEGATION OF POWER - LEGISLATURE - S.6, S.8, S.27 and S.28 are not void on the ground of excessive delegation of power - The guide lines subject to which power under the sections is to be exercised are laid down in the sections.

Gujarat Agricultural Produce Markets Act (20 of 1964), S.8.

Gujarat Agricultural Produce Markets Act (20 of 1964), S.27.

Gujarat Agricultural Produce Markets Act (20 of 1964), S.28.

Constitution of India, Art.245. (Paras 31, 32)

Cases Referred : Chronological Paras

(1970) AIR 1970 SC 93 (V 57) : (1969) 1 SCC 853, Mohd. Faruk v. State of Madhya Pradesh 29

(1969) Spl. Civil Appln. No.457 of 1965, D/-23-10-1969 (Guj) 22

(1968) AIR 1968 SC 1119 (V 55) : 1968-3 SCR 374, Nagar Mahapalika, Varanasi v. Durga Das 24

(1968) AIR 1968 SC 1408 (V 55) : 1968-3 SCR 534, Lakhanlal v. State of Bihar 19, 20, 24

(1965) AIR 1965 SC 1107 (V 52) : 1965-1 SCA 657, Corpn. of Calcutta v. Liberty Cinema 21, 22

(1959) AIR 1959 SC 300 (V 46) : 1959 Supp (1) SCR 92, Arunachala Nadar v. State of Madras 12, 29

(1956) AIR 1956 Bom 21 (V 43) : 57 Bom LR 892, Bapubhai v. State of Bombay 16

(1954) AIR 1954 SC 282 (V 41) : 1954 SCR 1005, Commr. of Hindu Religious Endowments Madras v. Sri Lakshimindra Thirtha Swamiar of Sri Shirur Mutt. 19, 21, 24

(1938) 1938 AC 708 : 107 LJPC 115, Shannon v. Lower Mainland Dairy Products Board 21, 22

V. B. Patel, J. B. Patel, for Applicants; Rajni Patel, S. K. Zaveri, for Opponent No.1; J. R. Nanavati, Asstt. Government Pleader, R. M. Gandhi, Addl. Govt. Pleader, for Opponent No.2, in both the matters.

Judgement

DIVAN, J.:- In both these petitions though the petitioners are different, the provisions of the Rules and the bye-laws framed under the Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to as "the Act") have been challenged by the respective petitioners. The rules in both the petitions are in connection with the bye-laws of the Kaira District Tobacco Market Committee, Anand and in connection with the market area, the principal market year and the market proper set up for the purpose of controlling trade in tobacco in Kaira District these challenges have been made.

2. The petitioners in Special Civil Application No.460 of 1969 state that petitioners Nos.1, 2 and 3 are dealers in tobacco. Petitioner No.1 purchases its tobacco from agriculturists and/or other dealers in tobacco and/or from through brokers or commission agents and petitioners Nos.2 and 3 are commission agents and brokers. Petitioner Nos.4 and 5 claim to be agriculturists and tobacco growers. On November 2, 1939 the Legislature of the Province of Bombay enacted an Act called the Bombay Agricultural Produce Markets Act, 1939 (hereinafter referred to as "the Bombay Act") to provide for better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the province of Bombay. Subsequent to the enactment of the Bombay Act, Sections 4-A, 5-A, 5-AA and 5-BB and Sections 18-A to 18-C, 21-A, 21-B and 29-A were added in the Bombay Act. Pursuant to the powers vested in the Provincial Government in that behalf under the Bombay Act, Rules were framed by the Provincial Government in 1941 and thereafter in 1960 the Commissioner, Ahmedabad Division, declared that with effect from 15th February 1960 the area of Kaira District was to be the market area for the purposes of the Bombay Act in respect of purchase and sale of tobacco. That notification was issued on 9th February 1960. Thereafter a further notification was issued on October 18, 1960 mentioning that the localities mentioned in the notification were to be the market yard for the market area of Kaira District and by another notification dated October 18,

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1960 the Commissioner concerned further notified that the area within the limits of Anand Municipality was to be the market proper in the market area of Kaira District. It is by virtue of these three notifications that in 1960 first the market area of the entire Kaira District was set up as the market area for purchase and sale of tobacco and the market yard was set up at Anand and the market proper was set up conterminus with the limits of Anand Municipality.

3. The Bombay Act of 1939 was repealed by the Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to as "the Gujarat Act") and in exercise of the powers conferred upon it by Section 59 of the Gujarat Act the Government of Gujarat framed Rules called the Gujarat Agricultural Produce Market Rules, 1965 (hereinafter referred to as "the Gujarat Rules,"). Thereafter the first respondent-Market Committee has framed appropriate bye-laws as well. In Special Civil Application No.460 of 1969 the petitioners have challenged some of the provisions of the Act as well as the Rules and we will later on set out seriatim the different contentions urged on behalf of the petitioners regarding those challenges.

4. In Special Civil Application No.1242 of 1969 the petitioners are three different partnership firms and all these partnership firms have their offices at Chikhodra village in Anand Taluka of Kaira District. The averments set out in this Special Civil Application are on the same lines as the averments in Special Civil Application No.460 of 1969 and the challenges are also on the same grounds. The three petitioners-firms in this Special Civil Application are dealers in tobacco and all the male partners of the different petitioner-firms claim to be agriculturists and tobacco growers. Since the challenges to the sections and the rules and the bye-laws in the two petitions are on the same lines, we will dispose of both these Special Civil Applications by this common judgment.

5. Mr. V.B. Patel appearing on behalf of the petitioners in both the Special Civil Applications contended as follows:-

(1) That the area declared as market area, market proper and market yard is so wide that the sale and purchase of tobacco cannot be controlled and, therefore, the notifications declaring such areas are invalid. It is also contended under this head that the market committee has not located the market and, therefore, the Act i.e. the Gujarat Act does not operate in this market area.

(2) Bye-laws dealing with the market fee and licence fee are void as the levy thereof is beyond the power of the Market committee inasmuch as there is no quid pro quo of sufficient quid pro quo for the services rendered by the Market Committee and the funds are permitted to be used for aiding other bodies under the provisions of Section 34 of the Gujarat Act.

(3) This contention was divided into two major sub-heads, viz. (a) Rules 58 and 59 of the Gujarat Rules are ultra vires the rule making power and they over-reach Section 28. In this connection it was contended that the word 'agent' must be given the ordinary meaning and that if the acceptance of a particular contract is under compulsion, no contract at all can be said to be created and if agency for the purpose of collection of market fee is constituted by compulsion, then there cannot be said to be any agency and hence Rules 58 and 59 are ultra vires. It was further contended under this sub-head that the mere expediency of saving money or a more convenient mode of collection of market fee was not a relevant factor while considering the rule making power in this connection.

(b) Relevant bye-laws of the respondent-Market committee are also challenged on the same grounds as the provisions of Rules 58 and 59 of the Gujarat Rules.

(4) Bye-laws 21, 24, 57 and 32, Forms 5, 6, 8 and 9 and conditions Nos.3, 5, 10 and 18 of the licence are all ultra vires the powers of the Market Committee and are not binding on the petitioners. It was contended in this connection that these bye-laws, forms and conditions operate as unreasonable restrictions to carry on trade and are, obnoxious to Art.19(1)(g) and are also violative of Art.31 of the Constitution.

(5) Section 34 is a colourable exercise of legislative power. It was contended that the Legislature cannot provide for use of the money for purposes of a body other than the respondent-Market Committee or any Market Committee other than the one which collects the market fees. It was also contended in this connection that Sections 34 and 35 are both beyond the legislative subject-matter and are ultra vires the State Legislature because the entry relating to contracts occupied the field so far as the Central Legislature is concerned and these provisions were not regulatory but were prohibitory in nature and amounted to unreasonable restrictions.

(6) Explanation to sub-rule (1) of R.48 and bye-law 2(9) were ultra vires the rule making authority and void and it was contended in this connection that the vice lies in the fact that the levy is charged before the leviable event occurs

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and, therefore, it was repugnant to the scheme of the Act.

(7) Sections 27, 28, 6 and 8 are void on the ground of excessive delegation inasmuch as these sections confer arbitrary power on the delegate without providing guidance and restraints subject to which the delegate has to prescribe fee.

(8) Transactions between the traders are beyond the scope of the Act.

6. It may be stated at the commencement of considerations of these different contentions that each of these contentions is supported by appropriate averments in the petition or in the affidavits filed on behalf of the petitioners in these proceedings.

7. Before we go on to consider the contentions it is necessary to set out certain prominent provisions of the Gujarat Act and the Gujarat Rules. As the title of the Act shows, the Gujarat Act is an Act to consolidate and amend the law relating to the regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Gujarat. At this stage we may also point out that entry No.28 in List II i.e. State List in the Seventh Schedule of the Constitution is "Markets and fairs" and under Article 246(3), subject to Cls.(1) and (2) of Art.246, the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in list II in the Seventh Schedule and thus the State Legislature had the exclusive power to make laws for the State of Gujarat in connection with markets and fairs. Deriving power from Article 246(3) read with Entry 28 in the Seventh Schedule the State of Gujarat has enacted this legislation and the legislation is for regulating buying and selling of agricultural produce and the establishment of markets for agricultural produce. Under Section 2(i) of the Gujarat Act, "agricultural produce" means all produce, whether processed or not, of agriculture, horticulture and animal husbandry, specified in the schedule. The terms "market" "Market proper" and "market area" mean respectively market, market proper and market area declared or deemed to be declared so under the provisions of the Act. Section 6 empowers the Director of Agricultural Marketing and Rural Finance, Gujarat State to declare any areas specified in the notification to be a market area for the purposes of the Act in respect of all or any of the kinds of agricultural produce specified in the notification and under Section 7(1) for each market area, there shall be a market which shall consist of one principal market yard, sub-market yards, if any and all markets proper as notified under sub-sections (2) and (3) of that section. The Director has been empowered under Section 7(2) to declare by notification in the Official Gazette any enclosure, building or locality in any market area to be a principal market yard and any other enclosure, building or locality to be a sub-market yard. Under Section 7(3) whenever the Director declares for any market area, the principal market yard or a sub-market yard, he shall simultaneously declare, by notification in the Official Gazette, an area within such distance of the principal market yard or sub-market yard, as the case may be, as he thinks fit, to be a market proper. Under Section 8 of the Gujarat Act, no person shall operate in the market area or any part thereof except under and in accordance with the conditions of a licence granted under the Act. One of the results of the declaration of the market area as under Section 6(2) is that notwithstanding anything contained in any law for the time being in force, from the date on which any area is declared to be a market area under sub-section (1), no place in the said area shall be used for the purchase or sale of any agricultural produce specified in the notification except in accordance with the provisions of the Act and under sub-section (3), nothing in sub-section (2) shall apply to the purchase or sale of any such agricultural produce, if its producer is himself its seller and the purchaser purchases it for his own private consumption. Under Section 9, for every market area the Director has to establish a market committee and the exceptions set out in sub-sections (2) and (3) of Section 9 have no bearing on the controversy arising in the present case and, therefore, we do not refer to the same. Section 27(1) lays down that on the establishment of a market, the market Committee may, subject to rules made in that behalf, grant or renew a general licence or a special licence for the purpose of any specific transaction or transactions to a trader, general commission agent, broker, weighman, surveyor, warehouseman or any person to operate in the market area or part thereof, or after recording its reasons therefore, refuse to grant or renew any such licence. Power has also been given to the Market Committee to suspend or cancel a licence after following proper procedure and for reasons to be recorded in writing. Section 28 empowers the Market Committee, subject to the provisions of the rules and the maxima and minima from time to time prescribed, to levy and collect fees on the agricultural produce bought or sold in the market

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area and the proviso to Section 28 states that the fees so levied may be collected by the Market Committee through such agents as it may appoint. Under Section 30 power has been conferred upon the Chairman, Vice-Chairman or Secretary of the Market Committee or any other member, officer or servant authorised by the committee in this behalf to evict summarily from the market any person found to be operating in the market area without holding a valid licence and such eviction is to be without prejudice to any punishment to which the person evicted may be liable under the Act. Under Section. 32 all moneys received by a Market Committee shall be paid into a fund to be called "the Market Committee Fund" and all expenditure incurred by the Market Committee under or for the purposes of the Act has to be defrayed out of the said fund. Any surplus remaining with the Market Committee after such expenditure has been met has to be invested in such manner as may be prescribed in this behalf. Section 33 lays down the purposes for which the fund is to be expended and what has been attacked is clause (9) laying down payment of contribution to the State Agricultural Produce Markets Fund. Section 34 lays down that there shall be established a fund called the State Agricultural Produce Markets Fund which is to consist of the payments made into it under sub-section (2) of that Section and such other sums which may under this Act be credited thereto, and which shall unless otherwise provided in the Act, be utilised for subsidising a market committee for the development of a market or for subsidising market committees whose financial position makes it impossible for them to employ a sufficient number of officers and servants for the discharge of their functions under the Act or for discharging any liability vesting in the State Government under Section 53. Section 34(2) provides that all market committees shall pay to the State Agricultural Produce Markets Fund every year such contribution on such date and in such manner as may be prescribed and the State Government has to contribute to the said Fund every year a sum which shall be equal to the total amount of contributions under clause (a) from all market committees.

The State Fund has to be kept in the custody of, and has to be administered by the Director of Agricultural Marketing and Rural Finance in such manner as may be prescribed. Under Section 35 no person shall make or recover any trade allowance, other than an allowance prescribed by rules or bye-laws made under the Act. In any market area in any transaction in respect of agricultural produce specified in respect of the market area under the provisions of the Act and no civil court shall, in any suit or proceeding arising out of any such transaction, take into consideration or recognise any trade allowance not so prescribed. The explanation to Section 35 mentions that every deduction other than a deduction on account of deviation from sample when the purchase is made by sample, or on account of a deviation from standard when the purchase is made by reference to a known standard, or on account of a difference between the actual weight of the container and the standard weight, shall be regarded as a trade allowance for the purposes of this section. Section 59 confers the power to make rules on the State Government and such rules may be either general or special for any market area or market areas and they are to be made for the purposes of carrying out the provisions of the Act. Section 60 confers power on the market committee in respect of the market area and agricultural produce for which it is established, to make by-laws, not inconsistent with the Act and the rules made thereunder, for the regulation of business and the conditions of trading in the market area for any other matters as may be prescribed and the proviso lays down that no such bye-law shall be valid until it is registered under the Act. Such registration under the provisions of Section 60 is to be made with the Director of Agricultural Marketing and Rural Finance. The other provisions of the Act are not material for the purpose of this judgment.

8. Acting in exercise of the powers conferred by Section 59 of the Gujarat Act, the Gujarat Government made the Gujarat Agricultural Produce Markets Rules, 1965. Rules which are relevant for the purpose of this judgment are as follows.

Rule 48 provides for market fees and lays down that the market committee shall levy and collect fees on agricultural produce bought or sold in the market area at such rate as may be specified in the bye-laws subject to the minima and maxima laid down in the rule. So far as the rates levied ad valorem are concerned, they are not to be less than 5 paise and not to be more than 40 paise per hundred rupees. The explanation to clause (1) of Rule 48 lays down that for the purposes of this rule a sale of agricultural produce shall be deemed to have taken place in market area if it has been weighed or measured or surveyed or delivered in case of cattle in the market area for he

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purpose of sale, notwithstanding the fact that the property in the agricultural produce has by reason of such sale passed to a person in a place outside the market area. Under the second proviso to sub-rule (2) of Rule 48 no fee shall be payable on a sale or purchase to which sub-section (3) of Section 6 applies, meaning thereby to a sale by an agricultural producer to a purchaser purchasing the produce for his own private consumption. Rule 49 provides for recovery of fees and lays down that the fees on agricultural produce shall be payable as soon as it is brought into the principal market yard or sub-market yard or market proper or market area as may be specified in the bye-laws, provided that the fees so paid shall be refunded on production of sufficient proof that such produce was not sold within the limits of the market area. The remaining provisions of Rule 49 are not material for this judgment. Under R.50 a receipt duly signed by the person authorised by the market committee has to be granted to every person in respect of fees collected from him under these rules or the bye-laws. Rule 54 lays down that all agricultural produce arriving into the market shall be brought into the principal market yard or sub-market-yard in the 1st instance and shall not be bought or sold at any place outside such yards, provided that ginned cotton, husked paddy, groundnut seeds and split pulses may be sold anywhere in the market area in accordance with the provisions of bye-laws and details of all agricultural produce resold in wholesale in the market area have to be reported to the market committee under clause (2) of Rule 54. Rule 57 prescribes the maximum fees for licences to be issued by the market committee to a broker, weighman, measurer, Hamal, Surveyor, warehouseman, carting agent and clearing agent. Provisions have also been made in Rule 56 for issuing licences to traders and general commission agents carrying on their respective business in the agricultural produce in question in the market area or any part thereof. The maximum licence fee which can be charged to a licenced trader or a general commission agent is Rs.200/-. Under Rule 58 every trader, general commission agent, broker, weighman, measurer and surveyor licensed under these rules has to keep such books in such form and render such periodical returns and at such time and in such form as the market committee may from time to time direct and has to collect fees and render such assistance in the prevention of the evasion of fees due under the Act, these rules and bye-laws and in the prevention of the breach of the rules and bye-laws as may be required by the market committee. There is also a provision in the rules for requiring the traders, general commission agents and brokers to submit for examination in the office of the market committee, and to allow the inspection of their account books, ledger etc. on demand by the chairman, vice-chairman or Secretary of the market committee or any other officer or servant of the market committee when so authorised by the chairman or secretary. The rules also provide for appropriate weights and measures and standard weights and measures and inspection of weights and measures. The remaining rules do not require consideration for the purpose of this judgment.

9. The first respondent-market committee has made the bye-laws for the purposes of the Act under Section 60. Bye-law 20 lays down that market fee at the rate of 25 p. per hundred rupees on tobacco bought and sold or brought within the market area in question has to be paid. Bye-law 21 lays down the procedure for recovery of market fee and clause (1) of bye-law 21 states that as soon as tobacco is bought or sold within the limits of the market area, the owners of the tobacco become liable to pay the market fee at the rates mentioned in bye-law 20. Clause (3) of bye-law 21 lays down that if in a particular transaction a commission agent or broker has been engaged, then the market fee is to be recovered from such commission agent or broker and/or from the purchaser of the tobacco and the responsibility of paying the market fee to the market committee is on such commission agent or broker or purchaser of the tobacco. Clause (4) lays down that at the time of paying the price of the tobacco to the seller of the owner of the tobacco the market fee may be deducted by the commission agent or the broker or the purchaser.

10. Bye-law 24 lays down the provisions for different types of licence-holders and the seller has also to observe certain rules at the time of effecting sale. One of the requirements is that if he does not wish to sell the goods, then he has to get a note to that effect made by the market committee. Bye-law 39 provides for inspection of tobacco when such tobacco has been brought into the principal market yard or market proper or market area. Bye-law 42 provides for the control and regulation of traffic, vehicles etc. and for the regulation of movements of tobacco in the principal market yard or sub-market yard and powers have been given under that bye-law to the Chairman,

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Vice-Chairman, Secretary or to the authorised member or official of the market committee to regulate the traffic in goods as well as in vehicles. The forms prescribed by the bye-laws lay down for the supply of different types of information by the licence-holders being either the general commission agents or licensed traders and form No. 8 prescribes the form in which the information has to be given regarding the account of weight and quantity sold and the price. Conditions of licence have been laid down and condition No.5 prescribes that whenever the market committee requires any information the licence-holder is bound to furnish that information and has to submit his books of account at such place as the committee may demand. That has to be done for the information of the market committee. The conditions also require the licence-holder not to carry on any trade with a non-licence holder in connection with products of tobacco, and require him to help the market committee in enforcing the provisions of the Act, the rules and the bye-laws in connection with the market committee and to be helpful to the market committee in preventing breaches of the sections, the rules and the bye-laws.

11. In order to deal with the challenge to these provisions it is important to bear in mind the distinction between "market area" "market proper" "principal or sub-market yard" and "market". The market area is out of all these geographical areas the largest entity and the market committee under the Act and the rules made thereunder has the power to regulate transactions of purchase and sale of tobacco throughout the market area and no person can operate in the market area in connection with this particular commodity of tobacco except in accordance with the licence granted to him. At the same time, it must be borne in mind that the operation means action as a trader, commission agent, broker, weighman, surveyor etc. as contemplated by the rules and the bye-laws. In the market area the principal market yard or sub-market yards as the case may be have to be notified by appropriate notification and appurtenant to each principal or sub-market yard an area called "market proper" which is a slightly larger area has also to be notified. The principal or the sub-market yards as the case may be together with the appurtenant market proper constitute a market. Thus there is a clear distinction between "market area" and "market". This distinction between "market" and "market area" has to be constantly borne in mind in order to understand properly the provisions of the Act, the rules and the bye-laws and what the Legislature has sought to do, in the instant case.

12. Subba Rao, J. (as he then was) in Arunachala Nadar v. State of Madras, AIR 1959 SC 300, has in paragraph 6 pointed out the historical background of such legislation for regulating marketing of agricultural produce and he has stated that marketing legislation is now a well-settled feature of all commercial countries. The object of such legislation is to protect the producers of commercial crops from being exploited by the middlemen and profiteers and to enable them to secure a fair return for their produce. He has also pointed out how the Royal Commission on Agriculture in India, the Central Banking Enquiry Committee, the All India Rural Credit and Survey Committee etc. and also the Expert Committee appointed by the Government of Madras had made recommendations for legislation on these lines and so far as tobacco trade is concerned, it may be pointed out that the notifications issued in 1960 were in pursuance of the Report of the Expert Committee on the review of the Bombay Agricultural Produce Markets Act, 1939. That Committee was set up by the Government of Bombay by its resolution of June 22, 1955. It was in pursuance of the report of that Expert Committee that regulation of marketing of tobacco which was one of the major cash crops under the Act was taken in hand and the market yard and market proper at Anand were notified in 1960 under the Bombay Act of 1939.

13. In paragraph 14 of the petition, the petitioners have stated that the authority issuing the Notifications declaring the areas to be the market area, market proper and market-yard has acted without applying its mind properly, arbitrarily and so unreasonably that the sale and purchase of the regulated produce cannot be controlled by the market committee. The petitioners contended that this is apparent from the Notifications annexed to the petition and collectively marked annexure-"A". According to the petitioners, the declarations made by the said notifications are manifestly unreasonable and more so in case of produce like tobacco. According to the petitioners, such declarations are totally misconceived and wholly inappropriate. The petitioners, therefore, contend that the said notifications were illegal, ineffective and unenforceable. The petitioners contended that Kalra District consists of 10 Talukas, each consisting of a number of villages; and the total

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area of the District is 6788 Sq. Kilometers. Mr. V.B. Patel, on behalf of the petitioners, also drew our attention to various rules laid down by the Central Government under the Central Excises and Salt Act, 1944; and these Rules are called the Central Excise Rules, 1944. Under the rules laid down in Chapter IV of the Central Excise Rules, 1944, special obligations have been laid down on growers of tobacco and those who store tobacco; and certain registers and books have to be maintained as laid down in those Rules; and it was contended that if the Central Excise Rules have to be complied with, then the Scheme of the market-area, market-yard, market proper, and the market committee under the Bombay Act, 1939 and Gujarat Act of 1963 becomes unworkable.

14. As regards this contention, it is true that under the Central Excise Act, certain obligations are laid down on the growers of tobacco and also on those who process tobacco for being taken to the market or process it in any other manner. Those obligations are from the point of view of seeing that the excise duty payable on tobacco is not evaded; where as the provisions of the Bombay Act of 1939 and the Gujarat Act of 1963 and the Rules and bye-laws framed thereunder, are for seeing that the agriculturists who produce tobacco in his field gets the maximum price for his agricultural produce and is not cheated in any manner; and it is from the point of view of thus benefiting the agriculturist, producer of tobacco, that the regulation of the market is sought to be enforced. The scheme of the two Acts being different, there cannot be any question of the Scheme of the Gujarat Act becoming unworkable because of the provisions of the Central Excises and Salt Act, 1944, or the Central Excise Rules, 1944.

15. As regards the contention that the area notified as market area, viz., 6788 Sq. meters, is a very wide area, we must bear in mind that under the Scheme of the Act and the Rules, it is only when goods arrive in the market-proper either because they are grown there or because they are brought there from outside that the obligation arises to take them either to the principal market yard or to the sub-market yard, as the case may be. Each and every purchaser of tobacco in the market area is not bound to take his goods to the principal market yard or the sub-Market yard, if any. But so far as the regulation of the traders is concerned, no trader can operate in the entire market area unless he has licence and by licensing and keeping control over his transactions, the Market Committee sees to it that proper prices are paid and that the traders carry out the terms and conditions of their licences and do not in any manner act contrary to the interests of the producers.

16. We may also point out that in Bapubhai v. State of Bombay, AIR 1956 Bom 21, a Division Bench of the Bombay High Court considered the constitutional validity of the Bombay Act of 1939 and held it to be a valid piece of legislation. Chagla C.J., delivering the judgment of the Division Bench, pointed out the distinction between a power vested in the Government and exercise of discretion. In paragraph 24 at p. 29, Chagla C.J., observed:-

"There is one further point that Sir Nusserwanji wanted to urge which we have not permitted him to do, and therefore in fairness to him we must point out what his contention was to be. With regard to the notification of 13-10-1954, to which reference has been made. Sir Nusserwanji wanted to argue that that notification was in fraud of the provision to Section 4-A(2). The argument was that the first notification which purported to give effect to the proviso was merely a camouflage, the intention all along was not to carry out the mandatory provisions of the proviso and to declare a principal market yard different from the principal market yard which had to be declared under the proviso.

Now, it is a serious allegation to make that a Government has acted in fraud of a legislation and we cannot countenance an argument based on such an allegation unless there is a clear plea in the petition. Now, there is no plea to the effect that the State Government has acted in fraud of the legislation or that the notification issued by it is in fraud of the legislation. The only contention put forward is that the State Government has arbitrarily and capriciously issued the second notification within a short time of the first notification.

In our opinion, a contention that a Government acts arbitrarily and capriciously is very different from the contention that the Government acts in fraud of a law on the statute book. It is also difficult to understand the plea of the State Government's action being arbitrary or capricious when we are not dealing with the question of exercise of discretion but the exercise of a power.

If absolute power is conferred upon Government, then that power can be exercised and the Government is not bound to give reasons and explain motives why the power was exercised. If the power, is not absolute and is conditional,

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then the power can only be exercised provided the conditions are satisfied.

But in either case a plea that the power was exercised arbitrarily or capriciously seems to be a little out of place. It is true that the Court will hold that there was no exercise of power conferred by a statute if that exercise was a fraud upon the law, and therefore short of a plea of fraud the exercise of the power conferred by statute cannot be objected to on vague grounds like the one put forward in the petition by the petitioners."

Applying the same reasoning here in the present case, the petitioners do not contend that the Notifications declaring Kaira District Market Area and Market-Yard, Market-Proper were in fraud of the statute, namely, the Bombay Act of 1939. It may be that the power having been conferred upon the State Government or the appropriate authority and fixing the market area in case of any particular area in the exercise of that power, the State Government has issued this Notification, which according to the petitioners is an arbitrary or capricious exercise of that power; but there is no plea of fraud in the present case and hence the exercise of the power conferred by this particular statute cannot be objected on grounds like ground of wide area, which has been urged by the petitioner in the petition. Under these circumstances, in our opinion, the contention, urged by Mr. V.B. Patel that the area notified as market-area is very wide must fail.

17. So far as the question of location of the market area is concerned, under the Gujarat Act and also under the Gujarat Rules Market Committee's function is to regulate the trade in tobacco in the market area viz., Kaira District, by its bye-laws. Under the Scheme of Section 7(1) of the Gujarat Act, for each market area, there shall be a market which shall consist of (i) one principal market yard (ii) sub-market yards, if any; and (iii) all markets proper; notified under sub-sections (2) and (3). Under sub-section (3) of Section 7 when the Director declares for any market area, the principal market yard or a sub-market yard, he shall simultaneously declare, by notification in the official gazette, an area within such distance of the principal market yard or sub-market yard, as the case may be, as he thinks fit, to be a market proper. Under sub-section (4) of Section 7, a market shall be deemed to have been established for any market area with effect from the date on which the principal market yard and a market proper are declared for that area. The principal market-yard and market-proper for this particular market area were declared as far back as November 1960; and hence from that date onwards, the market shall be deemed to have been established for this market area of Kaira District as regards agricultural produce of tobacco. We may point out that under Section 4-A(4) of the Bombay Act, a market was deemed to have been established for any market area with effect from the date on which the principal market yard and a market proper were declared for that area. In view of this legal position regarding the establishment of the market, which is the geographical entity for the purposes of regulating the actual transactions in the market area, the second part of the first contention of Mr. Patel must also fail. There is no question of the market committee locating to any market. The market is deemed to have come into existence under Section 7(4) of the Gujarat Act and under Section 4-A(4) of the Bombay Act when the principal market yard and its market proper in the market area were notified. It is, therefore, not correct to say that the Act does not operate at all in the absence of the location of a market by the market committee.

18. We find from the trend of the arguments before us that lot of confusion was prevailing in the contentions urged on behalf of the petitioners between market, market-proper and market area and that is why at all stages we have tried to emphasize that the jurisdiction of the market committee is with reference to the entire market area and market committee regulates the trade in tobacco in the entire market area but the obligation to take the goods to the principal market yard is only if the goods are brought within the market i.e. within the area of market proper; and once this scheme laid down under the Act and the Rules thereunder is properly understood, a large number of problems which are imagined to exist by the petitioners stand clearly explained and pose no difficulty.

19. Coming now to the second contention of Mr. V.B. Patel, on behalf of the petitioners, it was contended that under the scheme of the Gujarat Rules of 1965 and the bye-laws framed by the Committee, the market committee charges two types of fees; viz:-

(1) Licence fees from different types of persons operating in the market, namely, traders, commission agents, brokers, warehousemen etc who take out, licences for operating in the market area for tobacco and who pay fees for obtaining such licences; and

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(2) market fee, which is levied and collected at the time when tobacco is brought into the market area or the market proper or the principal market yard, or the sub-market yard, as the case may be.

The contention was that the bye-laws dealing with and levying these fees are void as there was no sufficient quid pro quo between the collection by way of fees and the services which are rendered by the market committee as against the collection of these fees. It was contended in this connection that no services worth the name were being rendered to the agriculturists or the different licensees and it was contended that in the affidavit-in-reply, no such services had been pointed out in the shape of any tangible material on the record. It may be pointed out in this connection that in the affidavit-in-reply filed by Vithalbhai Somabhai Patel, Secretary of the first respondent Market Committee, in paragraph 13 it has been pointed out as follows:-

"It is stated that negotiations are going on for acquiring lands for the purposes of the committee at various strategic places such as Sunav, in Detlad Taluka, Saresa, Bhalej, Lambhvel, Redva, Vaghasi in Ananad Taluka at Dumral and Nadiad in Nadiad Taluka and at Thasra in Tasra Taluka and for the purchase of such lands, the funds will be insufficient and it will be necessary to go in for loans as the lands are costly and it will be required to purchase. The following table will give an idea of the fees charged and the expenses incurred by the first respondent in last three years.

Year. Licence fees Market fees Expenses

Rs. Rs. Rs.

1966-67 58,984 1,95,084 81,013

1967-68 75,325 3,24,821 96,143

1968-69 87,621 2,81,770 1,22,546

It is stated that the surplus would not be sufficient for the purpose of acquiring lands as set out herein and more funds would be required for setting up warehouses and sub-market yards, in strategic areas. The lands in the areas are costly and present funds of rupees nineteen lacs will not be sufficient. It is true that the market area of this respondent committee is predominantly tobacco growing but looking to the task before the committee the levies effected by way of licence fees and market fees are reasonable."

Thus, the market committee has been utilizing a surplus from its income of licence fees and market fees for the purpose of providing facilities and it is only over a number of years that the funds can be collected and the moneys can be properly utilized for giving proper facilities to agricultural producers. It has not been contended, as in fact it is not open to contend, that the money collected from the agriculturists during a particular year must be spent for the benefit of the agriculturists in that very year and that the fees cannot be collected at all in the manner in which the market committee has been doing at present. We may point out that under Section 32 of the Gujarat Act, all moneys received by a market committee shall be paid into a fund to be called "the Market Committee Fund" and all expenditure incurred by the market committee under or for the purposes of the Act shall be defrayed out of the said Fund. Any surplus remaining with the market committee after such expenditure has been met shall be invested in such manner as may be prescribed in this behalf. Section 33 of the Gujarat Act lays down the purposes for which the Market Committee Fund shall be expended. It is, therefore, clear as pointed out by Bachawat J. in Lakhan Lal v. State of Bihar, AIR 1968 SC 1408.

"The market committee has taken steps for the establishment of a market where buyers and sellers meet and sales and purchases of agricultural produce take place at fair prices. Unhealthy market practices are eliminated, market charges are defined and improper ones are prohibited. Correct weighmen is ensured by employment of licensed weighment and by inspection of scales, weights and measures and weighing and measuring instruments. The market committee has appointed a Dispute sub-committee for quick settlement of disputes. It has set up a market intelligence unit for collecting and publishing the daily prices and information regarding the stock, arrivals and despatches of agricultural produce. It has provided a grading unit where the technique of grading agricultural produce is taught. The contract form for purchase and sale is standardised. The provisions of the Act and the Rules are enforced through inspectors and other staff appointed by the market committee. The fees charged by the market committee are correlated to the expenses incurred by it for rendering these services. The market fee of 25 naye paise per Rupees 100/- worth of agricultural produce and the licence fees prescribed by Rules 71 and 73 are not excessive. The fees collected by the market committee form part of the market committee fund which is set apart and ear-marked for the purposes of the Act. There is sufficient quid pro quo for the levies and they satisfy the test of "fee" as laid down in Commr., Hindu Religious Endowment

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Madras v. Shri Lakshimindra Thirtha Swamiar of Shri Shirur Mutt, AIR 1954 SC 282."

20. In the instant case as shown by the affidavit-in-reply the market committee has clearly pointed out that there are sufficient services rendered by the market committee to the agricultural producers of tobacco as a whole and it is for their benefit that this Act for regulating the trade in tobacco has been applied in Kaira District. In Lakhan Lai's case, AIR 1968 SC 1408 (supra), the Supreme Court was considering the provisions of Bihar Agricultural Produce Market Act, 1960, which are in pari materia with the provisions of the Gujarat Act of 1963; and hence the observations of Bachawat, J. in that case apply to the facts of the present case and also the contentions urged in that behalf.

21. We may also point out that the case of the licence fee stands on a slightly different footing from the case of the market fees. In AIR 1954 SC 282, the distinction between licence fees and other fees was pointed out; and in the Corpn. of Calcutta v. Liberty Cinema, AIR 1965 SC 1107, the Supreme Court has pointed out how this distinction between licence fees and other fees has to be approached. In Calcutta Corporation's case (supra), in paragraph 8 at pages 1111 and 1113 Sarkar, J. delivering the judgment on behalf of himself. Raghubardayal, J. and Mudholkar, J., has pointed out that no doubt Section 548 of the Act before the Court uses the word fee but the Act uses the word fee indiscriminately and did not intend to use it as referring only to a levy in return for services. In fact in our Constitution fee for licence and fee for services rendered are contemplated as different kinds of levy. The former is not intended to be a fee for services rendered. This is apparent from a consideration of Arts.110(2) and 199(2) where both the expressions are used indicating thereby that they are not the same and the following passage from Shannon v. Lower Mainland Dairy Products Board, 1938 AC 708, was relied upon by the Supreme Court;

"if licences are granted, it appears to be no objection that fees should be charged in order either for dyyyyy the costs of administering the local regulation or to increase the general funds of the province or for both purposes ........ It cannot, as their Lordships think, be an objection to a licence plus a fee that it is directed both to the regulation of trade and to the provision of revenue."

The Supreme Court, therefore, held that the imposition of a licence fee does not necessarily lead to the conclusion that the fee must be only for the services rendered. The Supreme Court, therefore, came to the conclusion that the word "fee" in Section 548 of the Calcutta Municipal Act, 1951, which was the statute before it, should be read as meaning a tax because it made no provision for services to be rendered and any other reading of that section would make the section invalid.

22. These different decisions of the Supreme Court and the observations of the Privy Council in Shannon's case, 1938 AC 708 (supra) were considered by a Division Bench of our High Court in Spl Civil Application No.457 of 1965, D/- 23-10-1969 (Guj). The question before the Division Bench was regarding the licence fees under the Prevention of Food Adulteration Act, 1954. In paragraph 33 of that judgment it was observed:-

"In our opinion, all the fees do not fall under one class. Arts.110(2) and 199(2) of our Constitution draw not only a distinction between a tax and a fee but they further distinguish between 'fees for licences' and 'fees for services rendered'. In view of this constitutional distinction as explained by the Supreme Court in the case of AIR 1965 SC 1107 (supra), we cannot lump together all levies which are called 'fees', apply to them the tests of (a) quid pro quo and (b) the existence of the reasonable relationship between the levy collected and the expenses incurred for services rendered to the persons from whom the levy is demanded. The levy may be known by any name but if in reality it is a 'fee for services rendered' within the meaning of the Constitution, it must undoubtedly satisfy the two tests before it can be upheld as a fee. By whatever name called if it is a 'fee for licences' within the meaning of the Constitution with an avowed object of regulating a trade or a business in public interest, it cannot be tested on the anvil of the two tests applicable to 'fee for services rendered'. Such a levy is a licence fee which is distinct from the tax as well as 'fees for services rendered'.

23. It was contended by Mr. Patel, on behalf of the petitioners, that the Supreme Court decision did not contemplate a third category apart from a fee for services rendered and that the third category which was referred to as fee of licence as shown in the judgment just now quoted, was not justified by the decision of the Supreme Court. So far as the present case is concerned, it is clearly a fee for licences of different categories issued by the market committee and those fees are collected as part of the terms and conditions on which the licences are

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granted. The tests of quid pro quo is not required to be met so far as these licence fees are concerned and it is for regulating the trade in this particular agricultural commodity, viz., tobacco, that these licence fees are levied from the traders, general commission agents and others who are permitted to operate in the market area for tobacco.

24. As against these decisions that we have so far discussed, Mr. V.B. Patel, on behalf of the petitioners, very strongly relied upon the decision of the Supreme Court in Nagar Mahapalika, Varanasi v. Durga Das, AIR 1968 SC 1119 and certain observations made therein. There the Supreme Court has pointed out that there is no generic difference between a tax and a fee; both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes and is not supported by any consideration of service rendered in return, a fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it. It was urged before the Supreme Court that the fee in question was a licence fee. The Supreme Court pointed out that in the light of the observations of the Supreme Court in AIR 1954 SC 282 (supra), the fee in question fell within the category of a tax and in para 7 of the judgment. Ramaswami, J., delivering the judgment of the Supreme Court, pointed out:-

"We shall assume in favour of the appellant that the tax element is predominant in the imposition of the fee upon the respondents under the impugned bye-laws and the license fee is therefore in the nature of tax. Even upon that assumption the imposition of the fee under the machinery contemplated by S.294 of the Act is ultra vires the powers of the Municipal Board. The reason is that if the imposition is in the nature of a tax the procedure contemplated by Ss.131 to 135 of the Act should be followed by the Municipal Board and in the absence of such procedure being followed the imposition of this kind of fee would be ultra vires."

It is clear that in the case before the Supreme Court, this particular procedure for imposition of the tax had not been followed by the Municipality of Varanasi; and hence the amount could not be collected as a tax. We must draw a distinction between a licence fee collected by a local authority like a Municipality or by the State and a licence fee collected by a body like the Market Committee set up under the provisions of the statute. When a licence fee is collected by a Market Committee like the first respondent Committee before us, the amount goes into a fund set up for the purposes of that Committee and does not form part of the general revenues of the State or of a local authority like a municipal body. Therefore, under no circumstances can it be said that the Market Committee is collecting a tax in the sense of a levy for the purposes of general revenues of the State or the Municipal Body, as the case may be. That essential element of tax, namely, the income by way of levy or impost being utilized as a part of the general revenues of that particular body is necessarily absent, when a market committee collects fees for licences. In our opinion, the present case must be distinguished from the line of cases where the licence fees are collected by the State or by a Municipal body. Further, the present case before us is on all fours with the case which was before the Supreme Court in Lakhan Lal's case, AIR 1968 SC 1408 (supra); and hence in the light of the observations of Bachawat, J. in that particular case, the impost of the present licence fee can also be justified. Hence the second contention of Mr. Patel must also fail.

25. It was further contended by Mr. Patel that Section 34 of the Gujarat Act of 1963 sets up a special fund called the State Agricultural Produce Markets Fund, which consists of the payments made into it under sub-section (2) and such other sums which may under the Act be credited thereto and which shall, unless otherwise provided in the Act, be utilised for subsidising a market committee, for the development of a market or for subsidising market committees whose financial position makes it impossible for them to employ a sufficient number of officers and servants for the discharge of their functions under the Act or for discharging any liability vesting in the State Government under Section 53. Under sub-section (2) of S.34, all market committees shall pay to the State Agricultural Produce Markets Fund every year such contribution on such date and in such manner as may be prescribed; provided that the amount of contribution shall be fixed at rates in proportion to the gross annual income of a committee. Mr. Patel contended that under sub-section (1) of Section 34, the funds collected from the different market committees would be utilised for subsidising market committees whose financial position makes it impossible for them to employ a sufficient number of officers and servants for the discharge of their functions under the Act; and it was, therefore, contended that under the scheme of the Act itself particularly under Section 34, a portion of the funds of any particular committee and the first respondent committee in particular

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could possibly be utilized for purposes which were in no way beneficial for marketing of tobacco crop. However, it has to be borne in mind that the provisions of Section 34 of the Act have been introduced as a part of an overall scheme of regulating the marketing of agricultural produce. The Act has not been enacted with a view to regulate the trade in any one market but to regulate the trade of agricultural produce of all kinds and it is but natural that if a market committee in any particular market area is not functioning properly because of want of funds for the employment of sufficient number of officers and servants, the regulation of market in agricultural produce in that particular market area would suffer and as a result the neighbouring areas are bound to be affected. Where the regulation is not set up properly, malpractices are likely to occur and it is quite likely that such malpractices in one market area would affect the marketing of agricultural produce in neighbouring areas as well. It is for this purpose that Section 34(1) provides not only for the spending of the money from the State Agricultural Produce Markets Fund for the benefit of the specific market committee contributing to it but for all market committees throughout the State. Under these circumstances, in our opinion, the contention based on the provisions of Section 34 must also fail.

26. It was next contended that under Section 28 of the Gujarat Act, power has been conferred on the market committee to collect the fees through such agents as it may appoint. This section refers to the market fee; and it was contended that the very notion of agency contemplated a contract between the principal, viz., the market committee, and the agent, i.e. the body of persons, who were entrusted with the task of collection of market fee. It was further contended in this connection that such element of contract necessarily implies an element of volition and nobody can be compelled to act as an agent; hence the contractual nexus between the principal and agent was necessary. It was also contended in this connection that if there was an element of compulsion, there could not be any agreement between the market committee and the person entrusted with the collection of the market fee. Under the rules, every licenced trader, general commission agent or broker has to collect the market fee, which is payable by the agricultural producer or by the person selling the agricultural produce in question and has to account to the market committee for such market fee collected by him from time to time. The bye-laws provide that once every quarter the market fee has to be paid into the office of the market committee by the licencees concerned and the statements of account have to be furnished in the prescribed form as laid down in the bye-law. It was urged by Mr. V.B. Patel on behalf of the petitioners that the rules and the bye-laws made the licensees the agents for collection. Now, under Section 27 of the Gujarat Act, it has been provided in sub-section (2) as under:-

"(2) Licences may be granted under sub-section (1) in such forms, for such periods, on such terms and conditions and restrictions (including .....................) as may be prescribed or determined by the bye-laws and on payment of fees determined by the market committee within such maxima as may be prescribed."

Therefore, it is open to the market committee to provide for the bye-laws under the power vested in it under Section 60 of the Gurarat Act to prescribe the terms and conditions of licences and while laying down such terms and conditions it is open to the market committee to lay down that the different licensees operating in the marketing area shall be liable to the market committee for collecting the market fee from different sellers, who bring their agricultural produce to the market for the purpose of sale and incidence of levying of market fee shall be on goods bought and sold. Thus, so far as the bye-laws, the rules and the provisions of the sections are concerned, they are all parts of a correlated scheme for the purpose of collecting the market fee on the buying and selling of agricultural produce and for the utilization of that fee ultimately for the benefit of the agricultural producers. We may also point out in this connection that it is not obligatory on the market committee to appoint agents but under the proviso to Section 28, power has been conferred on the market committee to appoint agents for the purpose of collecting the market fee as the market committee may appoint. It is, therefore, not obligatory on the market committee to appoint agents and the fact that the market fees are collected under the scheme of the bye-laws through the licencees, namely, licenced traders, licenced commission agents and licenced brokers, it does not mean that such licensees become the agents of the market committee as contemplated by the proviso to Section 28. Contentions Nos.3 and 4 of Mr. V.B. Patel based on this provision must, therefore, also fail.

27. We have already dealt with the contention regarding Section 34 of the Act and that is the form in which point No.5 was urged before us namely, regarding the constitution of the State Agricultural Produce Markets Fund. It is therefore, not necessary for us to deal with this point at this stage.

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28. As regards, Section 35, Mr. Patel's contention was that Section 35 of the Gujarat Act, which deals with the trade allowances is a prohibitory provision and is not regulatory and amounts to an unreasonable restriction on the right to carry on trade on one's own terms; and it was further contended that no rule or bye-law prescribing trade allowances has been prescribed or made. Section 35 of the Gujarat Act is in these terms:-

"35. No person shall make or recover any trade allowance, other than an allowance prescribed by rules or bye-laws made under this Act, in any market area in any transaction in respect of agricultural produce specified in respect of the market area under the foregoing provisions of this Act, and no civil court, shall, in any suit or proceeding arising out of any such transaction, take into consideration or recognise any trade allowance not so prescribed.

Explanation.- Every deduction other than a deduction on account of deviation from sample when the purchase is made by sample, or on account of a deviation from standard when the purchase is made by reference to a known standard, or on account of a difference between the actual weight of the container and the standard weight, shall be regarded as a trade allowance for the purposes of this section."

29. In this connection, Mr. Patel relied upon the decision of the Supreme Court in Mohammed Faruk v. State of Madhya Pradesh, (1969) 1 SCC 853 : (AIR 1970 SC 93). Now, though Sec.35 prohibits any trade allowances other than those trade allowances which may be prescribed by the rules or the bye-laws, in fact it is a part of the overall scheme for regulating the agricultural markets. As has been pointed out by Subba Rao, J. in Arunachala's case, AIR 1959 SC 300 (supra), various commissions and enquiry bodies dealing with marketing of agricultural produce have pointed out that in the case of trade allowances very large deductions were being made from price of agricultural produce by the dealers in the market and to prevent the agricultural producers being cheated in this manner, this prohibition as part of the regulation of trade in agriculture has been laid down by the Legislature. In our opinion, it cannot be said that such prohibition, which forms part of the machinery for regulation of buying and selling of agricultural produce is unreasonable restriction on the right to carry on trade. This contention of Mr. Patel must also, therefore, fail.

30. It was next contended that Rule 48 and bye-law 2(9) are both ultra vires the appropriate relevant section of the Gujarat Act inasmuch as the levy is charged before the leviable event occurs. Rule 48 lays down as follows:-

"48. Market fees.- (1) The market committee shall levy and collect fees on agricultural produce bought or sold in the market area at such rate as may be specified in the bye-laws subject to the following minima and maxima, viz.,

(1) rates when levied ad valorem shall not be less than 5 paise and shall not exceed 50 paise per hundred rupees;

(2) rates when levied in respect of cattle, sheep, or goat shall not be less than 10 paise per animal and shall not exceed Rs.2 per animal.

Explanation.- For the purposes of this rule, a sale of agricultural produce shall be deemed to have taken place in a market area if it has been weighed or measured or surveyed or delivered in case of cattle in the market area for the purpose of sale, notwithstanding the fact that the property in the agricultural produce has by reason of such sale passed to a person in a place outside the market area."

The Explanation has brought in the notion of a fictional sale, though property in the goods might have passed to a person outside the market area, so long as some steps have been taken within the market area in the form of weighing, scaling or measuring the goods in question within the market area. This is surely with a view to prevent some persons evading the regulations contemplated by the Act by carrying on some steps within the market area and then allowing the property in the goods to pass outside the market area, or subsequently contending that the property in the goods has passed by reason of such sale to person outside the market area. The Explanation to Rule 48 is merely a safeguard against the possible evasion of the regulatory provisions regarding the marketing of agricultural produce and nothing else. Clause (9) of Rule 2, (bye-law 2 ?) which defines the place of business, has been prescribed in the light of what has been stated in the Explanation to Rule 48; and if the Explanation to Rule 48 does not suffer from any defect. Cl.(9) of Rule 2 (bye-law 2 ?) cannot similarly be said to suffer from any illegality. The leviable event is buying or selling, which the deeming fiction has brought into play in this Explanation to Rule 48 and in bye-law 2(9) for the purpose of preventing any evasion of the levy or evasion of the regulatory provisions.

31. The next contention of Mr. Patel was that Sections 27, 28 as also Sections 6 and 8 are void on the ground of excessive delegation of power without any guidelines or restrictions subject to which such power is to be exercised.

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Section 27 of the Gujarat Act deals with the licences, their issues, renewal, suspension, or cancellation etc. and appeals against refusal, suspension etc. of licence; and it is under the power conferred by sub-section (2) of S.27 that as a part of the terms and conditions the licence fees are collected from the different persons to whom licences are issued. Under Section 28 of the Gujarat Act, the market committee has been empowered to levy market fees on the agricultural produce bought or sold in the market area. Now, these fees are collected, as shown by the scheme of the Act, and particularly by Sections 32, 33 and 34, dealing with the market fund, the purposes for which the market fund is to be expended, for carrying out the purposes of the Act, namely, regulating buying and selling of agricultural produce and to establish agricultural market in the State of Gujarat. One of the purposes under Section 33 for which the money can be expended is for acquisition of site or sites for the market committee; and thus it is clear that the fees which are collected in the shape of licence fees and market fees, are to be utilised for carrying out the purposes of the Act. Under these circumstances, it cannot be said that these sections suffer on the ground of excessive delegation. The guidelines are clearly laid down in the section itself so far as Sections 27 and 28 are concerned; and no further guidelines are necessary so far as the rules and bye-laws are to prescribe the maxima and minima and the actual rates of the market fees.

32. Sections 6 and 8 are also challenged on the ground of excessive delegation. Section 6 provides for the declaration of a market area and it is for the Director of Agricultural Produce Market to declare by a Notification in the Official Gazette a particular area as the market area for a particular agricultural produce. It is in the light of the particular information available to the Director, who is the Special Officer appointed for the purpose that these Notifications are issued fixing the market area for the particular agricultural produce; and so long as these Notifications are issued for the purpose of regulating the market and buying and selling particular agricultural produce, which is the main purpose of the Act, it cannot be said that there is no principle or guidelines for the exercise of the discretion of the Director.

33. Under these circumstances, all the different contentions urged by Mr. V.B. Patel, on behalf of the petitioners, fail.

34. We may also point out that though at one stage Mr. Patel contended that the transactions between two traders are beyond the scope of the Act, as contended in para 22 of the petition, no arguments were advanced by him before us in support of that contention and, therefore, we are not dealing with this contention in our judgment. In any event, we may point out that so far as licenced traders are concerned, they are governed by the terms and conditions of the licence and it is also the dealings and transactions of such licensed traders which the market committee can supervise. If they are not licenced traders or licenced commission agents, they could be removed or evicted from the market under Section 30 of the Gujarat Act; and, therefore, the provisions of the Act. Rules and the bye-laws in so far as they affect the transactions between the two traders, they have been proscribed as a part of the overall machinery for essentially regulating buying and selling of agricultural produce and not merely with a view to affect the transactions between the traders as such.

35. The result, therefore, is that all the contentions urged by Mr. Patel on behalf of the petitioners, fail. These two Special Civil Applications are, therefore, dismissed with costs. Costs in two sets one for the first respondent Committee and the other for the State Government. Rule is discharged in each of the two matters.

Applications dismissed.

AIR 1965 GUJARAT 165 (Vol. 52, C. 21) "Sakarlal v. I.-T. Commr."

GUJARAT HIGH COURT

Coram : 2 J. M. SHELAT, C.J. AND P. N. BHAGWATI, J. ( Division Bench )

Sakarlal Naranlal, Applicant v. The Commissioner of income-tax, Respondent.

Income-tax Ref. No. 14 of 1963, D/- 1 -9 -1964.

(A) Income-tax Act (11 of 1922), S.2(1)(b)(ii) - INCOME-TAX - OBJECT OF AN ACT - AGRICULTURAL PRODUCE - Scope - Process employed on agricultural produce to make it marketable when can he said process within section - Conditions - Agricultural produce in its raw state or processed state possessing no market in India - It is necessary to consider if produce in its raw state has market abroad.

There are two conditions which are required to be fulfilled before a process performed by the assessee can be said to be a process within, the meaning of Section 2(1)(b)(ii). The first condition is that the process must be necessary to render the produce lit to be taken to market and that involves the proposition that there must be no market for the produce in its raw state, if there is already a market for the produce in its raw state, then the process cannot be said to be a process employed to render the produce fit to be taken to market or, in other words, to make it marketable. That which is already marketable does not need any process to render it marketable. The second condition is that the process must be one which is ordinarily employed by a cultivator of the produce to render it marketable. But even it these two conditions are satisfied, it is not sufficient to attract the applicability of Section 2(1) (b)(ii). There is an additional requirement which must be satisfied and that requirement springs directly from the language and the reason of the enactment, which follows as a necessary corollary that even where the produce is subjected to a process ordinarily employed by cultivators to render it fit to be taken to market, the produce must not change its original character. The cultivator is permitted to subject the produce to a process in order to make it retable and what is ultimately marketed, therefore, be that produce. The character of the produce must not be altered as a result of the process. There may be changes brought about in the produce for the purpose of making the produce marketable, but those changes must not amount to altering the original character of the produce Case Law discussed. (Para 4)

For purposes of second condition, even if the assessee is the only cultivator, a generalization can be made from the single instance of the assessee and the process employed by the assessee can be regarded as a process ordinarily employed by a cultivator to render the produce marketable. : AIR 1930 Pat 44 (SB), Rel. on. (Paras 7, 15)

If there is no market for selling the product in its original character any process may be employed to render it fit to reach the market bus with this limitation under third condition, that the produce must retain its original character. All 1962 SC 186, Rel. on; AIR 1947 Bom 166 held no longer good law. (Para 9)

Where in a case, the markets if any can only be outside India both for the agricultural produce in its raw state or in its processed state it must be concluded that if the agricultural produce in its raw state has a market outside India the process employed, for converting the raw produce finished form, for a market which is also India, cannot be said to be employed in order to make the raw produce fit for being taken to the market. It is therefore, not enough to find that there is no market for the raw produce in India. The question whether the raw produce has market outside India should also be considered. (Para 14)

(B) Income-tax Act (11 of 1922), S.66(1) - INCOME-TAX - TRIBUNALS - HIGH COURT - Contention raising question of fact - Contention not raised before Income-tax Tribunal - Contention cannot be permitted to be raised in reference, before High Court. (Para 13)

(C) Income-tax Act (11 of 1922), S.66 - INCOME-TAX - TRIBUNALS - HIGH COURT - Power to reframe question - Question referred by Tribunal not bringing out real controversy between parties - High Court can reframe question. (Para 17)

Cases Referred : Courtwise Chronological Paras

('62) AIR 1962 SC 186 (V 49) : (1962) 44 ITR 6, Dooars Tea Co. Ltd. v. Commr. of Agricultural Income-tax 4, 9

('64) (1964) 1 ITR 197 : 1964-1 Andh WR 166, Boggavarapu Peda Ammiah v. Commr. of Income-tax 11

('47 ) AIR 1947 Bom 166 (V 34) : (1946) 14 ITR 611, Brihan Maharashtra Sugar Syndicate Ltd. v. Commr. of Income-tax 3, 9

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('21) AIR 1921 Cal 40 (V 8) : ILR 48 Cal 161, Killing Valley Tea Co. Ltd. v. Secy. of State 6

('63) (1963) 48 ITR 830 : 1963 Kant LJ 54, A.T. Parthasarathiah and Bros. v. Commr. of Income-tax 10

('32) AIR 1932 Nag 61 (V 19) : 139 Ind Cas 316, Sheolal v. Commr. of Income-tax 8

('19) AIR 1919 Pat 260 (V 6) : 53 Ind Cas 301 (FB), In re Bhikanpur Sugar Concern 5

('30) AIR 1930 Pat 44 (V 17) : ILR 9 Pat 185 (SB), J.M. Casey v. Commr. of Income-tax 7, 9, 15

K. H. Kaji, for Applicant; J. M. Thakore, Advocate General, instructed by M. M. Thakore and M. G. Doshit, partners of M/s. Bhaishanker Kanga and Girdharlal, for Respondent.

for the subsequent assessment years 1955-56 and 1956-57.

Judgement

ORDER :- Ordinarily we find cases where the assessee relies on Section 4(3)(viii) and the Revenue contests the claim of the assessee, but here in this reference the position is reversed and we find the Revenue relying on Section 4(3)(viii) and the assessee disputing that position. The Reference relates to assessment years 1954-55, 1955-36 and 1956-57, the corresponding previous years being Samvat years 2009, 2010 and 2011. The assessee is en individual and he holds certain agricultural lands. In or about 1952 a friend of the assessee suggested to him the idea of growing a vegetable product commonly called "Galka", the botanical name being "Luffa pentandra" and the assessee accordingly obtained Galka seeds from abroad and after preparing the lands for cultivation, raised Galkas on the lands in 1952. Now the kind of Galkas grown by the assessee was not an indigenous Kind but was a kind grown fairly widely in Formosa, Japan and other places. After the Galkas were fully grown, they were removed from the plants and the assessee then subjected them to a process for preparing what are called Loofahs. The process consisted of various steps taken in the following order : (1) tapping dry Galkas for taking out the seeds; (2) deskinning them; (3) giving them an acetic acid bath; (4) boiling them in salicylic acid; (5) drying them in the sun; to putting them in cold water for two days; and (7) lastly pressing them for the purpose of packing. The final product which emerges as a result of subjecting Galkas to this process is known as Loofah. It is a fibrous product in the nature of a pad and we are told that it is commonly used in the manufacture of shoes. The foreign Loofahs are about 16" in length and 4" in width. The Loofahs prepared by the assessee were, however, only 5" in length and 2" in width. The assessee tried to market these Loofahs abroad and sent them to England on consignment basis for sale, but it was found that it was not possible to sell them. The position was that even if they were sold at the lowest possible rate, the assessee would have been liable to pay purchase tax and that would nave caused considerable loss to the assessee. The Loofahs were, therefore, reshipped to India. The result was that loss was suffered by the assessee in this transaction. The assessee claimed a loss of Rs. 1,85,932,80. In the assessment for the assessment year 1954-55 and similar losses were also claimed in the assessments.

2. We may point out at this stage that the accounts in respect of the activities relating to the cultivation of Galkas were entered by the assessee in the books of account of a business carried on by him in the name of Sakarlal Sons and Company. After the Galkas were raised and removed from the plants, they were transferred by the assessee to the books of account of another business carried on by the assessee in the name of Minaxi Trading Company at a particular value determined by the assessee and it was Minaxi Trading Company which processed the Galkas and exported Loofahs prepared out of them. The losses set out above were, therefore, suffered by the business of Minaxi Trading Company and they were obviously arrived at on the basis of the cost of the Galkas being taken at the value at which they were shown to have been taken over from Sakarlal Sons and Company. These losses were claimed by the assessee as business losses arising out of non-agricultural operations but the Revenue contended that they were agricultural losses and were, therefore, not liable to be taken into account in computing the income of the assessee from business. That is a question which we shall presently consider, but it is clear that even if the contention of the assessee is accepted and it is held that the operations of Minaxi Trading Company were non-agricultural operations, a question might well arise as to the correct amount of losses suffered by the assessee attributable to those non-agricultural operation.? Both the businesses, namely, Sakarlal Sons and Company and Minaxi Trading Company being the proprietory businesses of the assessee, the Revenue may in that event have to apportion the losses suffered by the assessee in the entire transaction between the agricultural operations carried on in the name of Sakarlal Sons and Company and the non-agricultural operations carried on in the name of Minaxi Trading Company by resort to Rule 7 of the Rules made under Section 59 of the Act. We are, however, not concerned with that question and we do not wish to express any opinion upon it. These facts have been set out by us merely because an argument was founded upon them on behalf of the assessee for showing the conduct of the assessee as a cultivator.

3. The losses claimed by the assessee were disallowed by the Income-tax Officer on the ground that they were agricultural losses. The Income-tax Officer took the view that the raising of Galkas was admittedly an agricultural operation and so far as the processing of Galkas resulting in the preparation of Loofahs was concerned. It was a process ordinarily employed by a cultivator to render Galkas produced by him fit to be taken to market and the losses resulting from these operations were, therefore, agricultural losses within the meaning of Section 2(1)(b)(ii). The assessee carried the matter in appeal, but the Appellate Assistant Commissioner upheld the disallowance of these losses. The matter was then taken to the Tribunal. The Tribunal also came to the conclusion that the process employed by the assessee was a process which came within Section 2(1)(b)(ii) and the losses suffered by the assessee were, therefore,

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agricultural losses which, were not liable to be deducted in computing the income of the assessee. Much argument turned upon the question as to what findings of fact were actually reached by the Tribunal and it would, therefore, be desirable to get out the relevant portion of Paragraph 5 and the whole of Paragraph 6 of the order of the Tribunal which were in the following terms :

"... .it was submitted that this was a case where the product Galka has a market by itself and that subsequent operations are la the nature of manufacturing operations which do not come within the scope of the definition of agricultural income in Section 2(1)(b)(ii). Reliance for this purpose is placed on evidence in the shape of letters written by an entity called M/s. M. Kawanishi of Kobi, Japan. This is a letter, which was written to the assessee on 21-9-1953, in which it is stated that looking to the quality of the stuff, texture, and size, they would have been in a position to purchase the stuff on assorted basis in the year 1952 round about sh.12 per dozen on C. I. F. Japanese port basis. Another letter written on 8-10-1959 by another party of Japan was also relied upon for snowing that the price in 1952 would have been round about sh. 151/2 a dozen. It is stated that on the basis of these letters, even dried fruits had a market by themselves and that therefore the rest of the activity was not one which would be an agricultural operation.

We are unable to agree with this submission. In order to find out whether there was a market for the produce as such or whether it had to be processed before it could be sold, what is necessary is to see whether there is a market at which it could be absorbed. The existence of a theoretical market in a place like Japan is not one that has to be taken into account for this purpose. The section postulates the performance of any process ordinarily employed by a cultivator so as to render the produce fit to be taken to market. The expression "ordinarily employed" would appear to postulate the existence of certain conditions at or about the locality in which the produce is grown. The item marketed by the assessee was a stranger to the Indian market. Therefore, there could have been no ready market in India. Indeed, this position was not disputed by the assessee. Therefore, merely because there was some possibility of a sale at its original stage, in a distant country, it does not follow that the fruit by itself had a market, which is relevant for our purpose. If a produce is grown, say in Kerala, and it does not have a ready market in its original sage there, then merely because there is some market, say in Punjab, for the produce in its original stage, it does not follow that the process ordinarily employed by cultivators in Kerala would cease to be agricultural process. In all these matters, what is liable to be looked into is the area in which the produce is grown and the customary process employed to render it fit for market, if it is not marketable in its original stage. That is why it is a question of fact in each case. See Brihan Maharashtra Sugar Syndicate Ltd. v. Commr. of income-tax, (1946) 14 ITR 611 : (AIR 1947 Bom 166). In our opinion, therefore, in this case, there was no market in which it could be sold in its original stage."

The assessee thereupon made an application to the Tribunal for a reference and on the application, the Tribunal made an order referring the following question for the opinion, of this Court :

"Whether on facts here, where the Galka produced does not have a market in India, the process employed on it for purposes, of exporting and selling it abroad satisfies the requirements of Sec. 2(1)(b)(ii) of the Act ?"

This was the form in which the question was framed, but an argument was addressed to as that this question did not bring out the real controversy between the parties inasmuch as it was based on a very limited postulate, namely, that the Galkas did not have a market in India whereas the actual finding of the Tribunal was that there was no market at all for Galkas and that the question Should, therefore, be reframed so as to bring out the real controversy between the parties. We shall consider this argument at the appropriate stage.

4. It is evident that the question depends far its determination on the true construction of Section 2(1)(b) (ii) of the Income-tax Act, 1922. The question whether the process employed by the assessee for the purpose of preparing Loofahs out of Galkas with a view to exporting and selling Loofahs abroad satisfies the requirements of Section '2(1)(b)(ii) becomes material because if the process is covered by Section 2(1)(b)(ii), the whole of the loss suffered by the assessee would be agricultural loss and would by reason of Section 4(3) (viii) be liable to be excluded in commuting the income of the assessee. Section 4(3)(viii) provides that agricultural income shall not be included in the total income of an assessee. "Agricultural income" is defined in Section 2(1). Section 2(1) (a) deals with agricultural Income consisting of rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue in the taxable territories or subject to a local rate assessed and collected by officers of the Government as such. We are not concerned with this part of the definition, Section 2(1) (b) which contains the material provision relevant for the purpose of the present Reference reads as follows :

"2. In this Act, unless there is anything repugnant in the subject or context,-

(1) "agricultural income" means--

XX XX XX

(b) any income derived from such land by-

(1) agriculture or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii);".

This Section refers to income derived from land which means arising from land and denotes income

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the immediate and effective cause of which is land. It is divided into three clauses. Clause (i) in terms takes in income derived from agricultural land by agriculture which would include agricultural produce as held by the Supreme Court in Dooars Tea Co. Ltd. v. Commr. of Income-tax, (1962) 44 ITR 6 : (All 1962 SC 186), Clause (ii) includes cases of income derived from the performance of any process ordinarily employed by a cultivator to render the produce fit to be taken to market. The reason behind this provision is not far to seek and it really provides a clue to its interpretation. A cultivator raises produce from the land) with a view to selling it. If there is a market for the produce as grown, there is no difficulty; the cultivator can in such a case sell the produce without anything more and he need not perform any process on the produce. But if there is no market for the produce as grown and it can be sold only by performing some process on it, the cultivator would have to perform such process in order to be able to sell the produce : otherwise the produce would not be marketable and the raising of it would be futile. Where such is the case, the Legislature says that, though strictly the agricultural operations cease when the produce is raised and removed from the soil, the performance of the process should be regarded as a continuation of the agricultural operations since the process has to be performed by the cultivator for the purpose of enabling him to sell the produce which he otherwise cannot, it is because the performance of the process is essential in order to render the produce marketable which it is otherwise not, that the law regards it as part of the agricultural operations carried on by the cultivator. This reason also explains the other requirement of the Section, namely, that the process must be such as is ordinarily employed by cultivators to make the produce saleable. The performance of the process is assimilated to agricultural operations and must, therefore, like agricultural operations stricto sensu, be an operation which is ordinarily done by cultivators. If some special or unusual process is employed by a cultivator which is not ordinarily employed by cultivators to render the produce marketable, it cannot be regarded as part of the agricultural operations and the benefit of the income being treated as agricultural income would not be available to the cultivator. It will be clear from this discussion that there are two conditions which are required to be fulfilled before a process performed by the assessee can be said to be a process within the meaning of Section 2(1)(b)(ii). The first condition is that the process must be necessary to render the produce fit to be taken to market and that involves the proposition that there must be no mar-feet for the produce in its raw state. If there is already a market for the produce in its raw state, then the process cannot be said to be a process employed to render the produce fit to be taken to market or, in other words, to make it marketable. That which is already marketable does not need any process to render it marketable. The second condition is that the process must be one which is ordinary employed by a cultivator of the produce to render it marketable. But even if these two conditions are satisfied, it is not sufficient to attract the applicability of Section 2(1)(b)(ii). There is an additional requirement which must be satisfied and that requirement springs directly from the language and the reason of the enactment. It follows as a necessary corollary from what is stated above that even where the produce is subjected to a process ordinarily employed by cultivators to render it fit to be taken to market, the produce must not change its original character. The cultivator is permitted to subject the produce to a process in order to make it marketable and what is ultimately marketed must, therefore, be that produce. The character of the produce must not be altered as a result of the process. Of course when we say this we must make it clear that there may be changes brought about in the produce for the purpose of making the produce marketable, but these changes must not amount to altering the original character of the produce. Vide Dooars Tea Company's Case, (1962) 44 ITR 6 : (AIR 1962 SC 186) (supra).

5. So much on principle. Turning now to the authorities, the first decision to which our attention was invited was the decision of the Patna High Court in In re, Bhikanpur Sugar Concern, AIR 1919 Pat 260. The question which arose in this case was whether income derived from sale of sugar manufactured from sugarcane grown by the assesses on its lands was agricultural income within the meaning of Section 2(1)(b) of the Income-tax Act, 1918, which, was in identical terms with Section 2(1)(b) of the income-tax Act, 1922. The assesses contended that the income was agricultural income, but a Full Bench of the Patna High Court consisting of three Judges held that it was not, on the ground that the process employed by the asses see for manufacturing sugar was not a process ordinarily employed by cultivators of sugarcane for rendering it fit for marketing. Dawson-Miller, C.J. said that the market of the vast majority of cultivators of sugarcane was the sugar factory or the country mill and they did not manufacture sugar out of it in order to make it marketable and that the process employed by the assessee was, therefore, not a process ordinarily employed by cultivators so as to bring the case within Section 2(1)(b)(ii). The other learned Judges also expressed the same view. This decision clearly proceeded on the basis that the process employed by the assessee not being a process ordinarily employed by cultivators to render the sugarcane produced by them marketable, one of the two conditions specified in Section 2(1)(b)(ii) was not fulfilled.

6. We were then referred to a decision of the Calcutta High Court in Killing Valley Tea Co. Ltd. v. Secy. of State, AIR 1921 Cal 40. The assessee in this case grew green leaf tea in a tea garden owned by it and manufactured tea by performing a process on green leaves plucked from the tea garden. In its assessment to Income-tax, the assessee contended that the entire Income from the sale of manufactured tea was agricultural income within the meaning of Section 2(1)(b)(ii) of the Income-tax Act, 1918. The Calcutta High, Court, however, held, that though the green leaf from the tea plant was not a marketable commodity for immediate use as an article of food. It was certainly "a marketable commodity to be manufactured by people who possess the requisite machinery into tea fit for

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human consumption and the manufacturing process could not, therefore, properly be said to be employed to render the tea leaves fit to be taken to market as required by the section. This decision, therefore, proceeded on the basis that if there is a market for the produce grown by the assessee and despite that, some process is performed on it, such process can not be said to be a process to render the produce lit to be taken to market so as to attract the applicability of Section 2(1)(b)(ii).

7. The next decision which was cited before us was the decision of the Patna High Court In J.M. Casey v. Commr. of income-tax, AIR 1930 Pat 44 (SB). The facts in this case were that the assessed cultivated alone plants and from them by means of machinery prepared sisal fibre which he sold in the market. The question arose whether the whole of the Income derived by the assesses was exempt from tax as being agricultural income. The Patna High Court held that it was so exempt and the ground on which the Patna High Court based its decision was that aloe leaves had no market and that the process performed on aloe leaves for preparing sisal fibre was a process ordinarily Employed to render aloe leaves fit to be taken to market. Courtney-Terrell, C.J., who delivered the main judgment observed that no cultivation of aloe plant appeared to have been practised save in connection with the process of manufacture of sisal fibre and moreover, there was no market for aloe leaves. Of course aloe leaves could be supplied to Jails but the learned Chief Justice observed that that did not make any difference since the leaves so bought by the Jail authorities were treated by the prisoners by means of the same laborious and uneconomic process which was employed by some villagers in treating the leaves of the wild and uncultivated plant and that the object of the manufacture in Jails was not the conducting of an economic process which rendered profitable the cultivation of the aloe plant but merely to keep the prisoners employed on sufficiently laborious and punitive work, it was thus definitely found that the aloe leaves were not ordinarily marketable and they could normally be sold only by converting them into sisal fibre. The learned Chief Justice made it clear that the decision of the Court was based on these conditions which existed at the time and observed :

"It may be that in the future the economic conditions may change. If the growth of the aloe leaf should become established as an agricultural industry by itself, and if the manufacturers of sisal fibre should cease to cultivate the plant themselves and should purchase the leaves in an open market then such circumstances may possibly require reconsideration in the light of the income-tax law.." An argument was also advanced on behalf of the Revenue that the assessee being the only cultivator, the process employed by him could not be said to be a process ordinarily employed by a cultivator to render aloe leaves marketable, but this argument was met by the learned Chief Justice by saying that since there was no cultivation of the aloe plant save in connection with the economic process involving the use of machinery such as was employed by the assessee, the process ordinarily employed would in fact be that used by the assessee. This decision thus laid down two propositions : (1) that in order to attract the applicability of Section 2(1)(b)(ii) the produce in its raw state must not have a ready and available market where goods of that kind are bought and sold; and (2) that even if the assesses is the only cultivator, a generalization can be made from the single instance of the assessee and the process employed by the assessee can be regarded as a process ordinarily employed by a cultivator to render the produce marketable. The second proposition laid down in this decision would meet the difficulty pointed out on behalf of the assessee, namely, that the assessee being the only cultivator of Galkas in the present case, the process employed by him could not be appropriately described as a process ordinarily employed by a cultivator to render Galkas fit to be taken to market.

8. Reference was also made to a decision of the Court of the Judicial Commissioner, Nagpur, in Sheolal v. Commr. of Income-tax, AIR. 1932 Nag 61, where the question was whether the process of ginning applied by the assessee could be said to be a process within the meaning of Section 2(1)(b)(ii). The Court held that the process of ginning, was not a process ordinarily employed by cultivator to render cotton grown by them tit to be taken to/ market since unginned cotton was sold by the cultivators and ginning was not essential in order to render the cotton fit to be taken to market. The fact that there was a market for cotton grown on the land was thus taken into account for the purpose of holding that the process of ginning could not be said to be a process necessary to render the produce fit to be taken to market.

9. Then, we were referred to a decision of the Bombay High Court in (1946) 14 ITR 611 : (AIR 1947 Bom 166). The question which arose in this case was whether Income realised as a sale of gul manufactured by the assessee out of sugarcane grown by it, was agricultural Income within the meaning of Section 2(1)(b)(iii). The Tribunal found that the requirements of the section were satisfied, but on a reference to the High Court, a Division Bench of the High Court held that though there was evidence to support the finding of the Tribunal that the process employed by the assesses in the manufacture of gul was a process ordinarily employed by a cultivator, the finding that the process was one ordinarily employed by a cultivator to render the produce fit to be taken to market-was erroneous inasmuch as there was a market for the sale of sugarcane before it was turned into gul. Kania, J., as he then was, after referring to Section 2(1)(b)(iii) said :

"Heading the words used in the definition section with their natural meaning they must mean" that the produce must retain, its original character in spite of the process unless there is no market for selling it in that condition. If there is no market to sell the produce: then any process which is ordinarily employed to render it fit to reach the market, where it can be sold, would be covered by the definition...."

The learned Judge agreed with the Patna High Court in J.M. Casey's case, AIR. 1930 Pat 4-1 (SB)

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(supra) that market must mean a ready and available market where produce of the kind grown by the assessee is brought and sold and observed that since the statement of the case itself showed that there was a market for sugarcane, the process employed by the assessee in converting it into gul could, not be said to be a process ordinarily employed to render it fit to be taken to market where it can be sold. Now it must be conceded straightway that in view of the decision of the Supreme Court In Dooars Tea Co. Ltd.'s case, (1962) 44 ITR, 6 : (AIR 1962 SC 186) (supra) the statement contained in the passage quoted above can no longer be regarded as good law in so far as it says that if there is no market for selling the produce in its original character, the character of the produce may be altered by performing a process necessary to render it fit to be taken to market and such a process too would be covered by Section 2(1)(b)(ii). It is now clear that the produce must retain its original character and if the effect of the process is to alter the character of the produce, the process would not be a process within the intendment of Section 2(i)(b)(ii). But this much is certainly established by this decision, namely, if there is a market for the produce, no process performed on it can be said to be a process necessary for rendering it fit to be taken to market.

10. We were also referred to a decision of the Mysore High Court in A.T. Parthasarathiah and Bros. v. Commr. of income-tax, (1963) 48 ITR 830 (Mys.). That decision does not help us very much for it merely; applies Section 2(1) (b)(ii) as construed by us above to the facts of that case. The question there arose in regard to tamarind plucked by the assessee from trees owned by him and converted into "flower tamarind" by a process of cleaning when involved removal of fibre and seeds. The Mysore High Court held that inasmuch as the Tribunal had not addressed itself to the question as to what was the process ordinarily employed by cultivators in the locality where the assessee resides to render the tamarind grown by them fit to be taken to market, it was necessary to call for a further statement of the case and the Tribunal was accordingly required, to submit a further statement of the case in order to enable the Court to dispose of the question.

11. The last decision to which we must refer 4s the decision of the Andhra Pradesh High Court in Boggavarapu Peda Ammaiah v. Commr. of Income-tax, (1964) 1 ITJ 197 (Andh. Pra.). The assessee in this case carried on business of export of tobacco grown on his lands and he claimed, exemption in respect of income arising on the sale of tobacco as agricultural income. The Revenue authorities treated the income derived from operations upto the stage of "flue-curing" as agricultural income but regarded the subsequent activities which involved the performance of the process of re-drying, stripping and grading and sale of tobacco subjected, to such process as non-agricultural operations and treated the income attributable to those operations as income from business subject to tax. The Andhra Pradesh High court before whom the question came on a reference took the view that the tobacco after flue-curing had a large market in the country and the operations of re-drying, stripping and grading were, therefore, not quite essential to make the tobacco marketable. The High Court also took the view that these operations could not be regarded as a process ordinarily employed by cultivators in order to make the tobacco marketable. Since in the opinion of the High Court both the conditions of Section 2(1)(b)(ii) were not satisfied, the High Court held that the income attributable to the operations of re-drying, stripping and grading could not be described as agricultural income but should be treated as income liable to tax.

12. It would thus be seen that in all these decisions the various High Courts applied Section 2(1)(b)(ii) to the facts of the case before them and examined the question whether the two conditions of the Section were satisfied so as to make the income agricultural income. We will, therefore, now proceed to consider how far these two conditions could be said to be fulfilled in the present case in regard to the process employed by the assessee for the purpose of preparing Loofahs out of Galkas.

13. Before, however, we do so, it would be convenient to dispose of one short argument advanced by Mr. Kaji on, behalf of the assessee and that argument was that Galkas when subjected to the process for converting them into Loofahs did not retain their original character but underwent a change in character, since Loofahs were goods of a different character from Galkas and Section 2(1)(b)(ii) was, therefore, not attracted. Now it is undoubtedly true that if Galkas did not retain their original character on being subjected to the process for converting them into Loofahs, the process would not be a process within the meaning of Section 2(1)(b)(ii). But unfortunately for the assessee it is not open to Mr. Kaji to urge this contention before us since the contention raises a question of fact and not having been advanced before the Tribunal and there being; no finding of the Tribunal in the question and the question not being the subject matter of reference before us, the assessee cannot be permitted to raise the contention before us.

14. Going back to the main question, Mr. Kaji contended that the Tribunal had misdirected itself in law in proceeding on the basis that for the purpose of determining whether there was no market for Galkas in raw state which would make the performance of the process for converting them into Loofahs necessary to render them marketable, the only market which the Tribunal was required to take into account was the market in India. He urged that even if there was no market for Galkas in India but there was a market abroad, say for example, in Japan, as the contention of the assessee was, the performance of the process for converting them into Loofahs could not be said to be necessary in order to render them fit to be taken to market and the Tribunal should have therefore considered whether there was no market for Galkas outside India. This contention is, in our opinion, well-founded. We do not think it can be seriously disputed that if there was a market for Galkas - and by Galkas we mean the commodity of Galkas in raw state - even outside India, the performance of the process for converting them into Loofahs

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could not be said to be necessary in order to make them marketable. It is in this connection important to bear in mind, that even Loofahs had no market in India and the process of converting into Loofahs was performed on the Galkas with a view to exporting and selling them abroad. Both in the case of Galkas and in the case of Loofahs, therefore, there was no market in India and the market had to be found outside India. It is possible that if Loofahs had a market in India, an argument could with some plausibility have been advanced that even if Galkas had a market outside, a cultivator of Galkas in India would ordinarily convert them into Loofahs which would be saleable in India rather than sell Galkas in their raw state outside India. But where, as in the present case, the markets, if any, could only be outside India, both for Galkas and Loofahs. It must be concluded that if Galkas had a market outside India, the process employed for converting Galkas into Loofahs for a market which was also outside India could not be said to be employed in order to make Galkas fit for being taken to market in such a case both the markets being out of India and Galkas being marketable, no process performed on them could be said to be a process essential to make them marketable, it was, therefore, not enough for the Tribunal to find that there was no market for Galkas in India. The Tribunal should have also considered whether there was no market for Galkas outside India and it was only if the Tribunal found that there was no market for Galkas outside India, that the Tribunal could come to the conclusion that the process employed for the purpose of converting Galkas into Loofahs was a process covered by Section 2(1)(b) (ii).

15. But the learned Advocate General contended that even if that be the view which we are inclined to take, there was a finding of the Tribunal that there was no market for Galkas and that in view of that finding the process employed by the assessee must be regarded as a process necessary to render Galkas fit to be taken to market. This contention involves a consideration of the order of the Tribunal. But before we examine this contention, we may dispose of another argument advanced by Mr. Kaji, namely, that the process employed by the assessee could not be said to be a process ordinarily employed by a cultivator to render Galkas fit to be taken to market. There were two circumstances relied on by Mr. Kaji in this connection. The first was that the assessee was the only cultivator of Galkas and there could not, therefore, be any standard with reference to which it could be said whether the process was a process ordinarily employed by a cultivator. But this argument is sufficiently met by the reasoning of the Patna High Court in J.M. Casey's case, AIR 1930 Pat 44 (supra) to which we have already referred. As a matter of fact if Galkas in their raw state had no market at all, a cultivator of Galkas in India could not do otherwise than make Loofahs out of them and the process of making Loofahs would, therefore, be a process ordinarily employed by a cultivator of Galkas. The second circumstance on which reliance was placed was the fact that the accounts in respect of the cultivation of Galkas were maintained by the assessee in one set of books while the accounts in respect of the processing of Galkas and sale of Loofahs made out of them were maintained in another set of books. This, argued Mr. Kaji, showed that the intention of the assessee as a cultivator was not to make Loofahs out of Galkas but to sell Galkas in their raw state and if the conduct of the assessee be taken as a test, the process of making Loofahs out of Galkas could not be said to be a process which would be ordinarily employed by a cultivator. This argument is, in our opinion, totally devoid of force. It cannot be overlooked that both the concerns, the concern which was shown as cultivating Galkas and the concern which was shown as processing and selling them, belonged to the assessee and it is not possible to infer from a mere bifurcation of the two activities of the assessee that an ordinary cultivator of Galkas would sell Galkas in their raw state and would not prepare Loofahs out of them. The determining factor must be whether there was a market for Galkas as a commodity, if there was a market for Galkas as a commodity, it would be possible to take the view that a cultivator would ordinarily sell Galkas in raw state for he would be interested merely in selling his produce and not in performing processes which are not necessary in order to render the produce marketable. But if there was no such market, then obviously the cultivator would have no choice but to make Loofahs out of them for the purpose of sale. We must, therefore, come back to the question whether there was no market for Galkas in the sense that there was no place in India or abroad where Galkas as a commodity were bought or sold.

16. Now turning to the order of the Tribunal, the portion of paragraph 5 of the order which we have reproduced above shows that before the Tribunal it was the contention of the assessee that Galkas had a market by themselves and that the subsequent operations were in the nature of manufacturing operations. The assessee for the purpose of establishing this plea produced evidence in the shape of letters addressed by parties in Japan to the assessee and contended on the basis of these letters that there was a market for Galkas. The Tribunal after setting out this contention of the assessee in paragraph 5 proceeded to deal with it in paragraph 6. The Tribunal started by saying that they were unable to agree with this contention of the assessee, namely, that Galkas had a market. The Tribunal then proceeded to give its reasons for coming to this conclusion. The Tribunal first stated that in order to find out whether there was a market for the produce, what was necessary to be seen was whether there was a market at which it could be absorbed. This is no about a correct proposition, but in the way in which it is put, it is likely to be misunderstood and we would, therefore, like to clarify it by saying that what is required to be considered is not whether the particular produce grown by the assessee is saleable but whether there is a market where the produce ordinarily grown by a cultivator is bought or sold as a commodity so that a cultivator of the produce would ordinarily sell the produce as such and not perform any process on it. The Tribunal after setting out this proposition observed that the existence of "a theoretical market in a place like Japan is not one that hag to be taken into account for this purpose". The learned Advocate General relied strongly on this

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observation and contended that this observation showed that the Tribunal found as a fact that there was no real market in Japan, Mr. Kaji on the other hand contended that ail that the Tribunal meant to say in making this observation was that the existence of a theoretical market in a place like Japan was not relevant but what was relevant was the existence of a market in India. He urged that the word "theoretical' was used by the Tribunal to describe the market in Japan because the Tribunal considered that the real market to be considered was the market in India and all markets outside India were theoretical markets for the purpose of determination of the present question. We think Mr. Kaji is right in his reading of this observation of the Tribunal. The observations of the Tribunal which immediately follow upon this observation clearly support the interpretation sought to be placed by Mr. Kaji. The Tribunal, after making this observation, proceeded to examine what is the market in reference to which the question whether it exists or does not exist is required to be considered. The Tribunal observed that the expression "ordinarily employed" would appear to postulate the existence of certain conditions at or about the locality in which the produce is grown, meaning thereby that whether there is a market for the produce must be judged in relation to the area in which the produce is grown. The Tribunal then stated that the item marketed by the assesses, namely, Galka was a stranger to the Indian market and, therefore, held that there could not be ready market for Galkas in India. This position was as a matter of fact not disputed by the assessee. The Tribunal emphasized the necessity of the market in India by observing that merely because there was some possibility of a sale at its original stage in a distant country. It did not follow that Galkas by themselves had a market. The Tribunal then gave an illustration to reinforce its point of view. The Tribunal observed that if a produce is grown, say in Kerala, and it does not have a ready market in its original stage there, then merely because there was some market, say in Punjab, for the produce in its original stage, it does not follow that the process ordinarily employed by cultivators in Kerala would cease to be agricultural process. The Tribunal then stated that what was required to be looked at was the area in which the produce is grown and the customary process employed to render it lit for market, if it la not marketable in its original stage. This process of reasoning of the Tribunal which we have set out above clearly shows that what the Tribunal considered to be the correct position in law was that the market to be taken into account must be the market in the area in which the produce is grown, that is, the Indian market and since there was no ready market for Galkas in India, it must the concluded that Galkas had no market so as to attract the applicability of S. 2(1)(b). And that conclusion was set out by the tribunal in the last sentence of the paragraph. Heading the paragraph as a whole we think that though there are one or two observations in the paragraph which read in isolation appear to lead some support to the argument that the Tribunal found as a fact that there was no market for Galkas in Japan and therefore, no market at all in India or abroad since the market in Japan was the only market put forward on behalf of the asses-see, if those observations are read in the context of the rest of the paragraph, it is clear that those observations were made not for recording a finding that there was no market for Galkas as a commodity in Japan but merely for the purpose of emphasizing that what must be looked at is the market in India and not the market in a distant place like Japan. The word "theoretical" also appears to have been used in order to emphasize that the real market to be considered is the Indian market and that the rest of the markets would be mere theoretical markets. The word "theoretical" was not used in order to record a finding that there was no real market in Japan, it appears that in the view of the law which it took, the Tribunal did not concern itself to examine and whether there was a market for Galkas as a commodity in Japan and this becomes clear it we refer to the statement of the case and the question referred to us for our opinion. The statement of the case clearly shows that according to the Tribunal what it held was, to quote its own words :

"....that what was liable to be looked into for the purpose of finding out whether there was a market is the area in which the produce is grown, and the customary process employed to render it fit for market. If it is not marketable in its original stage. The Tribunal found also that there was no-market in India in which it could be sold in its original stage. Under these circumstances, it was held......"

The question which has been referred to us also shows that according to the Tribunal the basis on which its decision was founded was that Galkas did not have a market in India. Even if, therefore, there were any doubt as to what the Tribunal found in its order, such doubt is clearly laid at rest by the statement of the case and the question referred by the Tribunal. We, therefore, think that reading the order of the Tribunal as a whole along with the statement of the case and the question referred for our opinion, it must be held that the only finding reached by the Tribunal was that there was no market for Galkas in raw state in India and that there was no finding of the Tribunal that Galkas as a commodity had no market even outside India.

17. Now the real controversy between the parties was whether the process employed by the assessee was a process within the meaning of Section 2(1)(b)(ii) and in order to the proper determination of that controversy it was necessary for the Tribunal to give a finding on the question whether there was no market for Galkas in India or outside India, for it is only if there was no market for Galkas in India or abroad, that the process employed by the assessee could be said to be a process covered by Section 2(1)(b)(ii) as contended by the Revenue. The question as framed is however based on the postulate that it would be sufficient to attract the applicability of S. (1)(b)(ii) if there was no market for Galkas in India. It is, therefore, necessary to reframe the question in order to bring out the real controversy between the parties and the question as reframed will be as follows :

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"Whether on the facts and circumstances of the case the process employed on Galkas for purposes of exporting and selling them abroad satisfies the requirements of Section 2(1)(b)(ii) of the Act" in order to properly and effectively answer this question it is necessary to have the finding of the Tribunal on the question whether there was no market for Galkas as a commodity in India or abroad. We, therefore, direct the Tribunal to give its finding on this question after hearing the parties and to submit a further statement of the case in relation to the finding. The Tribunal will of course confine itself to the record of the case, in giving the finding. We, however, do not express any opinion on the question as to on whom would He the burden of proof in regard to the question on which the Tribunal is directed to give the finding. That would be a matter for the Tribunal to consider. The Reference will be placed on Board for hearing after the supplemental statement of the case is received from the Tribunal.

Reference remanded.

AIR 2008 HIMACHAL PRADESH 53 "Vardhman Textiles Ltd., M/s. v. State of H.P."

HIMACHAL PRADESH HIGH COURT

Coram : 2 DEEPAK GUPTA AND V. K. AHUJA, JJ. ( Division Bench )

M/s. Vardhman Textiles Ltd. and etc. v. State of H.P. and Ors.

C.W.P. Nos. 28, 437, 35, 31, 32, 33 of 2007, D/- 19 -11 -2007.

(A) H.P. Agricultural and Horticulture Produce Marketing (Development and Regulation) Act (20 of 2005), S.2(a) - AGRICULTURAL PRODUCE - WORDS AND PHRASES - Agricultural produce - Definition - Cotton bales and cotton waste fall within definition of cotton ginned and unginned - Is agricultural produce within meaning of Act. (Para 7)

(B) H.P. Agricultural and Horticulture Produce Marketing (Development and Regulation) Act (20 of 2005), S.40 - AGRICULTURAL PRODUCE - Manufacture of cotton yarn - Liability to pay market fee - Manufacture of cotton yarn out of cotton bales after series of processing - End product i.e. cotton yarn has totally different identity - It can be said that petitioners were manufacturing a non-agricultural product, namely, cotton yarn from agricultural produce and, therefore, do not fall within ambit of Act - Not liable to get themselves registered under S. 40 or to pay market fees on manufacture of cotton yarn. (Paras, 22, 23)

Cases Referred : Chronological Paras

2006 AIR SCW 6017 12, 21

AIR 2001 SC 931 : 2001 AIR SCW 757 : 2001 All LJ 498 16

AIR 2001 SC 1363 : 2001 AIR SCW 1087 17

AIR 2000 SC 1796 : 2000 AIR SCW 1278 14, 21

(1997) 2 SCC 496 18

1994 Pun LJ 188 19

AIR 1984 SC 1870 6

(1980) 82 Pun LR 54 19

AIR 1960 SC 96 6

R. L. Sood, Sr. Advocate with Vikas Rajput, Rakesh Thakur, Bimal Gupta, for Petitioner; R. M. Bisht, Dy. A. G. with J. S. Guleria, Law Officer, Navlesh Verma, Anoop Rattan, for Respondents.

Judgement

DEEPAK GUPTA, J. :- By this judgment we are disposing of the aforesaid six writ petitions since common questions of law and fact arise for decision in these cases.

2. All the petitioners before us are Spinning Mills engaged in the production of cotton yarn. The petitioners in all the petitioners except in CWP No. 437/2007 manufacture the cotton yarn from cotton. The petitioner in CWP No. 437 of 2007 has alleged that it manufactures the cotton yarn out of cotton waste. All the petitioners have their manufacturing units in the State of Himachal Pradesh. They alleged that they obtain the raw material from outside the State of Himachal Pradesh. The petitioners except in CWP No. 437 of 2007 purchase cotton bales from outside the State of Himachal Pradesh and these cotton bales are brought to their units within Himachal Pradesh and after going through a large

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number of processes the cotton yarn is manufactured. Petitioner in CWP No. 437 of 2007 alleged that it is only buying cotton waste from spinning mills situated outside the State of Himachal Pradesh and this cotton waste is then utilized for manufacturing of cotton yarn.

3. The State of Himachal Pradesh has enacted the Himachal Pradesh Agricultural and Horticulture Produce Marketing (Development and Regulation) Act, 2005 (for short the Act). Under the Act the H.P. State Agriculture Marketing Board has been constituted in the State of Himachal Pradesh and Marketing Committees have been constituted for different market areas. The Marketing Committee, Solan, respondent No. 2 issued notices to the petitioners directing them to get themselves registered under Section 40 of the aforesaid Act. The petitioners replied that they do no fall within the ambit of Section 40 and are engaged in the manufacture of cotton yarn and, therefore, they are not required to get themselves registered under the provisions of the Act. It is also urged that the Committees are not entitled to charge any market fee from the petitioners under the provisions of Section 44 of the Act. The Board-respondent No. 3 taken the view that the petitioners are liable to pay market fees to the Committee under Section 44 of the Act and it is this action of the respondents which is under challenge before us.

4. To appreciate the rival contentions of the parties it would be necessary to refer to the following provisions of the Act :

"Section 2(a) "Agriculture produce" means all produce and commodities, whether process or unprocessed of agriculture, horticulture, apiculture, sericulture, livestock and products of livestock, fleeces (raw wool) and skins of animals, forest produce and fisheries as are specified in the SCHEDULE to this Act or declared by the Government by notification under Section 19 of this Act and also includes mixture of two or more than two such products;

(e) "buyer" means a person, a firm, a company or a Co-operaive Society or Government Agency, Public Undertaking/Public Agency or Corporation, commission agent, who himself or on behalf of any other person or agent buy or agrees to buy agricultural produce in the notified market area :

(x) "market functionary" means a trader, a commission agent, buyer, hamal, processor, stockist and any other person as may be declared by the State Government, by notification, to be a market functionary;

(za) "marketing" means all activities involved in the flow of agricultural produce from the production point commencing from the stage of harvest till these reach the ultimate consumers viz., grading, processing, storage, transport, channels of distribution and all other functions involved in the process;

(zc) "notified agricultural produce" means any agricultural produce notified under Section 19 of this Act;

(zg) "Processing" means any one or more of a series of treatments relating to powdering, crushing, decorticating, dehusking, parboiling, polishing, ginning, pressing, curing, cleaning, or any other manual, mechanical, chemical or physical treatments to which raw agricultural produce or its product is subjected to;

(zo) "Trader" means a person who in his normal course of business buys or sells any notified agricultural produce includes a person engaged in processing of agricultural produce but does not include an agriculturist;

Section 27.(1) No person shall, except in accordance with the provisions of this Act or rules or bye-laws made thereunder-

(i) use any place in the market area for the marketing of notified agricultural produce; and

(ii) operate in the market area as a market functionary.

Section 40.(1) Every person who, in respect of notified agricultural produce, desires to operate in the market area as a trader, commission agent, weighman, hamal, surveyor, ware houseman, contract farming sponsor, owner or occupier of the processing factory or any other market functionary, shall apply to the Secretary of the Committee for registration or renewal of registration in such manner and within such period as may be prescribed. The Secretary of the Committee shall be the authority to grant registration certificate with the prior approval of the Committee :

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Section 44 : Every Committee shall levy, charge and collect market fee in the manner as may be prescribed on ad valorem basis at the rate not exceeding two rupees

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for every one hundred rupees as may be fixed by the State Government,-

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

(ii) on the notified agricultural produce whether brought from within the State or from outside the State into the market area for processing."

5. The case of the petitioners in a nutshell is that they do not fall in any of the categories mentioned in Section 40(1) of the Act and, therefore, are not liable to get themselves registered under the Act. It is further alleged that the cotton bales/cotton waste which they are brought into the State is not notified agricultural produce and therefore no market fees can be levied on it in terms of Section 44 of the Act.

6. At the outset we may deal with the first contention raised by the petitioners that they are not bringing in agricultural produce into the State of Himachal Pradesh. It is submitted that the cotton bales/cotton waste which they are bringing into the State of Himachal Pradesh is not agricultural produce but is a manufactured items. These contentions have been made only to be rejected. Cotton bales are nothing but processed cotton. In fact in the schedule to the Act under item No. 6 fibres cotton ginned and unginned are both included. Cotton bales are only ginned cotton. Therefore, it is definitely agricultural produce which is being brought into the State of Himachal Pradesh. In this behalf we may refer to a judgment of the Apex Court in Chimanlal Prem Chand v. The State of Bombay, AIR 1960 SC 96, wherein the Apex Court while dealing with the provisions of the Bombay Agricultural Produce Markets Act held as follows (Para 9) :

"Cotton, ginned or unginned, continues to be cotton till it loses its identity by some chemical or industrial process. So long as the identity is not lost, the fact that it is pressed into bales or packed otherwise does not make it any-the-less cotton specified in the Schedule to the Act. In this view, the pressed cotton in bales is an agricultural produce as defined in S. 2(1)(i) of the Act, and, therefore, a person doing business in the said produce without licence contravenes R. 65 of the Rules."

As far as cotton waste is concerned the Apex Court in Krishi Utpadan Mandi Samiti, Kampur v. Ganga Dal Mill and Co., (1984) 4 SCC 516 : (AIR 1984 SC 1870) in para 18 specifically set-aside the judgment of the Allahabad High Court holding that cotton waste is not agricultural produce. The Apex Court held as follows :

"In our opinion, the Court has strained the language to reach an unsustainable conclusion, holding that cotton waste is not the processed form of cotton but it is a by-product quite different form of cotton though containing cotton fibre which cannot be used as ordinary cotton. As its name indicates, cotton waste appears to be droppings, stripping and other waste product while ginning cotton. It cannot be said to be a by-product of cotton but it is cotton nonetheless minus the removed seed. In other words it is residue of ginned cotton. We, therefore, find it difficult to agree with the view of the High Court that cotton waste is not comprehended in the item "cotton ginned and unginned".

7. It is thus clear that both cotton bales and cotton waste fall within the definition of cotton ginned and unginned and is agricultural produce within the meaning of the Act.

8. We now take up the question as to whether the petitioners are liable to get themselves registered in terms of Section 40 of the Act. Section 40 requires that a person who desires to operate in the market area in respect of notified agricultural produce as a trader, commission agent, weighman, hamal, surveyor, ware houseman, contract farming sponsor, owner or occupier of the processing factory or any other market functionary is required to get himself registered in the manner prescribed. It is obvious that the petitioners do not fall under the categories of commission agent, weighman, hamal, surveyor, ware houseman, contract farming sponsor. The case of the respondents is that the petitioners fall in the other three categories i.e. trader, owner or occupier of the processing factory and market functionaries.

9. The definition of trader as given in Section 2(zo) has been quoted above. This includes a person who during normal course of business buys or sells any notified agricultural produce and includes a person engaged in processing of agricultural produce. The question which will arise is whether the petitioners are engaged in processing of agricultural produce. Processing has been

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defined in Section 2(zg) and it includes one or more of a series of treatments relating to different types of processing and including ginning, pressing, curing, cleaning and any other manual, mechanical, chemical or physical treatment to which raw agricultural produce or its product is subjected to.

10. Market functionary has been defined to include various categories of persons as may be declared by the State Government by notification to be market functionaries. It is obvious that the definition of market functionary necessarily means that before a person can be included in this definition there should be a notification by the State Government declaring such persons or category of persons to be market functionaries. No such notification has been brought to our notice.

11. The petitioners' case is that they are not processing units but are manufacturing units and, therefore, they do not fall either within the definition of trader or under the definition of owner or occupier of a processing factory.

12. Strong reliance is placed by the petitioners on the judgment of the Apex Court in case Orient Paper and Industries Ltd. v. State of M.P., (2006) 12 SCC 468 : (2006 AIR SCW 6017). The Apex Court was dealing with the M.P. Krishi Upaj Mandi Adhiniyam, 1972 which is similar to the H.P. Act. In that case the petitioners were using raw agricultural produce such as Bamboo, Wood, Dyes, Starch, Rosin, Talcum and several chemicals as raw material for production of paper. The manufacturing process consisting of reducing the bamboo and wood pieces into pulp to which chemicals were added at a subsequent stage. Section 19 of the M.P. Act is virtually identical to Section 44 of the H.P. Act. The Apex Court held that the petitioners before it were manufacturing paper and not processing the agricultural produce and held as follows :

"16. Manufacture implies a change but every change is not manufacture, yet every change of an article is the result of treatment, labour and manipulation. Naturally, manufacture is the end result of one or more processes through which the original commodities are made to pass. The nature and extent of processing may vary from one class to another. There may be several stages of processing, a different kind of processing at each stage. With each process suffered the original commodity experiences a change. Whenever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity; but it is only when the change or a series of changes take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place. Process in manufacture or in relation to manufacture implies not only the production but also various stages through which the raw material is subjected to change by different operation. It is the cumulative effect of the various processes to which the raw material is subjected to that the manufactured product emerges. Therefore, each step towards such production would be a process in relation to the manufacture. Where any particular process is so integrally connected with the ultimate production of goods that but for that process processing of goods would be impossible or commercially inexpedient, that process is one in relation to the manufacture.

17. "Manufacture" is a transformation of an article, which is commercially different from the one, which is converted. The essence of manufacture is the change of one object to another for the purpose of making it marketable. The essential point thus is that in manufacture something is brought into existence, which is different from that, which originally existed in the sense that the thing produced is by itself a commercially different commodity whereas in the case of processing it is not necessary to produce a commercially different article.

18. The relevant and generally accepted test to ascertain that there is "manufacture" is whether the change or the series of changes brought about by the application of processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity but is, instead, recognized as a distinct and new article that has emerged as a result of the process. There might be borderline cases where either conclusion with equal justification can be reached. Insistence on any sharp or intrinsic distinction between "processing and manufacture", results in an over simplification of both and tends to blur their interdependence.

19. To put it differently, the test to

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determine whether a particular activity amounts to "manufacture" or not is : Do new and different goods emerge having distinctive name, use and character? The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether it be the result of one process or several processes "manufacture" takes place and liability to duty is attracted. Etymologically the word "manufacture" properly construed would doubtless cover the transformation. It is the transformation of a matter into something else and that something else is a question of degree, whether that something else is a different commercial commodity having its distinct character, use and name and commercially known as such from that point of view is a question depending upon the facts and circumstances of the case."

13. The Court allowed the appeals filed by the Industries and held that since the appellants before it were manufacturers and not processors the market fees could not be levied.

14. In Edward Keventer Pvt. Ltd. v. Bihar State Agricultural Marketing Board, (2000) 6 SCC 264 : (AIR 2000 SC 1796), the appellant was a Company engaged in manufacturing fruit drinks under the name of Frooti and Appy. The Court held that the agricultural produce which is covered under the terms of the Bihar Act has to be specified in the schedule. The Court found that in the schedule under the caption "fruits", mango and apple had been specified as agricultural produce. Under caption "cereals" wheat was specified at item No. 3 and wheat atta, suji, maida etc. had specifically been specified as items 14, 15 and 16. Similarly milk had been specified as item No. 19 and butter, ghee, cream, chana and khoya which were milk products had been separately specified. The Apex Court held that this shows that even if the basic ingredients might be the same but the end product is a different commodity then it has to be treated as a separate item. If the product loses its initial identity then the end product will not fall under the first category and it would amount to manufacture. The Court held that the petitioner was not liable to pay market fees.

15. On the other hand Sh. Navlesh Verma, learned counsel appearing for the Marketing Board has contended that processing is an integral part of manufacture and the plain reading of the words of the Act makes it clear that a person engaged in processing of notified agricultural produce is liable to get himself registered and when such produce is brought into the State from outside for processing the Committees is entitled to levy fee on it.

16. He has placed reliance upon the judgment of the Apex Court in Park Leather Industry (P) Ltd. v. State of U.P., (2001) 3 SCC 135 : (AIR 2001 SC 931). In that case hides and skins were included in the agricultural produce. The appellant before the Apex Court was engaged in the business of preparing tanned and finished leather from hides and skins. The case set up before the Apex Court was that the appellant was engaged in the manufacturing of new commodity i.e. tanned leather which was not derived by processing hides and skins and was a commodity entirely different from hide and skin. The Apex Court held that hides and skins would include leather. Reliance was also placed on the Hindi version of the Act wherein as against the hides and skins the terms used were "khal and chamra". The Court held that Hindi version was more authentic and chamra included leather.

17. Reliance has also been placed by the respondents on another decision of the Apex Court in G. Giridhar Prabhu v. Agricultural Produce Market Committee, (2001) 3 SCC 405 : (AIR 2001 SC 1363), wherein the person concerned was purchasing raw cashew nuts and then extracting cashew kernels allegedly by means of processing. It was held that it was a trader within the meaning of Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. This judgment is not applicable in the facts of the present case since under the Karnataka Act the word 'trader' included a person who buys notified agricultural produce for the purpose of manufacturing. Even the word 'importer' in the Karnataka Act has been defined to include a person who imports notified agricultural produce for the purpose of manufacturing.

18. The provisions of the H.P. Agricultural Produce Markets Act, 1969 which was repealed by the Act now in consideration were considered by the Apex Court in Himachal Pradesh Marketing Board v. Shankar Trading Co. Pvt. Ltd., (1997) 2 SCC 496. In that case though katha was a distinct and separate product derived from the agricultural produce (Khair wood), the Court

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held that even katha was included since the State had included katha in the schedule to the Act. It is nobody's case that cotton yarn has been included in the Act. This judgment, therefore, does not help the respondent. Even under the present Act katha is included. Katha is not raw agricultural produce but it is the end product of a raw agricultural produce, namely, khair wood. The State has included it in the schedule and therefore it would be agricultural produce within the meaning of the Act.

19. Reliance has been placed by Sh. Navlesh Verma on a Division Bench judgment of the Punjab and Haryana High Court rendered in M/s. Bindra Feed Mills v. State of Haryana, 1994 PLJ 188. However, before we refer to this judgment it would be apposite to mention that the Punjab Agricultural Produce Markets Act as initially enacted was considered by a Division Bench of the Punjab and Haryana High Court in Parkash Woollen Industries, Panipat v. The State of Haryana, (1980) 82 PLR 54. The Court held that a dealer who brings agricultural produce for the purpose of manufacturing is not liable to pay market fees under the provisions of the Act. The Court held that giving the ordinary meaning to the word "processing", there was distinction between processing and manufacture. The Court held that the processing means 'such treating of an agricultural commodity so as to make it consumable while the commodity remaining substantially the same' while 'manufacturing' envisages turning of original commodity into a different commodity with different use and marketable character thereof being different and distinct from that of the original agricultural commodity. With a view to over- come this judgment the legislature amended the definition of the word "processing" and the new definition included "manufacturing out of an agricultural produce". It is thus obvious that the legislature by definition created a legal fiction and included manufacturing in the definition of processing. It is due to this definition that in Bindra Mills case the Punjab and Haryana High Court upheld the levy of market fee on goods brought for processing though the processing is an interim stage of manufacturing.

20. We cannot accept the contention of Sh. Navlesh Verma that cotton yarn is agricultural produce and is only produced by way of a process. As noted above certain Acts such as the Karnataka and Punjab Acts have included the words "manufacture" and "manufacturing" in their Acts and, therefore, even when agricultural produce is used for manufacturing a new product market fees may be levied. However, the legislature in the present case has purposely not used the words "manufacture" or "manufacturing". The words "process" and "processing" have been used in the various definition clauses as well as the sections but the legislature in its wisdom chose not to use the words "manufacture" and "manufacturing".

21. Every manufacture will necessarily include a series or number of processes. If agricultural produce is only processed and the resultant product is not very different then the resultant product may also be included in the definition of agricultural produce. However, as held by the Supreme Court in Edward Keventer's (AIR 2000 SC 1796) and Orient Paper and Industry's (2006 AIR SCW 6017) cases (supra) where the end product has a distinct and separate identity then it cannot be said that the notified agricultural produce is only being processed. It is by a series of processing being manufactured into something new; something having a totally different identity.

22. Petitioners have alleged which fact is not denied that when the cotton bales are brought into their Spinning Mills they are first taken to the blow room then carding is done thereafter combing takes place then the product goes through the various processes of being drawn through the draw frame, speed frame and ring frame and the resultant product which is cotton yarn is then wound and packed. It has been urged by Sh. Navlesh Verma that no chemical processes are involved unlike in the case of manufacture of paper from wood. However, this is not what is crucial to decide whether the processes amount to manufacture or just amount to processing. We have quoted in detail the judgment of the Apex Court giving the vital different between the two. The main point of differention between processing and manufacturing is whether the end product has a totally different identity. In our considered view cotton yarn has a totally different identity from cotton. The series of process which are undertaken when combined together result in the manufacture of a totally different product, namely, cotton yarn.

23. In view of the above discussion we

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are of the considered view that the petitioners are manufacturing a non-agricultural product, namely, cotton yarn from agricultural produce and, therefore, do not fall within the ambit of the Act. We accordingly allow the writ petitions and hold that the petitioners are not liable to get themselves registered under Section 40 of the Act and they are not liable to pay market fees on the manufacture of cotton yarn. We consequently quash the notices issued to the petitioners to get themselves registered and to pay market fees.

24. All the writ petitions are allowed in the aforesaid terms with no order as to costs.

Petitions allowed.

AIR 1982 HIMACHAL PRADESH 97 "Khushi Ram v. State"

HIMACHAL PRADESH HIGH COURT

Coram : 2 VYAS DEV MISRA, C. J. AND H. S. THAKUR, J. ( Division Bench )

Khushi Ram and others, Petitioners v. The State of H.P. and others. Rependents.

Civil Writ Petns. Nos.254, 82, 252 and 259 of 1974, 236 of 1979, 68 and 89 of 1981, D/- 7 -1 -1982.

(A) H.P. Agricultural Produce Markets Act (9 of 1970), S.4 - AGRICULTURAL PRODUCE - Market-fee charged by Marketing Board and Market Committees - Not a tax but is a levy of fee for which in return services have to be rendered.

AIR 1981 SC 1127 and AIR 1980 SC 1008, Rel. on. (Para 24)

(B) H.P. Agricultural Produce Markets Act (9 of 1970), S.3, S.4 - AGRICULTURAL PRODUCE - Notifications under - Providing of all facilities under the Act is not a precondition for enforcement of the Act and issuing of notifications u/ss.3 and 4.

AIR 1981 SC 1127, Rel. on. (Para 26)

(C) H.P. Agricultural Produce Markets Act (9 of 1970), S.3, S.4 - AGRICULTURAL PRODUCE - Publication of notification - Non-compliance with R.5 framed under the Act - Even if there is any omission in this behalf, notification published u/s.3 or 4 shall have full force. (Para 27)

(D) H.P. Agricultural Produce Markets Act (9 of 1970), S.1 - AGRICULTURAL PRODUCE - Applicability - Articles of sale falling within definition of agricultural produce purchased from place outside Himachal Pradesh - Even then Act is applicable. (Paras 32, 33)

Cases Referred : Chronological Paras

AIR 1981 SC 1127 24, 25

AIR 1980 SC 1008 24

AIR 1978 PunjHar 53 (FB) 23

AIR 1975 SC 846 : 1975 Tax LR 1455 22

AIR 1975 SC 2037 : 1975 Tax LR 2013 23

AIR 1965 SC 1107 23

AIR 1963 SC 966 22

AIR 1962 SC 97 25

AIR 1961 SC 459 22

AIR 1954 SC 282 22

AIR 1954 SC 388 22

AIR 1954 SC 400 22

K. D. Sud, for Petitioners; Inder Singh, Advocate General with Chhabil Dass, for Respondents.

Judgement

H. S. THAKUR, J. :- Civil Writ Petitions Nos.82 of 1974, 252 of 1974, 254 of 1974, 259 of 1974, 236 of 1979, 68 of 1981 and 89 of 1981, can be conveniently disposed of together, since the main points involved in these writ petitions are common to all of them. However, additional point or points raised in any petition would be also dealt with in the judgment that follows.

2. To start with, it is desirable to narrate me facts and contentions raised in C.W.P. No.254 of 1974. In this writ petition, besides other reliefs, it is prayed that the Himachal Pradesh Agricultural Produce Markets Act, 1969 (9 of 1970) (hereinafter referred to as the Act) be declared ultra vires of the Constitution. It is stated that the petitioner is carrying on the business of commission agent in fruits and other vegetable articles within the territorial jurisdiction of Simla District. It is pointed out that the Act was promulgated in the State of Himachal Pradesh in the year 1970 and a notification to this effect was published in the Gazette dated 19th Sept., 1970. It is stated that the object of the Act stipulates to consolidate and amend the law relating to better regulation of purchase and sale, storage and processing of the agricultural produce and establishment of markets for agricultural produce in Himachal Pradesh. It is provided under Sec.3 (19) of the Act that the Board may, with the prior approval of the State Government, by notification, declare its intention of exercising control over the purchase, sale, storage and processing of such agricultural produce, and in such area as may be specified in the notification. Such notification shall state that any objections or suggestions which may be received by the Board within the period to be specified in the notification will be considered. It is further stated that a notification (Annexure-'A') in the Official Gazette under Section 3 (19) was published. It is further alleged that the State Legislature under its rule-making powers under the Act framed rules in 1971 and that R.5 provided as to how the publication of the notifications is to be effected. Rule 5 thereof may be reproduced for a ready reference:

"5. (1) Copies of a notification issued under Ss.3 (19) and 4 of the Act shall be published in one or more of the undermentioned modes under the orders of the Chairman of the Himachal Pradesh Marketing Board :-

(i) in Hindi and if necessary in English language in all such newspapers as the Chairman may decide;

(ii) the Board will give publicity among persons likely to be affected by or interested

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in the sale and purchase of agricultural produce in the proposed notified market area-

(a) by affixing a copy of the notification in Hindi and if necessary in English language as may be considered expedient by the Chairman of the Board in the office of every Municipal Corporation, Municipal Committee, Small Town Committee, Notified Area Committee, Panchayat and/or any other organisation or society, if any, within whose jurisdiction the notified market area or any part thereof is situated and at some conspicuous place(s) in the existing market, if any.

(b) by affixing a copy of the notification in Hindi, and if necessary, in English language as may be considered appropriate by the Chairman of the Board in the principal common meeting place or any rendezvous of interest, if any, of every village in the countryside within the notified market area;and

(c) by beat of drum in the village within the notified market area.

(2) The time of publication under clauses 5 (1) (i), (ii) (a), (b) and (c) and the time and frequency of the drum-beating under clause (c) shall be determined by the Chairman, Himachal Pradesh Marketing Board.

(3) Expenses of notification.- The expenses of the publication under sub-rule (1) of the notification issued under Ss.3 (19) and 4 of the Act shall be met out by the Government of Himachal Pradesh."

It is pointed out that no publication was effected m accordance with R.5, as reproduced above. It is urged that it has not been published at all in conformity with the Act and the petitioner was not in the know of the said notification. According to the petitioner, the respondent No.1 issued a notification (Annexure-'B') under S.4 (3) implementing the said Act in the market area of Simla district. A reference has been made to Section 4 (1) which provides that after the expiry of the period specified in the notification under Sec.3 (19) and after considering such objections and suggestions as may be received before the expiry of the specified period, me Board may, by notification and in any other mariner that may be prescribed, declare the area notified under Sec.3 or any portion thereof to be notified market area for the purpose of this Act in respect of fee agricultural produce. It is contended that the State Government did not apply its mind before issuing Annexures-'A' and 'B' and thereby violated the rules. It is also contended that Annexures-'A' and 'B' are vague and indefinite and incapable of being enforced. On this account, it is urged that no one could have properly raised objection inasmuch as no market areas have been notified or established. It is stated that the Act has provided for the acquisition of land for the Board and the Committee under Sec.29 thereof. According to the petitioner, the Land Acquisition Act being a Central Legislation already in force no legislation can be made by the State without the approval of the President. As such, according to the petitioner, the Act providing for acquisition, is ultra vires of the Constitution without the approval of the President. It is pointed out that the State has delegated its legislative powers to the Marketing Board and the Market Committees under S.4 (1) to notify the market areas and to levy fee which is a legislative function and could not be delegated. It is further contended that there are no plans for rendering any service, nor any provision have yet been made for rendering service. According to the petitioner, no fee can be levied nor the petitioner can be asked to take licence unless the services are rendered. The petitioner has contended that the levying of market fee is a colourable legislation amounting to indirect taxation inasmuch as no service is being rendered but fee is being charged. According to the petitioner, the fee is in the nature of tax on sale. On this basis, it is urged that the market fee demanded from the petitioner amounts to imposition of tax which the Market Committee is not empowered to do. The petitioner reiterates that the market fee is in fact a tax inasmuch as the purposes for which the market fee is being collected is that the market funds can be spent under Ss.23 and 25 which provide that the same be used for national and public interest. According to the petitioner, it has no nexus with the object of the Act. It is contended that the levying of a market fee and issuing a licence is an unreasonable restriction, on the right of the petitioner to do free trade. It is also urged that no guidelines have been provided nor the restrictions have any nexus with the objects of the Act. The petitioner submits mat the entire action of the respondents is without foundation and without the authority of law. It is averred that the erstwhile Union Territory of Himachal Pradesh was granted Statehood on 25th Jan., 1971 and the Act had already been enacted and that on attaining Statehood, the Act was not again passed by the Legislature of Himachal Pradesh. According to me petitioner, the Act cannot be treated to be law in force as

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contemplated by the provisions of State of Himachal Pradesh Act, as no notification has been issued m exercise of powers under sob-section (1) and sub-section (19) of S.3 and Sec.9 of the Act. It is further urged that the constitution of respondents Nos.2 and 3 is without the authority of law and based on invalid notification. According to the petitioner, he was never allowed an opportunity to file objections as no notification in accordance with the rules was published. It is pointed out that before the enforcement of the Act, the petitioner as also other commission agents used to charge 7% on fruits and 4% on vegetables from the growers. According to him, no commission was charged from the purchasers in respect of fruits. It is urged that the Act and the Rules provide that the commission agent cannot charge any commission from the growers but only from the purchasers. The petitioner has also contended that the commission agents engaged in business do not render any service to the purchasers but merely help the growers in marketing their commodities. According to the petitioner, the commission agents are coerced to charge fee from the purchasers although they render no service to them. The petitioner contends that there is no intelligible basis on which commission can be charged from the purchasers. According to the petitioner, no notification in accordance with R.5 was published. The petitioner on his belief contends that no publication was made in English or Hindi paper. He claims that the persons affected, including me petitioner, were not given due notice of the notification as envisaged by Sub-rule (ii) of R.5 (1). No copy of the notification was affixed on or near about the premises where the petitioner was carrying on business nor it was affixed in the principal common meeting place of interest. According to the petitioner, the commission agent, like him, have to market the commodities at places like Delhi, Bombay, Calcutta and Madras. At all these places, the commission agents, it is asserted, are authorised to charge between 8% to 10% commission from growers and not from the purchasers. On this account, it is urged that the petitioner is handicapped in competing with the persons engaged in similar business and contends that it is in violation of Arts.14 and 19 of the Constitution of India. It is also urged that according to the scheme of the Act, the market can only be established by a Market Committee under the Act. It is canvassed that if it is required to be so done by the State Government, the requirement by the State Government is a condition precedent to the establishment of a market. It is pointed out that no direction was given by the State Government to establish market-yard or market. According to the petitioner, the Committee took no steps after the receipt of the said directions for the establishment of a principal market-yard or sub-market yard, if any. It is urged that during the pendency of the case after the enforcement of the Act and till 31st March, 1975, the petitioner has deposited a sum of Rs. 1,0008.13 on account of fee with respondents Nos.2 and 3. The petitioner states that the respondents cannot retain this amount. It is pointed out that the association of which he is a member, made representation to the respondents seeking information of the facilities to be provided for which they claim fee and the licences are being granted. According to him, the respondents gave the reply Annexure- 'C' saying inter alia that steps are being taken to provide them amenities. The petitioner has urged that without providing the amenities and services, no fee can be charged and they cannot be forced to take the licences to do the business. According to the petitioner, no facility either of storage or of processing or any other amenity worth the name has been conceived as yet, germane to the dealing in business.

3. On the above averments, the petitioner claims that the Act be declared as ultra vires of the Constitution and a writ of mandamus be issued directing respondent No.1 not to enforce the same. It is further prayed that a proper writ or direction be issued to respondents Nos.2 and 3 to refund a sum of Rs. 1,008.13 to the petitioner as also the amounts which may be collected during the pendency of the writ petition.

4. Replies to the writ petitions have been filed by the respondents. It is submitted therein that the petitioner has no right to maintain the writ petition as he is not a person to pay the levy as the same is not to be paid by a dealer or producer. It is urged that the scheme of levy is that the market fee is to be paid by the buyer and not by the producer or a dealer. According to the respondents, the Act received the assent of the President of India and was published in the Himachal Pradesh Government Gazette on 6th April, 1970. It is urged that the Himachal Pradesh Marketing Board was constituted under Sec.3 of the Act by the State Government vide notification dated 5th Feb., 1972. The preliminary notification indicating intention to regulate Simla Market

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under Sec.3 (19) was issued on 5th May, 1973 and was published in the Gazette on 12th May, 1973. According to the respondents, the petitioner did not file any objection to the said notification and the final decision was taken, and final notification under Sec. 4 (1) was published on 21st May, 1973. It is alleged that the first Market Committee for Simla notified market area was constituted by a notification dated 15th Sept., 1973 and the first meeting of the said Committee was held on 12th March, 1974. The petitioner is alleged to have applied for a licence and deposited licence fee of Rupees 100/- on 10th April, 1974. On the basis of these facts, it is contended that the petitions suffer from laches. According to the respondents, the Act is a step towards an agrarian reform and benefit is intended to be given to the growers of agricultural produce. It is contended that the object of the Act is to give a fair-deal, and fair rates to the growers and also to save them from exploitation of intermediaries. It is contended that the provisions of the Act are saved by Article 31-A of the Constitution and the Act is not open to challenge on the basis of alleged violation of the provisions of Articles 14,19 and 31 of the Constitution of India. It is pointed out that otherwise also, non-publication of the preliminary notification under the rules is protected by the provisions contained in sub-section (4) of S.4 of the Act. It is contended that the petitioner besides the business in fruits and vegetables, is also wholesale dealer in these articles. It is pointed out that the intention to create a Market Committee was proposed by the erstwhile State of Punjab during the year 1965 and a preliminary notification was issued on 12th Jan., 1965. Wide publicity to the aforesaid notification is alleged to have been given by the Government of Punjab and, in consequence thereof, several representations were received from various traders within the city of Simla. The matter was also brought to the notice of the Simla Municipal Committee in which there were as many as sixteen elected representatives of the then Municipal Committee, and they passed a, resolution as contained in Annexure 'PB'. It is pointed out that after receiving the objections, the then Government of Punjab considered the objections and took the decision on 27th May, 1965. In pursuance of that notification, it is contended, the Market Committee was constituted, but further steps could not be taken within the present territory of Simla town. It is conteded that thereafter the Himachal Pradesh Assembly passed the Act which received the assent of the President of India on 3rd March, 1970 and was published in the Rajpatra. It is also urged that in view of the changed circumstances, it was decided to constitute one consolidated Market Committee for the entire district of Simla after the reorganisation of districts in Sept., 1972. On the reorganisation of the districts, large area comprising of erstwhile Mahasu district came within the district of Simla. Due to this reorganisation, it was decided to amalgamate the two areas into one Committee and by notification dated 13th June, 1973, the previous notifications were denotified and a fresh notification under Sec.3 was issued declaring intention of the Himachal Pradesh Government of constituting a Market Committee in the area including Simla. According to the replying respondents, the aforesaid notification was given a wide publicity and its copies were distributed and affixed on the notice boards of the Deputy Commissioner, Simla, Municipal Corporation, Simla, and also other conspicuous places within Simla town and other areas of Himachal Pradesh. Copies were also sent to the District Agriculture Officers and Agriculture Inspectors to give wide publicity to the notification. No objections were, however, received and consequently the Government of Himachal Pradesh decided to constitute the Market Committee and a final notification was issued and published in the Official Gazette. Notifications under Ss.3 and 4 of the Act were published in the Official Gazette. It is also pointed out that otherwise also, in view of the provisions contained in sub-section (4) of S.4 of the Act, the omission, if any, would not affect the constitution of the Committee. It is denied by the replying respondents that notification did not comply with R.5 framed under the Act. It is further pointed out that the petitioner knew the factum of the enforcement of the Act. It is also pointed out that the petitioner is the President of Krishna Fruit and Vegetable Dealers Association, Simla which had filed, objections to the earlier notification. These objections were considered by the appropriate authorities. It is urged that it is within the competence of the Government to decide and notify a particular area as market area and to apply the provisions of the Act after following the necessary procedure. It is contended that the notifications Annexures 'A' and 'B' are not vague. The replying respondents contend that the acquisition of land is a common subject of the Centre and the State.

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At the same time, it is pointed out, that the acquisition of land for market yards etc. is the ancillary object of the Market Committee. In any event, it is pointed out that the petitioner cannot make any grievance to this behalf. Further, it is denied that any essential legislative powers have been delegated to the Board. The Board has been given limited powers to fix the market fee subject to a maximum, provided under the Act. It has been elaborated by the respondents that the main object of the Act is to remove the disabilities of the producers' share in the price paid by the consumers and to avoid the exploitation and other malpractices followed by middlemen. It is urged that keeping in view the difficulties of illiterate producers of agricultural produce, the countries of the world, including India, have sought to remove the socio-economic disabilities of the farmers and to increase the production and improvement of agricultural produce. Accordingly, the first socio-economic measure in this behalf is to establish the regulated markets. Such legislations are stated to have been enacted by numerous other States in India. In para 15 of the reply filed by the respondents Nos.2 and 3, the evils and malpractices prevailing in the purchase and sale of agricultural produce have been elaborated. The Act is intended to give protection to the producers of such produce. The reply indicates that the various traders in the market area, including the petitioner, met the Deputy Commissioner, Simla in deputation. The meeting was held on 26th Sept., 1974 and they demanded certain facilities. The Deputy Commissioner agreed to provide certain facilities. It is contended that other facilities are also being provided and more facilities would be provided when sufficient funds are available to the Market Committee. The staff is alleged to have been appointed and preliminary steps to provide facilities are stated to have been already taken. It is pointed out that the Act received the President's assent on 3rd March, 1970 and was published in Himachal Pradesh Gazette of 26th March, 1970. In reply, to para 18-B, it has been alleged that the petitioner is a commission agent and used to charge the commission at the rate of 7% on fruits and 4% on vegetables from growers. No commissionor fee was to be charged from the purchasers in respect of fruits. It is, however, alleged that the petitioner in fact had been charging 4% commission from sellers and 1½%, from the purchasers on vegetables. On fruits, the petitioner is alleged to be charging commission at the rate of 7% from the sellers and 25 P. per box (unit) from the purchasers. Under the Act, the growers have, however, been completely exempted from paying market charges. The commission at the rate of 5% is fixed by the Committee to be charged by the commission agent for themselves whereas one per cent is to be paid to the Committee. The petitioner, accordingly, is entitled to 5% commission which is to be paid by the purchasers. It is pointed out that in Punjab and Haryana, no commission is charged from the producers. According to the replying respondents, the establishment of the principal market yard under S.5 (1) (2), is not a precondition that the market-yards be established before enforcement of the Act. The licensed dealers who were taken as members of the Market Committee can suggest the better places for the purpose. It is pointed out that the petitioner has already deposited the market fee. As desired by the traders in the meeting held with the Deputy Commissioner, Simla, the order for the installation of weigh-bridge has already been placed with a firm. In the end, it is pointed out that various facilities are being provided under the Act. Almost similar reply has been filed on behalf of respondent No.1, on the affidavit of the Joint Agriculture Production Commissioner, Himachal Pradesh and it is not necessary to reproduce the same over again.

5. An additional affidavit has been filed by the Secretary, Market Committee, Simla in which several services which are being rendered by the Market Committee have been elaborated. It is proper to reproduce the said affidavit for a ready reference:

"I, Prem Prakash Gupta S/o Shri Makhan Lal Gupta, aged forty-two years at present Secretary, Market Committee, Simla, since 1st August, 1978 and as such, I am well conversant with affairs of the Market Committee, Simla. I solemnly declare that in Simla district. Market Committee was constituted on 15-9-1973 and the fee was levied with effect from 15-10-1974.

2. That following services are being rendered by the Market Committee in the market area of Simla :-

(a) Secretary, Market Committee has been appointed along with supporting staff of fee collectors/Market Supervisors/Auction recorders, Head Clerk, two clerks, one chowkidar and one peon.

(b) That the Fee collectors/Market Supervisors/Auction recorders perform, the following duties:

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(i) Supervision of the Market, attending the auction, hearing the general complaints of the producer, sellers at the time at auction, regulating the Market charges Market functionaries and Market practices.

(ii) Supervision of weighment and checking of malpractices and unauthorised charges etc. so as to check unhealthy practices and eliminate unauthorised overcharges in the Market.

(iii) The Market intelligence work for collecting and publicity and broadcasting daily prices and information regarding the stock arrivals being collected periodically along with despatches of major cash crops of agricultural produces.

(iv) The supervision of grading and standardisation of the seed potatoes and apples which, are the major cash crop of the area.

(c) That land for construction of the Market has been taken over at Dhalli, Theog, Rohru and Shillaru. The layout plans for Dhalli, Theog and Shillaru for the purpose nave been prepared and approved. The estimated cost of the Market Yards at Dhalli is about Rs. seventy lacs and that of Theog is about rupees fifteen, lacs and of Robin, Shilllaru are rupees five lacs each. Construction has been started at Dhalli and Theog.

(d) A weighing-bridge has been installed at a total cost of rupees two lacs. At Theog about 20 shops and canteens have been constructed at a cost of rupees three lacs.

(c) A storage shed for agricultural inputs has been constructed at Dhalli at a cost of rupees one lac.

(f) A grading and standardisation centre has been created at Dhalli for seed potato marketing. To promote potato grading equipment worth Rs. 18,000/- has been. purchased.

(g) Parking place has been provided and convenience for the users are under construction.

(h) The efforts are being made to acquire suitable land for Market Yard for Simla town for which several proposals have been submitted. At present, Municipal Corporation, Simla is not co-operating, and the matters has to be pursued at higher level as the entire Nazul land vests in the Corporation.

(i) A piece of land has been taken over in existing Municipal Sabzi Mandi, Simla for conducting actions and a platform for the same has been provided. The weighment is checked by the Market Supervisors.

3. That the statement of Income and Expenditure of the Market Committee for the year 1974-75 till 31st March, 1981 is annexed as Annexure-'A' to the affidavit and the Expenditure incurred is annexed as Annuxure-'B' to this affidavit.

4. That the total income from levy of market fee till 31-3-1981 is Rs. 31,54,288.32 p. whereas expenditure is Rs. 18,87,736.73 p. Thus a sum of Rs. 12,66,551.59 p. has been saved from the incomes and as against that projects worth more than rupees ninety five lacs for construction of Market Yards alone have been taken in hand and the balance expenditure will be met out of future income, grant-in-aid, loans etc. A fall-fledged principal markets for potatoes, apple and other cash crops are produced to be constructed at Dhalli and another proposal is afoot to construct another Marketing Complex at Shogi, besides other sub-market yards in the Notified Market Area at suitable points.

5. No suitable site to declare a principal Market Yard under Section 5 has yet been approved in Simla Town although some proposals have been submitted to the higher authorities.

Simla dated 15th July, 1981.

SD/-

(Prem Prakash Gupta) Deponent."

Annexurea-'A' and 'B' have been also filed with the additional affidavit. In Annexure -'A', the income of Market Committee, Simla of market the as realised from 1974-75 up to 1980-81 has been detailed. In this way, the Market Committee is shown to have derived a total income of Rs. 31,54,228.32 p. for all these years. In Annexure- 'B', the details of the expenses incurred by the Market Committee, Simla have been given from the year 1974-75 up to 1980-81. In this way, a sum of Rs. 18,87,736.73 p. is stated to have been incurred by the Committee on the expenditure side.

6. The petitioner has filed a counter-affidavit to the aforesaid additional affidavit. It has been contended that to the knowledge of the petitioner, the market fee is not collected anywhere in Simla district except Simla proper. It is contended that no services, amenity, facility or comforts are being provided in Simla proper. No market-yard, sub-market yard or market proper is alleged to have been declared so far. According to the petitioner, no other facilities as contemplated by R.44 framed under the Act have been provided. The petitioner contends that the staff only renders the service of harassment to the petitioner and others, carrying on business and also to the growers. It is

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also asserted that the Market Committee is bound to spend a substantial amount collected on account of market fee on the services to be rendered. According to the petitioner, the weighing-bridge set up by the Market Committee is running on commercial basis and any person can get his truck or any other articles weighed by paying charges. The piece of land said to have been taken in the existing 'Sabji Mandi', Simla for conducting auctions is hardly 18' X 10' and that too, according to the petitioner, has been set apart for the use of the co-operatives.

C.W.P. No.89 of 1981:

7. The petitioners in this writ petition are running their business at Manali, within district Kulu. The petitioner No.1 is the Managing Director of M/s. Rajinder Paul Sood and Sons Private Limited, Manali and also the owner of M/s. Modern General Stores, Manali petitioner No.2. According to Shri Rajinder Paul, petitioner No.2 is carrying on the business of selling foodgrains, edible oils, goods etc. in Manali. The petitioner No.1 purchases most of their goods for the business from the marked at Damtal, Delhi and Punjab and they sell almost all their goods in wholesale and make no local purchases of the articles in which they deal. Inter alia, it is stated that Manali has been shown as the Principal Market-yard. The petitioners submit that the place where they carry on their business it a distinct place and is separated by three-four villages and is not a part of the Notified Area Committee, Manali. Accordingly, it is urged that no principal Market-yard or sub-market yard was declared for Manali proper. It is pointed out that respondents Nos.2 and 3 demanded the market fee from the petitioner and they filed a C.W.P. No.265 of 1978. It is alleged that the Joint Agricultural Production Commissioner issued a communication dated 22nd Dec., 1978 to the effect that the Government had decided that no market fee would be charged by the Marketing Committee of Solan, Simla, Kulu and Nagrota in respect of cereals, pulses, oil-seed, gur and shakkar (khandsari). As such, direction was made that necessary instructions in this behalf be issued. A copy of the communication has been placed on record as Annexure P-7. On the basis of this communication, the counsel for respondents Nos.2 and 3, stated at the bar that at present, the petitioner is not liable to pay any market fee. Accordingly, the petitioner did not press this writ petition and the same was dismissed as withdrawn on 2nd March, 1979. It is stated that they received a letter dated 3-1-1981, calling upon them to collect and deposit market fee at the rate of 1% with effect from 1-1-1981. A notification dated 29th Jan., 1981 was thereafter issued by Respondent No.1 to the effect that in respect of Market Committee, Kulu, market fee on cereal pulses, oil-seeds and gur and shakkar (Khandsari) would be levied with immediate effect. Almost similar other legal contentions as contained in C.W.P. No.254 of 1974, have been raised in this writ petition. Inter alia, it is contended that no marketing board as envisaged by S.3 (1) of the Act has been constituted it is urged that at any rate, its constitution is not proper. No market-yards and any market sub-yards are alleged to have been defined or notified. It a contended that the respondents under the garb of action under Sections 8 and 20 of the Act are levying fees. The action of the respondents is branded as violative of Arts. 301 and 304 of the Constitution of India. It is pointed out that under Section 22 of the Act, the Government is enjoyed by directing the Committee or the Notified Area Committee not to charge octroi in the area where the Act has been made applicable. No such action is said to have been taken and the octroi continues to be levied by the Municipal Committee, Kulu and Notified area Committee, Manali. According to the petitioner, the Market Committee was not competent to levy the market fee till the Market Committee was constituted according to law. It is stated that the articles like rice, edible ails and other products are not agricultural produce and are not produced in the market areas, and as such, no market fee can be levied. It is pointed out that principal market-yard for Manali (Chauri Behal) Tehsil, Kulu was notified by the respondents, as the potato business is carried out at the said place. According to die petitioned, the establishment of Market Committee is a condition present for levying market fee. As such, it is prayed by the petitioners that the Act be declared as ultra vires of the Constitution of India and the imposition at licence fee and collection of fee be declared illegal, void and arbitrary. A prayer has also been made for the refund of licence fee as also the market fee. Notifications Annuxures-P-1 and P-2 and demands as contaid in Annexures-P-9 and P-10 are prayed to be quashed. In the alterative, however, it is prayed that the respondents be directed to enforce the provisions of the Act in accordance with law.

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8. In the reply filed on behalf of the respondents Nos.2 and 3, besides the legal objections, as contained in reply filed in C.W.P. No.254 of 1974, it is contended that on 3rd Oct., 1977, as many as six members of the Market Area Committee, Kulu were nominated and five other members were also nominated in the year 1979. It is contended that it is not necessary that for the purposes of levying market-fee, the constitution of the Market Committee is a condition precedent. It is pointed out that under Section 12 of the Act, the outgoing members, if not replaced after the expiry of their term, the old members continue to hold the office and the Market Committee continues to be validly constituted Committee. It has been admitted in the reply that C.W.P. No.265 of 1978 was filed in which it was stated that no market fee was levied on various items. It is, however, contended that the aforesaid items now stand included vide notification dated 29th Jan., 1981. The respondents denied that there was any assurance that the petitioners would never be made liable to pay the market fee. It is urged that it was only stated that no market fee was liable to be charged in view of the notification as it stood then. It is also urged that in connection with the statutory duty of the Market Committee and the Board to render services as prescribed under the Act, various steps are being taken. Some staff for the enforcement of the Act is alleged to have been employed and Market Committee constituted. It is pointed out that proper sheds and market yards etc. shall be built and other facilities provided gradually according to the funds available with the Market Committee. It is further contended that the market fee is levied in respect of the goods sold in the market irrespective of the source of purchase by the dealer. Ultimately, it has been pointed out that it is the statutory duty of the Market Committee and of the Board to render services as prescribed under the Act. The respondents have justified their actions under the Act and have repudiated the other contentions of the petitioners.

C.P. W.No. 82 of 1974:

9. This writ petition has been filed by M/s. Keshav Ram Chandermani and others, shop-keepers of Nalagarh, district Solan, praying that the action of, the respondents constituting the Board as also imposition of the licence fee and collection of fee be declared illegal, void and arbitrary. It is further prayed that respondents be directed to refund the licence fee deposited by the petitioners. It is also prayed that the respondents be directed to enforce the provisions of the Act in accordance with law. Inter alia, it is contended that no Marketing Board as envisaged under the Act has been constituted. At any rate, it is contended that its constitution is not proper. It is urged that neither any market yards nor market sub-yards nor any market areas have been defined or notified. It is further urged that the provisions of the Act were extended to Saproon, Solan, Simla etc. but later on the respondents elected to denotify these areas. It is pointed out that the respondents in the garb of action under Sections 8 and 20 of the Act are levying fees. It is asserted that under the provisions of the Act, the respondents 2 and 3 are enjoined to perform various functions and to provide facilities to the producers as also to the dealers, but no facilities have been provided. The other contentions are substantially the same as raised in C.W.P. No.254 of 1974.

10. The reply filed on behalf of the respondents 2 and 3 is almost on the identical lines as filed in C.W.P. No.254 of 1974.

C.W.P. No.252 of 1974:

11. This writ petition has been filed by Shri Balwant Singh and fifteen others. In this writ petition, it is contended by the petitioners that they carry on the trade as butchers and sell goat meat and mutton for consumption of general public at Simla. It is stated that they purchase sheep and goats from places outside Simla and sell their meat. According to the petitioners, goat meat and mutton cannot be described to be an agricultural produce and that according to law respondent No.1 is not authorised to formulate any law in respect of goat meat or mutton. According to the petitioners, the State Legislature is not empowered to levy any fee on sellers of goat meat and mutton. It is further asserted that the action of the respondents is violative of Arts.304 and 301 of the Constitution of India. The notifications constituting the Marketing Board as also the Market Committee are said to be non est inasmuch as they were not published in accordance with Rule 5 of the Rules framed under the Act. The other contentions raised in this writ petition are substantially the same as raised in C.W.P. No.254 of 1974. Ultimately, it is prayed that the notification (Annexure- 'D') directing the petitioners to apply immediately for the licence under the Act be quashed, and the respondents be directed-not to enforce the Act and the Rules vis-a-vis the petitioners.

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12. In the reply filed on behalf of the respondents, the contentions of the petitioners have been repelled and it has been contended that goat meat and mutton stand included under animal husbandry products and are treated as agricultural produce. C.W.P. No.259 of 1974.

13. This writ petition has been filed by Shri Jagdish Raj and nine others. It is stated therein that the petitioners Nos.1 to 6 are running business of the sale of infertile eggs and dressed chicken meat, whereas respondents Nos.7 to 9 are carrying on the business of selling fish, at fish market, Simla. According to the petitioners, the animal husbandary goods cannot be included within the definition of agricultural produce. Other contentions raised in this writ petition are almost the same as contained in C.W.P. No.254 of 1974. Ultimately, the petitioners have prayed that Notifications 'D' and 'E' and the like notices be quashed. It is further prayed that Annexure-'A' and subsequent notification notifying the Market Committee be quashed and respondents be directed not to enforce the provisions of the Act.

14. In the reply filed on behalf of the respondents, substantially the similar contentions have been raised as in the reply filed to C.W.P. No.252 of 1974. The additional contentions of the petitioners have also been repudiated.

C.W.P. No.236 of 1979:

15. This is a writ petition filed by Shri Gurbax Singh and another of Una District. It is stated that the petitioners carry on the trade of butchers, general merchants, milk sellers, grain merchants, and deal in vegetables and allied commodities of the daily need of the general public as retail and wholesale dealers. According to the petitioners, these commodities are not the products of the State of Himachal Pradesh, where the petitioners are carrying on their business and that the petitioners have to purchase these articles from Punjab and other nearer States, outside Himachal Pradesh. Inter alia, it is contended that the notice issued to them as contained in Annexures 'C' and 'C-1' be quashed and the respondents be directed not to enforce the provisions of the Act and the Rules made thereunder vis-a-vis the petitioners. It may be pointed out that Annexure-'C' is to the effect that application form for obtaining the requisite, licence under the Act be sent to the Market Committee, Una or to the Deputy Director of Agriculture, Una.

16. The reply has been filed on behalf of respondents 2 and 3 in which the contentions of the petitioners have been repelled and the action of the respondents has been claimed to be perfectly valid. Other contentions raised in this writ petition as also in the reply to the writ petition are substantially the same as contained in C.W.P. No.254 of 1974.

C.W.P. No.68 of 1981.

17. This is a writ petition filed by Shri Surinder Nath of main bazar Una and, another. It stated in the writ petition that the petitioner No.1 is a 'karyana' merchant whereas petitioner No.2 is a 'vanaspati' dealer, exclusively. According to the petitioners they sell the commodities which are not the products of the State of Himachal Pradesh and that they purchase these commodities from the State of Punjab and other nearer States outside Himachal Pradesh. The other contentions raised in this writ petition are also the same as raised in C.W.P. No.236 of 1979. It has been prayed in the writ petition that the notice issued to the petitioners as contained in Annexure-'B' be quashed and the respondents be directed not to enforce the Act and the Rules made thereunder.

18. The respondents in their reply have repelled the contentions of the petitioner and have raised similar contentions as contained in reply to C.W.P. No.236 of 1979. It is, however, not necessary to reproduce the facts as detailed either in the writ petition or in the reply thereto.

19. The Act has been passed to consolidate and amend the law relating to the better regulation of the purchase, sale, storage and processing of agricultural produce and the establishment of markets for agricultural produce in Himachal Pradesh. It may be noticed that before the Act was passed there were two Acts in force in Himachal Pradesh in regard to the establishment of markets for agricultural produce and other matters connected therewith. These were, the Patiala Agricultural Produce Markets Act, 2004 BK which was in force in the area comprised in Himachal Pradesh immediately before 1st Nov., 1966 and the Punjab Agricultural Produce Markets Act, 1961, which was in force in the areas added to Himachal Pradesh under S.5 of the Punjab Reorganisation Act, 1966. As such, with a view to bringing about uniformity in the matter of such law, it was considered necessary to have one unified law for the whole of Himachal Pradesh. Consequently the Act in question was passed.

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20. The scheme of the Act may be briefly narrated. Under S.3 of the Act, the State Government may, for exercising the powers conferred on, and performing die functions and duties assigned to, the Board by or under the Act, establish and constitute a Himachal Pradesh Marketing Board consisting of official and non-official members to be nominated by the State Government. Under S.3 (19) of the Act, the Board may, with the prior approval of State Government, by notification declare its intention of exercising control over the purchase, sale, storage and processing of such agricultural produce and in such area as may be specified in the notification. Such notification shall state that any objections or suggestions which may be received by the Board within a period to be specified in the notification, will be after considered provided that such period will not be less that/then one month. S.4 of the Act deals with declaration of notified market area. It provides that after the expiry of the period specified in the notification under S.3 (19) and after considering objections and suggestions as may be received before the expiry of the specified period the Board may by notification and in any other manner that may be prescribed, declare the area notified under S.3 or any portion thereof to be notified market area for the purposes of this Act in respect of agricultural produce, notified under S.3 or any part thereof. Under S.4 (4), it is declared for the removal of doubts that a notification published in the official gazette under this section or S.3 shall have full force and effect notwithstanding any omission to publish or any irregularity or defect in the publication of a notification under this section or S.3 as the case may be. Section 6 of the Act provides that no market is to be opened in or near places declared to be markets. Sections 7 and 8 are concerned with the grant of licences and payment of licence-fee. Under Section.9, the Board by notification is to establish Market Committee for every notified market area and specify its headquarters. Sections 10 to 15 deal with the constitution of Market Committee, its duties and powers, term of office of the members, removal of members, election of Chairman and Vice-Chairman, and filling of vacancies of member of the Market Committee. S.16 declares that every Market Committee shall be a body corporate as well as local authority by such name as the Board may specify in the notification. Section 17 relates to the appointment of sub-committee, joint committee and delegation of powers whereas S.18 deals with the appointment and salaries of officers and servants of Market Committee. Sections 19 to 32 deal with other allied matters relating to the working of the Market Committee, levy of fee the Marketing Board fund. Market Committee fund, purposes for which the Market Committee fund may be expended, acquisition of land for the Board and market committees and imposition of penalties etc. Under Section 33 of the Act, the State Government has powers to make rules for carrying out all or any other purposes of the Act Under Section 34 of the Act, the Board has been given power to make bye-laws subject to certain conditions. Under S.35, the State Government has power to add to the schedule to this Act any other item of agricultural produce, or amend or omit any item of such produce, specified therein. Sections 36 to 43 deal with the trial of offences, appeal, revision, power to compound offences and liability of member or employee of Market Committee or the Board. Section 44 of the Act relates to repeal and savings provision whereby the Punjab Agricultural Produce Markets Act and the Patiala Agricultural Produce Markets Act are repealed with a proviso that such repeal shall not affect certain matters. In the schedule attached to the Act, the names of agricultural produce as defined under Section 2 (a) have been given. The relevant provisions of the Act will be considered while dealing with a point or points raised in these writ petitions.

21. Common arguments were addressed by the learned counsel for the parties in these writ petitions. It may be pointed out at the very outset that the learned counsel for the petitioners have not, at this stage, chosen to challenge the vires of the Act. As such, it is not necessary to go into that question.

22. The first question that has been raised on behalf of the petitioner is that the fee charged by the respondents is not in the nature of a tax but is a levy of fee for which in return services have to be rendered. Our attention has been drawn to a judgment of the Supreme Court in State of Maharashtra v. Salvation Army Western Territory, (AIR 1975 SC 846), to show the difference between a fee and a tax. The relevant observations may be reproduced for a ready reference (at p.850):

"Now the first question for consideration is: What is the nature of a fee? It is idle to parade the familiar learning on the question of the distinction between a tax and a fee. A tax is a compulsory exaction of money by a public authority for a public purpose

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enforceable by law and is not a payment for any specific service rendered. The levy of a tax is for the purpose of general revenue which when collected forms part of the public revenues of the State. There a no element of quid pro quo between the tax payer and the public authority. A fee is generally defined to be a charge for a special service rendered to individuals by the Government or some other agency like a local authority or statutory corporation. The amount of fee levied is supposed to be based on the expenses incurred by the Government or the agency in rendering the service though in many cases the costs are arbitrarily assessed. Fees are ordinarily uniform but absence of uniformity is not a criterion on which alone it can be said that a levy is in the nature of tax. In tile case of a fee, no account is taken of the varying abilities of different recipients of the service to pay. As a fee is regarded as a sort of return or consideration for services rendered, it is necessary that the levy of fee should be correlated to the expenses incurred by the agency in rendering the services.

"If the special service rendered is distinctly and primarily meant for the benefit of a specified class or area the fact that in benefitting the specified class or area the State as a whole may ultimately and indirectly be benefitted would not detract from the character of the levy as a fee." See Hingir Rampur Coal Co. Ltd. v. State of Orissa, (1961) 2 SCR 537 at p.549 : (AIR 1961 SC 459 at p.466). It is also generally necessary that the payments demanded for rendering of such services must be set apart or specifically appropriated for that purpose and that they should not be merged in the general revenue of the State to be spent for general public purposes. It may not be possible to prove in every case that the fees that are collected by the Government or the agency always approximate to the expenses that are incurred by it in rendering the particular kind of services or in performing any particular work for the benefit of certain individuals.

"A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual services rendered, by the authority to the individual who obtains the benefit of the service. If with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are met out of the amounts collected there bring a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax "See H.H. Sudhindra Thirtha Swamiar v. Commr. for Hindu Religious and Charitable Endowments Mysore, (1963) Supp 2 SCR 302 at p.323.:

(AIR 1963 SC 966 at p.975).

"That there is correlation between the levy and the services can be proved by showing that on the face of the legislative provision itself, the collections are not merged in the general revenue but are set apart and appropriated for rendering services. Thus, two elements are essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accept either willingly or unwillingly and in the second place, the amount collected must be earmarked to meet the expenses of rendering these services and must not go to the general revenue of the State to be spent for general public purposes. See Commr. Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar, 1954 SCR 1005 at pp.1037, 1040 : (AIR 1954 SC 282 at pp.294, 295); Sri Jagannath Ramanuj Das v. State of Orissa, 1954 SCR 1046 at p.1053 : (AIR 1954 SC 400 at p.403) and Ratilal Panachand Gandhi v. State of Bombay, 1954 SCR 1055 at p.1075 :(AIR 1954 SC 388 at p.395)."

Again, is this very judgment, the Supreme Court has further observed as under:

"As we said, the fee must, as far practically as possible, be commensurate with the services rendered. One should not seek for any mathematical accuracy in these matters but be content with rough approximations. The services are mostly rendered by the officers of the Charity Organisation. With the proliferation of public trusts in the State, it became necessary to expand the Charity Organisation and to increase the staff for supervision and control. It also became necessary to have more regional offices for the more effective and immediate supervision and control. The expenditure m constructing buildings for locating the head office and regional office and the increase in the allowances of other amenities to the staff have also to be included in the costs of the services. When there is surplus, it cannot immediately be said that the surplus must necessarily go in reduction of tee rate of contribution to be levied thereafter."

23. In this context, a Full Bench decision of Punjab and Haryana High Court in

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M/s. Harnam Dass Lakhi Ram v. State of Punjab, (AIR 1978 Punj and Har 53) be referred in which reference has been made to the report of Royal Commission on Agriculture in India, 1928, in respect of purchase, sale, storage and processing of agricultural produce and regulating the markets in respect of these matters. The relevant extract of the report may be reproduced (at p.55) :-

"If, as we have held in the preceding para, it is established that the cultivator obtains a much better price for his produce when he disposes of it in a market than when he sells it in his village, the importance to him of properly organised markets needs no emphasis. The importance of such markets lies not only in the functions they fulfil but in their reactions upon production. Well regulated markets create in the mind of the cultivator a feeling of confidence and of receiving fair play and this is the mood in which he is most ready to accept new ideas and to strive to improve his agricultural practice. Unless the cultivator can be certain of securing adequate value for the quality and purity of his produce, the efforts required for an improvement in these will not be forthcoming. The value of the educative effect of well regulated markets on the producer can hardly be exaggerated but it has yet to be recognised in India. From all provinces we received complaints of the disabilities under which the cultivator labours in selling his produce in markets as at present organised. It was stated that scales and weights and measures were manipulated against him, a practice which is often rendered easier by the absence of standardised weights and measures and of any system of regular inspection. Deductions which fall entirely on him but against which he has no effective means of protest are made in most markets for religious and charitable purposes and for other objects. Large 'samples' of his produce are taken for which he is not paid even when no sale is effected. Bargains between the agent who acts for him and the one who negotiates for the purchaser are made secretly under a cloth and he remains in ignorance of what is happening. The broker whom he is compelled to employ in the larger markets is more inclined to favour the purchaser with whom he is brought into daily contact than the seller whom he only sees very occasionally. This inclination to favour the buyer becomes more pronounced when, as not frequently happens, he acts for both parties."

In this very judgment, it was further observed as under, (at p.63):

"The contention of the learned counsel for the petitioners that since no services are being rendered by the Market Committee to the category of unregulated sales to which category the petitioners belong, therefore, the Committee is not entitled to charge any fee from the petitioners is really not well founded. Firstly, there is no clear-cut averment as to which type of services as are postulated in the provisions of the Act, were not being rendered to the petitioners. Secondly, as would be apparent from the provisions of the Act and the Rules made thereunder, the market fee is levied for the purposes of rendering services to the licensees under S.10 and 13 and to the producers residing in the market area. The purposes for which the fund realised from market fee is to be spent are enumerated under the provisions of S.26 and 28 of the Act. It may be observed that a portion of market fee recovered by the Market Committee is given to the Marketing Board for constituting the Market Development Fund. The funds of the Market Committee and that of the Board are to be spent for the purposes enumerated under the provisions of S.26 and 28 of the Act. The main purpose of the Act is to make provision for regulated markets for the agricultural produce and in that respect render services to all concerned. It cannot be denied that the existence of a regulated market system in State is itself a service to the sellers and to the intending purchasers of the agricultural produce. The provisions of the Act have to be administered by the Market Committees/Marketing Board and the State Government. The establishment and the administrative network involving the administration of the Act by the Market Committees and the Board, does require the finances to run such an administration. If the fee is being levied under the provisions of a statute, the services to be rendered in lieu of the fee as provided under the statute, have to be kept in view with a view to uphold the provisions of the statute

The judgment also observed:

"It is no doubt true that a levy by way of fee is a sort of return or consideration for the services rendered which makes it necessary that there should be an element of quid pro quo in the imposition of a fee, as has been held by their Lordships of the Supreme Court in Government of Andhra Pradesh v. Hindustan Machine Tools Ltd., AIR 1975 SC 2037. But the question has to be viewed from a broader perspective. Reference in this connection may be usefully made to the

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decision of their Lordships of the Supreme Court in Corporation of Calcutta v. Liberty Cinema, AIR 1965 SC 1107, wherein it has been observed as follows (at p.1128):-

"It, therefore, appears to us that the word quid pro quo should be read not in the narrow and restricted sense submitted by the learned counsel for the appellant but in a somewhat wider sense as including cases where the function of the licence is to impose control upon an activity, the cost incurred for effectuating that control, and this on the basis that the industry or activity is placed under regulation and control not merely in public interest but in the interest and for the benefit of the licensees as a whole as well."

It was also observed (at p.65 of AIR 1978 Puni and Har):

"The contention that the area of utilisation of the funds raised from the fee should be confined to the Principal market-yard, is really without any merit. The bare perusal of the provisions of the Act would show that the Committee is established for the notified market area. The principal market yard or the sub-market yard or the market is only a small place where the producers come and dispose of their agricultural produce. With the development made in the notified market area, the development of the principal market yard, or sub-market yard or the market, is closely linked. The producers, who live in villages, are to be provided facilities such as link roads, construction of culverts on the link roads for facilitating the transportation of the agricultural produce to the markets etc. If such facilities, as are specified in the Act are, not offered to the Villagers who grow agricultural produce, they are not likely to get the fair return for the agricultural produce they grow with hard labour and if that is done, the real purpose for which the Act has been enacted, will be frustrated."

It was moreover observed as under (at p.65 of AIR 1978 Punj and Har):

"The contention of the learned counsel for the petitioners that the sales and purchases made by the petitioners, who alleged that their shops are outside the principal market yard or sub-market yards, are not regulated sales and are sales by retail sellers, is really unfounded. As is clear from the provisions of the Act, all sales and purchases of agricultural produce made within each market area are being regulated under the Act. It is immaterial whether the said sales or purchases take place in the principal market yard or sub-market yard or even outside."

24. It is also desirable to understand the essence of the expression 'commission' which is to be charged by a licensee. In this context, the expression 'commission' is almost synonymous to the expression 'fee'. According to dictionary meaning, commission is a fee paid to an agent or employee for transacting a piece of business or performing a service. According to 'Venkataramaiya's Law Lexicon and Legal Maxims' 2nd Edition, the expression 'commission' has no technical meaning but both in legal and commercial acceptation of the term it has definite signification and is understood as an allowance for service of labour in discharging certain duties, such for instance of an agent, factor, broker or any other person who manages the affairs or undertakes to do some work or renders some service to another. Mostly it is a percentage on price or value or upon the amount of money involved in any transaction of sale or service or the quantum of work involved in a transaction. It can be for a variety of services and is of the nature of recompose or reward for such services. Accordingly, it cannot be disputed that the fee charged by the respondents as also by a licensee is in lieu of services to be rendered and is not a tax. Reference may also be made to a decision of the Supreme Court in Rameshchandra Kachardas Porwal v. State of Maharashtra, (AIR 1981 SC 1127). In this judgment, their Lordships of the Supreme Court while dealing with Maharashtra Agricultural Produce Marketing (Regulation) Act observed as under:

"Next we pass on to the main submission made on behalf of the petitioners that the transactions between trader and trader and transactions by which the agricultural produce was imported into the market area from outside the market area were outside the purview of the Act and that if S.5 and Rule 5 were intended to cover such transactions also, they were invalid. The basic assumption of the submission was that the Maharashtra Agricultural Produce Marketing Regulation Act was conceived in the interests of the agriculturists only and intended for their sole benefit. This basic assumption is not well founded. It is true that one of the principal objects sought, to be achieved by the Act is the securing of a fair price to the Agriculturist for his produce, by the elimination

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of middlemen and other detracting factors. But, it would be wholly incorrect to say that the only object of the Act is to secure a fair price to the agriculturist. As the long title of the Act itself says, the Act is intended to regulate the marketing of agricultural and certain other produce. The marketing of agricultural produce is not confined to the first transaction of sale by the producer to the trader but must necessarily include all subsequent transactions in the course of the movement of the commodity into the ultimate hands of the consumer, so long, of coarse, as the commodity retains its original character as agricultural produce. While middlemen are sought to be eliminated, it is wrong to view the Act as one aimed at legitimate and genuine trader. Far from it. The regulation and control is as much for their benefit as it is for the benefit of the producer and the ultimate consumer. The elimination of middlemen is as much in the interest of the trader as it is in the interest of the producer. Promotion of grading and standardisation of agricultural produce is as much to the benefit of the producer or consumer. So also proper weighment."

Again, the Supreme Court in Kewal Krishan Puri v. State of Punjab, (AIR 1980 SC 1008), while dealing with a case under Punjab Agricultural Produce Markets Act (23 of 1961), laid down certain principles for satisfying the tests for a valid levy of market fee on the agricultural produce bought or sold by licensees in a notified market area. It is desirable to reproduce the same for a ready reference (at p.1022):

"From a conspectus of the various authorities of this Court we deduce the following

principles for satisfying the tests for a valid levy of market fees on the agricultural produce bought or sold by licensees in a notified market area:

(1) That the amount of fee realised must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for this purpose.

(2) That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the agricultural produce.

(3) That while rendering services in the market area for the purpose of facilitating the transaction of purchase and sale with a view to achieve the objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and reasonable correlation between the licensees and the transaction.

(4) That while conferring some special benefits on the licensee, it is permissible to reader such service in the market which may be in the general interest of all concerned with transactions taking place in the market.

(5) That spending the amount of market fees for the purpose of augmenting the agricultural produce, its facility of transport in villages and to provide other facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground that such services in the long run go to increase the volume of transactions in the market ultimately benefitting the traders also. Such an indirect and remote benefit to the traders is in no sense a special benefit to them.

(6) That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of me fee.

(7) At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourth must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above."

25. It is contended by the learned counsel for the petitioners that facilities have to be provided before an area is declared as a market area. The learned counsel have drawn our attention to a decision of the Supreme Court in Mohammad Huissain Gulam Mohammad v. State of Bombay, (AIR 1962 SC 97) in respect of their contention. After perusing the lodgment, however, we find that there is no observation in this Judgment that a market yard cannot be declared before all the facilities have been provided. On the contrary, in Rameshchandra Kacharadas Porwal's case, (AIR 1981 SC 1127) (supra) their Lordships of the Supreme Court observed as under (at pp.1140-1141):

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"It was also said that neither the Gultekdi market nor the Turbhe market had any convenience or facility or was ready for use on the date on which it was notified as the Principal Market for the concerned market area. On the material placed before us we are satisfied that all reasonable conveniences and facilities are now available in both the markets, whatever might have been the situation on the respective dates of notification. We refrain from embarking into an enquiry as to the situation obtaining on the dates of notification. We do say that a place ought not to be notified as a market unless it is ready for use as a market with all reasonable facilities and conveniences but we do not conceive it to be our duty to pursue the matter to the extreme limit of quashing the notification when we find that all reasonable facilities and conveniences are now available. While a notification may be quashed if nothing has been done beyond publishing the notification, in cases where some facilities and conveniences have been provided but not some others which are necessary the Court may instead of quashing the notification give appropriate time-bound directions for providing necessary facilities and conveniences. On the facts of the present case, we are satisfied that all reasonable facilities and conveniences are now provided."

26. As such, we are of the view that providing of all the facilities under the Act is not a pre-condition for the enforcement of the Act and issuing of notification under Ss.3 and 4 of the Act. A perusal of Annexures-'A' and 'B' filed on behalf of the respondents with die additional affidavit shows that positive steps have been taken by the Market Committee, Simla and, as pointed out earlier above, expenses have been incurred on different heads as reflected in the said annexures. Accordingly, it cannot be said that by now no facilities have been provided by the Market Committee, Simla.

27. Another question that has been raised on behalf, of the petitioners is regarding the non-compliance of S.3 (19) of the Act as prescribed under Rule 5 framed under the Act (hereinafter referred to as the Rules). This argument can be repelled on the short ground that under S.4 (4) of the Act, even if there has been any omission in this behalf, the same shall have full force. The relevant provision may be reproduced:

"4 (4). For the removal of doubts, it is hereby declared that a notification published

in the Official Gazette under this section or Section 3 shall have full force and effect notwithstanding any omission to publish or any irregularity or defect in the publication of a notification under this section or under Section 3, as the case may be." Accordingly, there is no force in this contention as well.

C.W.P. No.89 of 1981.

28. It may be pointed out that at the time of arguments, it was stated by the learned counsel for the petitioners that in view of the reply filed to Para 23 of the writ petition on behalf of the respondents Nos.2 and 3, the writ petition is not pressed. It is convenient to reproduce para 23 of the reply to this writ petition:

"Paragraph 23 of the writ petition is wrong and denied. The market fee is levied in respect of the goods sold in the market irrespective of the source of purchase by the dealer. It is further denied that here had been any discrimination. In any case, the Government has now exempted the levy of fee on cereals, pulses, oil seeds, gur and shakkar (Khandsari) as per terms of the letter Annexure-RA. Furthermore, there is a geographical reasons for distinction and there is a reasonable classification of the areas of account of geographical reason. The petitioners have not made out any case of discrimination."

The writ petition is accordingly dismissed as not pressed.

C.W.P. No.82 of 1974.

29. Since the points involved in tins writ petition are substantially the same as in C. W.P. No.254 of 1974, ft is not necessary to discuss the same over again. The learned counsel for the petitioners has not even canvassed the additional points as contained in the writ petition. It has, however, been contended that the respondents be directed to discharge their duties, functions and obligations in consonance with the provisions of the Act and the Rules. Accordingly, the respondents can be directed to carry out the purpose of the Act and to discharge the duties, functions and obligation provided under the Act and the rules.

C.W.P. No.252 of 1974.

30. The points common in this writ petition to C.W.P. No.254 of 1974, stand already answered. The additional point raised in this writ petition is that the petitioners carry on the trade of butchers and sell goat meat and mutton. It is contended that they purchase sheep and goats from outside

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Simla and sell their meat. It is urged that goat meat and mutton cannot be described to be agricultural produce and the Act is not applicable to such a trade. It may be pointed out that under S.2 (a) of the Act, agricultural produce has been defined as under:

"2 (a) "agricultural produce" means all produce whether processed or not, of agriculture, horticulture, animal husbandry or forest as specified in the schedule to this Act."

In the schedule attached to the Act, under item No.8 (animal husbandry products), goat meat and mutton have been specified as agricultural produce. As such, this contention of the petitioners cannot be accepted.

C.W.P. No.259 of 1974.

31. Besides the grounds as discussed in C.W.P. No.254 of 1974, the additional ground taken in this writ petition is that the infertile eggs, dressed chicken meat and fish being animal husbandry goods cannot be included within the definition of agricultural produce. The definition of agricultural produce has been already reproduced above while dealing with C.W.P. No.252 of 1974. In the schedule, poultry eggs and fish have also been declared as agricultural produce. As such, even the additional contention raised by the petitioners has no force.

C.W.P. No.236 of 1979.

32. Besides the contentions already answered in the above writ petitions, it is contended by the petitioners that they purchase the articles of sale from outside Himachal Pradesh which is not the produce of Himachal Pradesh and as such the Act cannot be applied to them. Even this contention cannot be accepted. Under the Act, all transactions in the agricultural commodities covered under the purview of the Act within notified market area are covered by the Act. As such, there is no force in this contention as well.

C.W.P. No.68 of 1981.

33. The additional contention raised in this writ petition is almost the same as in C.W.P. No.236 of 1979 to the effect that petitioner No.1 being a 'karyana' merchant whereas petitioner No.2 a 'vanaspati' dealer exclusively, the Act does not apply. As noticed earlier above, these commodities are not stated to be the products of the State of Himachal Pradesh and that the petitioners purchase these articles from the State of Punjab and other nearer States outride Himachal Pradesh. All the articles, which are included in the schedule, are treated to be agricultural produce under the Act. All edible oils are agricultural produce in the schedule under the Act as also certain articles which are included in the schedule, and in which petitioner No.1 deals. As such, this contention has also no force.

34. No other contention on behalf of the petitioners has been raised during the course of arguments. As such, it is not necessary to go into other points.

35. The points raised in the above writ petitions having been answered, it is to be considered whether any relief can be granted to the petitioners in these writ petitions. It may be noticed that the petitioners after applying for licences have subjected themselves to the provisions of the Act. At the same time, it is not the licensees who are to bear the brunt of the levy except for obtaining the licences on payment of fee prescribed therefor. The commission is to be paid by the purchasers only. As such, the petitioners cannot make any legitimate grouse in this behalf. Keeping in view the purpose of the Act and the intention of the Legislature, the Act is meant to safeguard the interests of the producers of agricultural produce so that they can get fair price for their produce and thereby incentive is to be given to them for making maximum production of such produce. In this behalf relevant observations have already been extracted earlier above. All the same, it is the duty of the respondents to carry out and implement the statutory obligations, duties and function as contemplated under the Act and the rules, in accordance with the resources available.

36. The result of the above discussion is that the only direction that can be given by this Court is that the respondents are directed to carry out such obligations and functions as provided under the Act and the rules framed thereunder, according to the funds available. Keeping in view the fact that a fee is not a tax, the same is to be utilised on the basis of the principle of quid pro quo, according to the principles narrated above. The direction is accordingly issued to the respondents and the writ petitions are allowed only to this extent, but with no order, as to costs.

37.The above writ petitions are accordingly disposed of.

Petitions partly allowed.

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AIR 2009 JHARKHAND 137 "Vyavasayi Sangh, Krishi Bazar Prangan v. State of Jharkhand"

JHARKAND HIGH COURT

Coram : 1 NARENDRA NATH TIWARI, J. ( Single Bench )

Vyavasayi Sangh, Krishi Bazar Prangan, Garhwa v. The State of Jharkhand and Ors.

W.P.(C) No. 1064 of 2008, D/- 1 -5 -2009.

Bihar (Jharkhand) Agriculture Produce Markets Act (16 of 1960), S.17, S.18, S.2(1)(v) - Bihar (Jharkhand) Agriculture Produce Markets Rules (1960), R.80, R.81 - AGRICULTURAL PRODUCE - LEASE - LAND - Lease of land - Land in question belonging to Agriculture Produce Market Committee, adjoining Agriculture Market Yard - Cannot be leased out or settled for trade or business of non-agricultural produce by market committee. (Paras 25, 26, 27)

Cases Referred : Chronological Paras

AIR 1974 SC 1489 14

AIR 1965 SC 1296 28, 29

AIR 1965 Pat 746 13

AIR 1961 SC 954 28

M/s. Rajiv Ranjan and Amit Kumar Tiwari, for Petitioner; V.P. Singh, Sr.Counsel, and Mirnal Kanti Roy, for Respondents.

Judgement

ORDER :- Whether the land belonging to the Agriculture Produce Market Committee, adjoining the Agriculture Market Yard, can be used and leased out for non-agricultural business is the point needs to be answered in this writ petition?

2. The brief facts, giving rise to the said controversy between the traders of the Market Yard, Garhwa and the Agriculture Produce Market Committee, Garhwa (hereinafter to be referred as the 'Market Committee')

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are as follows :-

(i) The Market Committee decided to construct 60 shops, facing road side of the Market Yard, Garhwa, to be allotted to the beneficiaries under the Self Finance Scheme for non-agriculture trade. The members of the petitioner, who have got their shops in the Market Yard, Garhwa for business of agriculture produce raised objection by filing their representation before the authorities of the Market Committee and other concerned authorities.

(ii) The Managing Director, Jharkhand State Agriculture Produce Marketing Board, Ranchi by its Memo No. 95 dated 28th January, 2006 stayed the construction of the said shops and directed the Market Committee to consider the representation of the petitioner and take a decision afresh.

(iii) By Resolution No. 5 dated 6th July, 2007, the Market Committee revised the earlier decision and decided to construct 106 shops under the said scheme and allotted the same to the persons for business of non-agriculture produce. It is relevant to mention that the points raised in the petitioner's representation were not considered.

(iv) The Market Committee partially modified its earlier decision by resolution dated 10th December, 2007, stating that the shops will be constructed parallel to Majhiaon Road. The same was circulated by Letter No. 991 dated 10th December, 2007.

(v) The said resolution was, thereafter, sent to the Managing Director, Jharkhand State Agriculture Produce Marketing Board, Ranchi for concurrence, who also approved the said decision by his order dated 28th December, 2007.

3. The petitioner has sought to challenge the said resolutions of the Market Committee dated 6th July, 2007 and 10th December, 2007 as also the order of the Managing Director, Jharkhand State Agriculture Produce Marketing Board dated 28th December, 2007 in this writ petition.

4. According to the petitioner, the said decision of the respondents to construct 106 shops in the agriculture Market Yard allotting the same to the persons for non-agriculture business is wholly arbitrary and violative of provisions of the Jharkhand Agriculture Produce Markets Act, 1960 (hereinafter to be referred as 'the said Act') and the Rules framed thereunder. Non-agriculture trade and business in or adjoining area of the market yard would adversely affect the petitioner's business of market produce and would be against the interest of the farmers and traders. It would also give rise to malpractices of common market including emergence of middleman and exploiters against the object and purpose of the said Act. The Market Committee, which is the creature of the said Act, has no jurisdiction to take any decision for establishing any shop for doing business of non-agriculture articles and that too within or adjacent to the specified market yard and the said decisions are contrary to the provisions of the Act and its object and letter and spirit, are illegal and tainted with bias and mala fide.

5. The respondents contested the writ petition and refuted the said contentions in their counter-affidavit. It has been, inter alia, stated that the members of the petitioner have been operating their business in Principal Market Yard and are not in any way prejudiced or affected by the construction and allotment of shops for non-agriculture business under the Self Finance Scheme facing road side of the Market Yard. After the decision and approval of the scheme several persons have applied and deposited money pursuant to the advertisement regarding allotment of the shops for non-agriculture business. The said shops which have road facing would be allotted to the persons for doing business of non-agriculture produce. It has been ensured that the traders, who deal in agriculture produce inside the market yard, may not have to compete with the persons to whom the said new shops are to be allotted. Non-agriculture business, thus, would not affect the business of the traders in agriculture produce in the Market Yard. The said resolution dated 6th July, 2007, which was slightly modified by the resolution dated 10th December, 2007, has been approved by the Jharkhand State Agriculture Produce Marketing Board by order dated 28th December, 2007. The shops are to be constructed under Self Finance Scheme, meaning thereby that the cost of the shops would be borne by the applicants. The burden of construction is not to be borne by the Market Committee, which would be in the interest of the Committee.

6. It has been further contended that under the provisions of Section 17 of the said Act, the Market Committee has power to acquire and hold property and to lease

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out the same. There is no restriction either in the provisions of the Act or Rules framed thereunder, restricting the rights of the Market Committee to use the property only for agricultural purpose. In view thereof, the resolution of the allotment of the shops for non-agriculture purposes is not illegal and without jurisdiction. The Market Committee has taken the resolution in order to use the area for its maximum benefit and also to provide opportunity to unemployed persons. The said resolution is in public inter est. The claim of the petitioner has no merit and is fit to be rejected.

7. In order to appreciate rival claims and contentions of the parties and to answer the point, it is useful to have look to the object and intent and the provisions of the legislation on the subject. The Bihar Agriculture Produce Market Act, 1960 was enacted for regulation of trade of agricultural produce and to establish market for the same. The object and intent of the Act is clear from the preamble of this Act, which reads thus :

"An Act to provide for the better regulation of buying and selling of Agricultural Produce and the Establishment of Markets for Agricultural Produce in the State of Bihar and for matters connected therewith."

8. The Act was, thus, enacted to regulate the buying and selling of agricultural crops by providing suitable and regulated markets and to eliminate middlemen and to help the cultivators and the buyers in buying and selling of agricultural commodities.

9. On going through the different provisions of the Act, it is clear that the said Act enable the Marketing Committee to realize fee for transaction taking place in market area.

10. It is clear that the main object of the said legislation was to create market area and markets with a view to ensuring fair trade transactions in agricultural and allied commodities; appointment of Market Committees consisting of representative of growers, traders, local authorities and Government to supervise the working of regulated markets; regulation of market charges and prohibition of realization of excess charges; regulation of market practices; licensing of market functionaries; arrangement for conciliation in cases of disputes regarding quality, weighment, deduction etc.; sale by open auction; arrangement for the display of reliable and up-to-date market information in the market yard; and improving generally the conditions of agricultural marketing.

11. The said legislation has its historical background. In Madras State, as in other parts of the country, various Commissions and Committees were appointed to investigate the problem, to suggest ways and means of providing a fair deal to the growers of crops, particularly commercial crops, and find a market for selling their produce at proper rates. Several Committees, in their reports, considered this question and suggested that a satisfactory system of agricultural marketing should be introduced to achieve the object of helping the agriculturists to secure a proper return for the produce grown by them. The Royal Commission on Agriculture in India appointed in 1928 observed thus :

"......cultivator suffers from many handicaps; to begin with he is illiterate and in general ignorant of prevailing prices in the markets, especially in regard to commercial crops. The most hopeful solution of the cultivator's marketing difficulties seems to lie in the improvement of communications and the establishment of regulated market and we recommend for the consideration of other provinces the establishment of regulated markets on the Berar system as modified by the Bombay legislation. The establishment of regulated markets must form an essential part of any ordered plan of agricultural development in this country......... We consider that the system can conveniently be extended to other crops and, with a view to avoiding difficulties, would suggest that regulated markets should only be established under Provincial legislation."

12. The necessity for marketing legislation was stressed by other bodies as well, like the Indian Central Banking Enquiry Committee, the All India Rural Credit and Survey Committee etc. One of the reports of an expert committee graphically described the difficulties of the cultivators and their dependence upon the middlemen. It observed thus :

"The middleman plays a prominent part in sale transactions and his terms and methods vary according to the nature of the crop and the status of the cultivator. The rich ryot who is unencumbered by debt and who has comparatively large stocks to dispose of, brings his produce to the taluk or district centre and entrusts it to a commission agent

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for sale. If it is not sold on the day on which it is brought, it is stored in the commission agent's godown at the cultivators' expense and as the latter generally cannot afford to wait about until the sale is effected he leaves his produce to be sold by the commission agent at the best possible price, and it is doubtful whether eventually he receives the best price. The middle class ryot invariably disposes of his produce through the same agency but unlike the rich ryot he is not free to choose his commission agent, because he generally takes advances from a particular commission agent on the condition that he will hand over his produce to him for sale. Not only, therefore, he places himself in a position where he cannot dictate and insist on the sale being effected for the highest price but he loses by being compelled to pay heavy interest on the advance taken from the commission agent. His relations with middlemen are more akin to those between a creditor and a debtor, than of a selling agent and producer. In almost all cases of the poor ryots, the major portion of their produce finds its way into the hands of the village money-lender and whatever remains is sold to petty traders who tour villages and the price at which it changes hands is governed not so much by the market rates, but by the urgent needs of the ryot which are generally taken advantage of by the purchaser. The dominating position which the middleman occupies and his methods of sale and the terms of his dealings have long ago been realized."

13. In Thakur Prasad Gupta v. State of Bihar [1965 BLJR 746 : (AIR 1965 Pat 267)], the Patna High Court referred to the report of the Royal Commission while tracing out the history of the said legislation and also quoted the observations of Planning Commission as under :

"The primary consideration for the development of agricultural marketing is to reorganize the existing system so as to secure for the farmer his due share of the price paid by the consumer and subserve the needs of planned development. To achieve these objects, malpractices associated with buying and selling of agricultural produce have to be eliminated, arrangements made for the efficient distribution of marketable surpluses from producing to consuming areas and co-operative marketing has to be developed to the maximum extent possible. Rural marketing and finance have to be integrated through the development of marketing and processing on co-operative lines. Programmes for co-operative marketing and processing which have been drawn up so far for the second five year plan have been outlined in an earlier chapter. Here it is proposed to refer to other aspects of agricultural marketing. It is estimated that co-operative agencies may be able to handle about 10 per cent of the marketable surplus by the end of the second plan. The rest of the surplus will continue to be sold through other marketing agencies. In the interest of the primary producer, therefore, the importance of regulating markets and market practices needs more emphasis. Moreover, the success of co-operative marketing itself depends on the efficiency with which regulated markets function. It has been observed that in States in which regulated markets have not been established to any extent, the cultivator is in a situation of much greater disadvantage than elsewhere."

14. The principal object of the legislation on the subject is to come to the aid of the producers of "Agricultural Produce", who are generally not organized or ill-organised and are an exploited party in the bargaining bet-ween unequals. Reference-Vishnu Dayal Mahendra Pal v. State of U.P. [(1974) 2 SCC 306 : AIR 1974 SC 1489)].

15. The expression of the object and intent also finds place in various provisions and definitions in the Act. Section 2 of the Act gives definition of market, market area, trade, trader and so on, giving meaningful expression of the object of the Act. It can be gathered from the following definitions :-

Section 2 (1)(h) : "Market" means a market established under this Act for the market area and includes a principal market yard and sub-market yard or yards, if any.

Section 2(1)(i) : "Market Area" means any area declared to be a market area under Section 4.

Section 2(1)(j): "Market Committee" me-ans a committee established under Section 6.

Section 2(1)(k) : "Market Proper" means any area within the market area including all lands, with the buildings thereon, within such distance of the principal or sub-market yard, as the State Government may, by notification, declare to be a market proper under Section 5.

Section 2(1)(o) : "Principal Market Yard" means any enclosure, building or locality

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within the market area declared to be a principal market yard under Section 5.

Section 2(1)(v) : "Trade" means any kind of transaction of sale and purchase or any kind of remuneration on sale and purchase of any agricultural produce.

Section 2(1)(w) : "Trader" means a person ordinarily engaged in the business of buying and selling agricultural produce as a principal or as a duly authorized agent of one or more principals and includes a commission agent or a person ordinarily engaged in the business of processing agricultural produce. (Emphasis supplied).

16. The said Act also prescribes provisions for constituting the Markets and Market Committees. Section 3(1) of the Act provides for issuing notification expressing its intention to regulate the purchase, sale, storage and processing of specified agricultural produce in the specified area in the notification. Section 3(2) provides for inviting objection or suggestion by any person on such notification. After consideration of the objection/suggestion, if any, on the said notification under Section 3(1) and after holding necessary enquiry, a notification is issued under Section 4(1), declaring such specified area as the "Market Area" in respect of the agricultural produce specified in the notification under Section 3(1). It further provides that after issuance of notification under Section 4, no person can carry on any business in the notified area of the Market Committee except in accordance with the provisions of the Act, the rules and bye-laws.

17. Section 6 of the Act provides for establishment of a Market Committee by the State Government for such market area by issuing a notification.

18. Section 18 of the Act describes powers and duties of the Market Committee. Section 18 runs thus :

" 18. Powers and duties of the Market Committee- (1) It shall be the duty of a Market Committee to implement the provisions of this Act, the rule and bye-laws made thereunder in the market area to provide such facilities for marketing of agricultural produce therein as the Board may from time to time direct and do such other acts as may be required in relation to the superintendence, direction and control of market, or for regulating the marketing of agricultural produce in any place in the market area, and the purposes connected with the matters, and for that purpose the Market Committee may exercise such powers and perform such functions and discharge such duties as may be provided by or under this Act.

(2) Without prejudice to the generality of the foregoing provision, a Market Committee may :-

(i) when so required by the State Government, to establish a market for the market area providing for such facilities as the State Government may, from time to time, direct in connection with the purchase and sale of the agricultural produce concerned:

(ii) where a market is established under sub-clause (i) to issue licences in accordance with the rules to traders, brokers, weigh-men, measurers, surveyors, warehousemen and other persons including persons or firms engaged in the processing, storing or pressing of agricultural produce concerned operating in the market area :

(iii) to maintain and manage the principal market yard and sub-market yards and to control, regulate and run the market in the interest of the agriculturists and licencees in accordance with the provisions of this Act and the rules and the bye-laws made thereunder;

(iv) to act in the prescribed manner as mediator, arbitrator or surveyor in all matters of differences, disputes, claims, etc., between licensees inter se or between them and persons making use of the market as sellers of agricultural produce :

(v) to control and regulate the admission of persons and vehicular traffic to the principal market yard or sub-market yards to determine the conditions for the use of market and to check and prosecute persons trading without a valid licence in the market area;

(vi) to bring, prosecute or defend, or aid in bringing, prosecuting or defending any suit, action, proceeding, application, or arbitration in regard to any matter on behalf of the committee, or otherwise when directed by the Board :

(vi) to enforce the provisions of this Act, the rules and bye-laws; and

(viii) to perform such other duties and exercise such other powers as are imposed or conferred upon it by or under this Act, the rules or the bye-laws."

(Emphasis supplied).

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19. Part-V of Bihar Agricultural Produce Markets Rules, 1975 framed under the said Act deals with Market, Market Yard and Sub-yard. Rule 80 deals with the establishment of markets and Rule 81 deals with control and conservancy of market yard. It runs thus :

"80. Establishment of markets- (i) After the issue of notification under section 4 and establishment of Market Committee under section 6, the State Government shall direct the market committee to establish a market.

(ii) When directed to do so under sub-rule(i) the Market Committee shall establish a market for the market area for which it is established.

(iii) After the establishment of market by the Market Committee, the State Government shall issue a notification under section 5.

81. Control and conservancy of market yard- (i) The Market Committee shall maintain one or more market yards and shall have absolute control over the market yards subject to these rules and to the general or special orders of the Government or the Board and to such control as is by these rules or by any other law vested in the Board. The Market Committee shall manage market yards in the interest of trade having regards to convenience of the trade of agricultural produce and the purpose for which the control is vested in the Market Committee. The market yards shall remain open for trading at such hours as the Market Committee may, from time to time fix.

(ii) In the market areas the Market Committee shall exercise such rights as may be necessary for the convenient control of the market and for the convenience and comfort to the persons using the market and for collection of the fees, in accordance with provisions of the Act, Rules and Bye-laws.

(iii) The Market Committee may require the owner or manager of any industrial concern located within the market areas to furnish such information in respect of agricultural produce for which the market is established and which is handled or used by the Industrial concern, as the Market Committee may think necessary for the purposes of the market."

20. On close reading of the said provisions, it is clear that the Act is meant for protecting the interest of the trade of agricultural produce. Rule 81 makes it clear that the Market Committee shall manage market yard in the interest of trade having regard to the convenience of the trader of agricultural produce and the purpose for which the control is vested in the Market Committee. There is no provision in the said Act and Rules giving power to the Market Committee to promote market of non-agricultural produce. It emphasizes management of market yard by the Market Committee in the interest of trade having regard to the convenience of the trade of agricultural produce.

21. By the resolutions under challenge in this writ petition, the Market Committee has sought to establish a market for non-agricultural purposes by allotting shops road facing and overshadowing the Market Yard, Garhwa for trade and business of non-agricultural produce. The same is not at all permissible under the provisions of the said Act and the Rules. The impugned resolutions are, thus, wholly without jurisdiction, illegal and vitiated.

22. The Market Committee, according to the object and scheme of the said Act, has to act in the interest of trade of agricultural produce. The Committee is the creation of the statute and it has to function within the limits of the statute. It has no authority to establish any market within the market proper for non-agricultural trade/business.

23. Mr. V. P. Singh, learned senior counsel, appearing on behalf of the respondents submitted that Section 17 of the said Act gives power to the Market Committee to acquire and hold property, both, movable and immovable, and to lease or otherwise transfer any such property. That power is unrestricted. In exercise of that power conferred on the Market Committee under the said provision, a decision was taken for constructing shops under the Self Finance Scheme for proper use and utilization of the property of the Market Committee. The Market Committee, being the owner/holder of the property, has rightly taken the said decision for the maximum use and utilization of the property and also to provide opportunity to unemployed persons of the area, including the members of the Scheduled Castes and Scheduled Tribes, and to help self-employment. The shops are constructed facing outside road and not inside the market yard, which is not restricted by any provisions of the said Act.

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24. Section 17 of the Act is reproduced herein below :-

"17. Incorporation of Market Committee-Every Market Committee shall by a body corporate by such name as the State Government may specify by notification in the Official Gazette, and shall have perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to lease, shall or otherwise transfer any such property, subject to the prescribed conditions and restrictions, and may by the said name sue and be sued, and subject to rules, bye-laws and the provisions of this Act, it shall be competent to do all other things necessary for the purpose for which it is established."

(Emphasis supplied)

25. On plain reading of the said Section, it is clear that it does not give any power to lease out or settle the property or the area of the market yard for trade/business of non-agricultural produce.

26. Rule 81 specifically provides that the Market Committee shall maintain market yards in the interest of trade having regard to the convenience of the trade of agricultural produce and the purpose for which the control is vested in the Market Committee. The said Rule read with other provisions of the Act as well as object of the Act goes to dispel the said interpretation of Section 17 of the Act. The Market Committee has to see the interest of trade and traders of agricultural produce and not of the traders, trading in non-agricultural produce.

27. The definitions of "Trade" in Section 2(1)(v) and "Trader" in Section 2(1)(w) of the Act clearly mention about transaction of sale and purchase of agricultural produce and business of buying and selling agricultural produce, respectively. The market is established under Section 2(1)(h) of the said Act, which is meant for buying and selling of agricultural produce and the market includes the principal market yard and sub-market yard or yards. The adjoining outer space of the market yard comes within the definition of market, and unless specifically excluded by notification, cannot be leased out or transferred in any manner for any other purpose than the purposes specified in the said Act and obviously, it cannot be transferred in any manner, either by lease settlement or otherwise, for non-agricultural trade and business.

28. Learned counsel for the respondents led much stress that the preamble of the Act needs not be resorted to for construing the provisions of the Act and in particular for understanding the meaning of the definitions. Learned counsel referred to and relied upon a decision of the Apex Court in M/s. Burrakur Coal Co. Ltd. v. The Union of India and Ors. [AIR 1961 SC 954]. He has further referred to and relied upon the decision of the Apex Court in The State of Rajasthan v. Mrs. Leela Jain and Ors. [AIR 1965 SC 1296] to stress the said point that the preamble may, no doubt, be used to solve any ambiguity or to fix the meaning of words which may have more than one meaning, but it cannot be used to eliminate as redundant or unintended, the operative provisions of a statute.

29. In State of Rajasthan's case (supra), the Apex Court has made it clear that if there are other provisions in the statute which conflict with them, the Court may prefer the one and reject the other on the ground of repugnance. When the words in the statute are reasonably capable of more, than one interpretation, the object and purpose of the statute, a general conspectus of its provisions and the context in which they occur might induce a court to adopt a more liberal or a more strict view of the provisions, as the case may be, as being more consonant with the underlying purpose. But it is not possible to reject words used in an enactment merely for the reason that they do not accord with the context in which they occur, or with the purpose of the legislation as gathered from the preamble or long title. It has been further observed that the preamble may, no doubt, be used to solve any ambiguity or to fix the meaning of words which may have more than one meaning, but it can, however, not be used to eliminate as redundant or unintended, the operative provisions of a statute.

30. In the instant case, it is not only preamble, but the definition of the 'trade', 'trader', 'market', etc. the purpose for constituting the Market Committee, its power and function and all other relevant provisions including Rules 80 and 81 are in consonance and there is no ambiguity in the words used in the operative provisions of the said Act. The said decisions are of no help to support the respondents' interpretation of Section 17 and other provisions of the Act and Rules. In view of the reasons

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aforementioned, this writ petition deserves to be allowed.

31. The impugned resolutions dated 6th July, 2007 (Annexure-3), Letter No. 991 dated 10th December, 2007 (Annexure-4) and the office order of the Managing Director of Jharkhand State Agriculture Marketing Board dated 28th December, 2007 (Annexure-5) are quashed. This writ petition is allowed.

32. However, there is no order as to costs.

Petition allowed.

AIR 2004 JHARKHAND 34 "Lipton India Ltd., M/s. v. State of Bihar(FB)"

JHARKAND HIGH COURT

FULL BENCH

Coram : 3 SUDHANSU JYOTI MUKHOPADHAYA, TAPEN SEN AND VIKRAMADITYA PRASAD, JJ. ( Full Bench )

M/s. Lipton India Ltd., Petitioner v. State of Bihar and others, Respondents.

C.W.J.C. No. 5042 of 1986, D/- 12 -9 -2003.

(A) Bihar Agricultural Produce Markets Act (16 of 1960), S.2(1)(a) - AGRICULTURAL PRODUCE - Agricultural produce - What is - It necessarily has to be specified in the schedule, to be covered by sweep of Act.

1986 Pat LJR 172 no more good law in view of AIR 1999 SC 3125 and AIR 2000 SC 1796. (Para 6)

(B) Bihar Agricultural Produce Markets Act (16 of 1960), Sch.VIII, Item 9 - AGRICULTURAL PRODUCE - Market fee on agricultural produce - Levy of - "Anik Spray" skimmed milk powder - Whether can be said to be milk Product as covered in Schedule VIII - Ingredients and constituents allegedly required for bringing into existence finished product "skimmed milk powder" not detailed by petitioner - For conversion of milk to milk powder no separate ingredient is added or taken out except water and basic ingredient 'milk' remains in 'skimmed milk powder' - Thus skimmed milk powder can be said to be solidified form of milk as contemplated under Item 9 of Sch. VIII of Act - Levy of market fee on sale thereof - Not illegal.

AIR 1999 SC 3125 Rel. on. (Paras 15, 16)

Cases Referred : Chronological Paras

Edward Keventer Pvt. Ltd. v. Bihar State Agricultural Marketing Board, AIR 2000 SC 1796 : 2000 AIR SCW 1278 5

Belsund Sugar Company Ltd. v. State of Bihar, AIR 1999 SC 3125 : 1999 AIR SCW 3074 (Rel. on.) 5, 7, 11, 14

Tata Oil Mills v. Director Marketing Bihar State Agricultural Marketing Board, 1986 Pat LJR 172 (No more good law in view of AIR 1999 SC 3125 : AIR 2000 SC 1796) 4, 6

Lane v. Collins, 54 LJMC 76 12

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M. M. Banerjee, A. Sen and I. Sinha, for Petitioner; K. K. Jhunjhunwala, for Respondent 1. V. P. Singh, Sr. Advocate, M. K. Roy, for Respondents 2-6.

Judgement

S. J. MUKHOPADHAYA, J. :- The Bihar State Agricultural Marketing Board (Marketing Board for short) held that Anik Spray (Skimmed Milk Powder) is an "agricultural produce" and therefore, market fee was payable. The Director, Marketing Board asked the Secretary, Agricultural Produce Market Committee. Jamshedpur (Market Committee for short) to recover the market fee from Hindustan Lever Limited (now merged with the petitioner M/s. Lipton India Limited) vide letter No. 1424/Patna dated 2nd March, 1983. The Marketing Secretary, Market Committee. Jamshedpur, in its turn, informed the petitioner vide letter No. 1595/Jam dated 31st July, 1986 and letter No. 1913/Jam dated 8th September , 1986 to pay the market fee on sale of Anik Spray (Skimmed Milk Powder) being payable under the Bihar Agricultural Produce Market (Amendment) Act, 1982, failing which action under Section 31B and 32B of the Bihar Agricultural Produce Markets Act, 1960 was threatened to be taken.

2. The petitioner challenged the aforesaid decision and directions, contained in letter No. 1424/Patna dated 2nd March, 1983 letter No. 1595/Jam dated 31st July, 1986 and letter No. 1913/Jam dated 8th September, 1986.

3. In the writ petition, the only plea as was taken by the petitioner was that the 'Milk' having been deleted from the Schedule of the Bihar Agricultural Produce Markets Act, 1960, vide S. O. No. 1002 dated 21st August, 1984 and the "Skimmed Milk Powder" having not been included in the schedule the authorites had no jurisdiction to impose Market Fee on the sale of "Skimmed Milk Powder".

4. At the time of admission of the case, the counsel for the State brought to the notice of the Court a Division Bench judgment of Patna High Court in the case of 'Tata Oil Mills v. Director, Marketing, Bihar State Agricultural Marketing Board', reported in 1986 Pat LJR 172, wherein the Court held, as follows :

"............... In my view, under the new definition whether a produce or product thereof has been specified in the Schedule is not of much conseuence for being held as an agricultural produce. The only thing which has to be established is as to whether the item in question is a processed or non-processed or manufactured product of agriculture, horiticulture, plantation, animal husbandry, forest, sericulture, pisciculture, live stock or poultry.................."

The aforesaid finding of Division Bench was doubted by a Division Bench in the present case and so, the case was referred to a larger Bench.

5. During the pendency of this case the Supreme Court rendered two decisions on the subject taking into consideration the definition of 'agricultural produce' as defined under the amended Section 2 (1)(a) of the Bihar Agricultural Produce Market Act, 1960. In the case of Belsund Sugar Company Ltd. v. State of Bihar reported in AIR 1999 SC 3125, the Supreme Court held :

".........................that the said term 'agricultural produce' as defined by S. 2 (1)(a) clearly indicates that the agricultural produce which is to be covered by the sweep of the Act has to be one which should be specified in the Schedule..................."

Similar was the finding of Supreme Court in the case of Edward Keventer Pvt. Ltd. v. Bihar State Agricultural Marketing Board, AIR 2000 SC 1796, as quoted hereunder :

"A perusal of Section 2 (1)(a) unambiguously shows that the agricultural produce which are to be covered by the sweep of the Act necessarily has to be specified in the Schedule, it goes beyond the purview of the Act and respondent has no power to levy fee on such product."

6. In view of the authoritative pronouncements of law laid down by the Supreme Court on the issue in question we have no hesitation in declaring that the judgment rendered by the Division Bench in the case of Tata Oil Mills v. Director, Marketing, Bihar State Agricultural Marketing Board, reported in 1986 PLJR 172, is no more good law in so far as it relates to the interpretation of the amended Section 2 (1)(a).

7. At the time of hearing of the case, when it was pointed to the counsel that vide S. O. No. 1002 dated 21st August, 1984, only 'Liquid Milk' was deleted but any 'Milk product' consisting of solidified milk, like 'Milk Powder' is contemplated as observed by the Supreme Court in the case of Belsund Sugar Company Ltd. v. State of Bihar, reported in

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AIR 1999 SC 3125 (Paragraph '133'), the counsel for the petitioner submitted that the 'Skimmed Milk, Powder' is not even a solidified milk. It is a 'Milk Product' like Butter; Ghee; Cream; Chhena; Khowa and is different than Milk.

It was further submitted that while 'Milk Products' such as Butter; Ghee; Cream; Chhena and Khowa have been included in Schedule No. VIII of the Act, 1960. 'Skimmed Milk Powder' has not been included therein. Therefore, no market fee can be levied nor can be realized on the sale of Anik Spray (Skimmed Milk Powder).

8. The question, that thus arises for determination is :

"Whether Skimmed Milk Powder can be said to be 'Milk', as enumerated at sub-item No. 9 of Item No. VIII, under the heading 'Animal Husbandry Product' of the Schedule of Bihar Agricultural Produce Markets Act, 1960, so as to bring it within the purview of the Bihar Agricultural Produce Markets Act, 1960 for the purpose of realization of market fee or not.

9. In the writ petition, the petitioner has not pleaded the 'Skimmed Milk Powder' is not 'Milk'. On the other hand, the whole pleading is based on the presumption that 'Milk' as shown at item No. 9, has been deleted from the Schedule VIII by Notification No S. O. 1002 dated 21st August, 1984. Meaning thereby, the petitioner presumes that 'Skimmed Milk Powder' is 'Milk' but the same having been deleted from the Schedule VIII by the said Notification dated 21st August, 1984, it is not liable to pay market fee.

10. Counsel for the petitioner submitted that Anik Spray is Skimmed Milk Powder and was being manufactured by petitioner-Company at its Factory located outside the erstwhile State of Bihar. The Manufacturing of Skimmed Milk Powder involves complicated industrial manufacturing process and require, apart from Milk various other ingredients for bringing into existence the finished products - Skimmed Milk Powder.

Though aforesaid submission advanced on behalf of the petitioner, but the ingredients and constituents of the product have not been detailed in the writ petition.

11. In the case of Belsund Sugar Company Ltd., (AIR 1999 SC 3125), the Supreme Court noticed the ingredients and constituents which were processed by addition of all other extra items with the result that finished products like Baby Foods (Lactodex and Raptakos S.I.F.) emerged as manufactured items for serving as substitute for Milk and came to a definite finding that the Baby Foods i.e. Lactodex and Raptakos S.I.F. cannot be treated to be an 'agricultural produce'.

In the present case, the petitioner has not detailed the ingredients and constituents of Anik Spray (Skimmed Milk Powder) nor has given the names of other extra items added with the result that finished product like Anik Spray emerged as manufactured item.

12. The Dictionary meaning of 'Milk' is - "A white fluid of female mammals , secreted for the nourishment of the young" (Webster Dictionary).

"Milk" - Milk, commercially speaking, means, Skimmed Milk" (per Mathew, J., Lane v. Collins, 54 LJMC 76.

(quoted from the Law Lexicon - of P. Ramanatha Aiyar, 1997 Ed.)

'Skimmed Milk' means "Milk from which the white cream which naturally raises to the surface has been skimmed in the ordinary manner" (Law Lexicon of P. Ramanatha Aiyar, 1997 Ed.)

While the 'Milk' contains the nutrients, as shown hereunder :

"Protein Pantothenic Acid

Carbohydrates Folic Acid

Vitamin A Calcium

Vitamin D Magnesium

Thiamin Phosphorus

Riboflavin Zinc

Niacin

Vitamin B 6

Vitamin B 12"

The Typical Physical and Chemical Characteristics of Skimmed Powdered Milk is :

"ISI Standard Grade (IS : 13334-Part-I ISI Extra grade (IS : 13334-Part-II

Moisture, % max. 4.0 3.5

Total Milk solids % min. 96.0 96.0

Insolubility Index ml. max. 2.0 0.5

Fat, % max. 1.5 1.25

Total Ash, % max. Titratable Acidity 8.2 8.2

(% L. A.), max. 1.5 19.5 ml of 0.1 NaOH

Lacate Content Mg/g, max. 1.5

Phosphatase -ve -ve

Antibiotics -ve -ve

Colour Creamy Creamy

Flavour and odour Clean Clean

Sediment Disc A/B A"

13. In absence of any definition of 'Milk' in the Bihar Agricultural Produce Market Act, 1960, apart from the general definition of 'Milk' and 'Skimmed Milk Powder', no definition can be imported on the basis of any other Act.

14. The Supreme Court in the case of Belsund Sugar Company Ltd. v. State of Bihar, AIR 1999 SC 3125, held :

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"..........When we turn to the Schedule of the Act framed as per S. 2 (1)(a), we find one of the animal husbandry products at item VIII, sub-item (20) as milk except liquid milk. Thus any product, consisting of solidified milk, like milk powder is contemplated by the said item."

15. For conversion of 'Milk' (liquid form) to 'Skimmed Milk Powder' (solidified form), no separate ingredient is added nor any ingredient is taken out. except water and the basic ingredients of 'Milk' remain in the 'Skimmed Milk Powder'. The product of petitioner Anik Spray (Skimmed Milk Powder) can be said to be a solidified form of Milk, as contemplated under item 9 of Schedule VIII of Bihar Agricultural Produce Markets Act, 1960.

16. Therefore, it is well within the jurisdiction of the respondents to ask the petitioner to pay the market fee on the sale of 'Anik Spray' (Skimmed Milk Powder).

17. There being no merit the writ petition is dismissed. However, there shall be no order, as to costs.

18. TAPEN SEN, J. :- I agree.

18A. VIKRAMADITYA PRASAD, J. :- Humbly, I wish to supplement the views of Hon'ble Mr. Justice S. J. Mukhopadhaya as expressed by his Lordship in the judgment prepared by him.

19. I take judicial notice of what is displayed on the containers (one of such I have of the year 1997) of Anik Spray marketed by the petitioner. It reads as follows :

Anik Spray

[Spray dried] Skimmed Milk Powder

Dissolves without a Trace

Leaves great Taste.

Black's Medical Dictionary described various preparation of Milk and the manner of their preparations is as follows :

"One of the preparations is dried Milk. Dried milk is prepared by evaporation of the fluid so that milk is reduced to the form of powder. In spray drying a very fine spray of milk is forced into a heated chamber where drying is almost instantaneous. Milk powder thus prepared is nearly completely soluble in water.

20. Thus when the containers display that Anik Spray is spray dried Skimmed Milk Powder, dissolving in water without a trace, it simply conforms to the aforesaid manner of preparation of such milk. Thus in the event of petitioner's failing to give ingredient/constituents the display in container simply means that milk when spray dried becomes Skimmed Milk Powder. This is simply a physical change brought by mechanical process in the form of the Skimmed Milk and not a chemical one and if dissolves into water (instantaneously dissolved) and takes the form of 2.5, Liters of Skimmed Milk (against every net weight of 200 gm. as shown in container) claimed by the petitioner in the marketed containers.

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21. Thus the spray dried skimmed milk is only physically changed form of Fluid Milk which falls within the definition of Milk.

Petition dismissed.

AIR 2002 JHARKHAND 20 "Jagdish Singh & Sons, M/s. v. Bihar State Agrl. Mktg. Board"

JHARKAND HIGH COURT

Coram : 1 M. Y. EQBAL, J. ( Single Bench )

M/s. Jagdish Singh and Sons and others, Petitioners v. Bihar State Agricultural Marketing Board and others, Respondents.

Civil Writ Jurdn. Case No. 3602 of 2000 (R), D/- 7 -8 -2001.

(A) Bihar Agricultural Produce Markets Act (16 of 1960), S.27 - AGRICULTURAL PRODUCE - Market area - Levy of rent or licence fee - Has no connection with enjoyment of constructed shop situated in market area - Licensee hence cannot avoid to pay rent on ground that he is occupying shop in lieu of market fee paid.

Section 27 of the Act imposes a liability to pay market fee on the agricultural produce bought or sold within the area. Provisions of the Act are attracted to transactions of buying and selling, even if sale or purchase of an agricultural commodity is not voluntary but under the statutory control. The market fee is payable whenever any of the notified article'is bought or sold'within the market area. The words bought or sold'signifies that market fee is leviable when a licensee for the first time purchases or sells the agricultural produce in the market area. Rules framed under Act prescribes the machinery for the realisation of market fee from buyer who is not a licensee but purchases the agricultural produce from seller, who is a licensee. In other words, the realisation of market fee depends upon sale and purchase of agricultural produce in the market area and it has no connection with the enjoyment of the constructed shop situated in the market area by the dealer. Therefore, the licensee cannot plead that they are not liable to pay rent of the shops on the ground that they occupied it in lieu of market fee paid by them. (Paras 11, 13)

(B) Bihar Agricultural Produce Markets Act (16 of 1960), S.27, S.17, S.18 - AGRICULTURAL PRODUCE - Market area - Rent - Fixation/Enhancement - Cannot be made by Marketing Committee or Board, unilaterally and ex parte without complying with rules of natural justice. (Paras 15, 17)

Cases Referred : Chronological Paras

Belsund Sugar Co. Ltd. v. State of Bihar, AIR 1999 SC 3125 : (1999) 9 SCC 620 : 1999 AIR SCW 3074 12

S. N. Mukherjee v. Union of India, AIR 1990 SC 1984 : 1990 Cri LJ 2148 16

Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India, AIR 1976 SC 1785 16

J. K. Pasari, for Petitioners; V. P. Singh and K. K. Jhunjhunwala, for Respondents.

Judgement

ORDER :- One of the interesting questions raised by the petitioners in this writ application is as to whether Marketing Board constituted under the Bihar Agricultural Produce Market Act, 1962 or the Rules made thereunder has jurisdiction to unilaterally enhance and/or fix the rent of the shops situated in the market area and in occupation of the petitioners as lessee or licensee.

2. The relevant facts necessary to decide the question are summarised as under :

3. Petitioners'case is that they were allotted shops in their occupation in Jharia Rajground Sabji Sub-Market Yard at Jharia in the year 1986 being shop Nos. 1, 2, 3, 4, 7A, 8A, 9, 10C, 14, 15, 16 and 17. It is stated that at the time of allotment of shops to the

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petitioner, no agreement to that effect was executed between the parties and the petitioners were paying rent to the concerned respondent according to the size of the respective shops which varied from Rs. 50/- to Rs. 185/-. In 1992, a resolution was passed on 26-2-92 by the respondents whereby they started realising rent from the petitioners. In the year 1999 by resolution dated 17-7-99 the respondents took a decision to impose rent at the rate of Rs. 1.25 paise per sq. ft. from 1-1-1990 per month and 1-2-1997 at Rs. 2.00 per Sq. ft. per month. The respondent-Marketing Board divided the different towns into four classes, namely. A class, B Class, C class and D class for fixation of separate rent of the shops situated in the Market yard or sub-yard under the Market Board, So far shops in question are concerned it comes under "A" class and therefore rent was fixed at Rs. 1,25 paise per sq. ft. per month. In the year 1998 the Managing Director of the Marketing Committee by letter dated 5-2-98 enhanced the rent from Rs. 1.25 paise to Rs. 4.00 per sq. ft. per month. However, the respondents reconsidered the decision and issued letter dated 29-1-99 reducing the rent from Rs. 4.00 to Rs. 2.00 per sq. per month. It appears that again respondent-Marketing Committee enhanced the rent at Rs. 1.25 paise per sq. ft. per month for B'class shops. On the basis of that resolution and decision taken by the respondents including Marketing Board, the impugned demand letters were issued calling upon the petitioners to deposit the arrears of rent as well as current rent at the rate of Rs. 2/- per sq. ft. per month.

4. Mr. J. K. Pasari, learned counsel for the petitioners assailed the action of the respondents Market Committee and the Market Board for realising rent from the petitioners as being illegal and wholly without jurisdiction. Learned counsel mainly raised the following points :

(i) Under the Agricultural Produce Markets Act, 1962 (in short Market Act) and the Rules and Schemes framed thereunder, the respondents cannot direct the licensee who are in occupation of shops for payment of rent as it is the basic facility which is to be provided by the respondents for which they collect market fee under Section 27 of the Act.

(ii) The respondent-Market Committee or the Board have no authority under the Act to take action for enhancement of rent as by providing shops they are rendering services to the persons from whom they collect market fee.

(iii) Enhancement of rent by the respondents is just to raise revenue which has of connection with the aims and objects of the Act and is a contravention of Bihar Building (Lease, Rent and Eviction Control) Act, 1982. It is submitted that the shops let out by Market Committee is not covered under Section 32 of the Act as the Market Committee is merely a statutory authority and it is not a local authority.

(iv) The Market Committee has no authority or jurisdiction to revoke the earlier resolution which has been taken in a meeting of the concerned traders and principal of the Market and the Market Committee and to pass fresh resolution without giving opportunity of hearing to the traders.

(v) There is no provision under the Act for demanding rent for the shop in question inasmuch as only licence fee can be taken by the respondents for the shops in question.

(vi) In any view of the matter respondents-Board can take action only under Section 30(iv) of the Act.

5. On the other hand, Mr. V. P. Singh, learned counsel for the Market Committee had drawn my attention to various provisions of Market Act and the Rules made thereunder and submitted that the Market Committee and the Board is empowered under the Act and the Rules to realise and enhance rent from the petitioners in occupation of shops belonging to Market Committee. Learned counsel submitted that principle of quid-pro quo does not at all applicable in the instant case. Learned counsel submitted that Market fee is collected from the whole market area. It is the fee collected from the purchasers in respect of sale and purchase which took place in the market area. It has no concern with the occupation of shops by the traders on payment of rent. Learned counsel submitted that about 12 years back the rent in respect of the shops in question was fixed at Rs. 1.25 paise per sq. ft. per month and therefore after 12 years enhancement of rent from Rs. 1.25 paise to Rs. 2/- per sq. ft. per month cannot be said

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to be unreasonable or irrational.

6. After having heard learned counsels for the parties, the following questions falls for consideration by this Court :

(i) Whether allotment of shops by the Market Committee to the traders in the market area is by way of providing facility and thereby rendering services in lieu of the market fee collected from them.

(ii) Whether the Market Committee can allot constructed shops in the market yard to the perspective traders on payment of rent or licence fee.

(iii) Whether the Market Committee or the Board have the jurisdiction to enhance the rent of the shops time to time by adopting resolution.

7. Before appreciating the contention made by the learned counsel for the parties and answering the questions it would be useful to look into the relevant provisions of the Market Act and the Rules made thereunder. Chapter 2 of the Act lays down provisions for constitution of markets and Market Committee including market area, market yard and sub-market yard. Sections 17 and 18 of the Act lays down the objects, powers and duties of the Market Committee. For better appreciation Section 17 reads as under :-

"Incorporation of Market Committee :- Every Market Committee shall by a body corporate by such name as the State Government may specify the notification in the Official Gazette, and shall have perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to lease, shall or otherwise transfer any such property subject to the prescribed conditions and restrictions and may by the said name sue and be sued, and subject to rules, bye-laws and the provisions of this Act, it shall be competent to do all other things necessary for the purpose for which it is established."

8. Section 27 is the relevant provision which empowers the Market Committee to levy fees. Section 27 reads as under :-

"27. Power to levy fees :- (1) The Market Committee shall levy and collect market fees on the agricultural produce bought or sold in the market area at the rate of rupee one per Rs. 100 worth of agricultural produce.

Illustration : Paddy sold in the market area as well as rice produced from such paddy, shall both the leviable.

Explanation :- All notified agricultural produce leaving a market area, shall unless the contrary is proved be presumed to have been bought or sold in such area provided that, when any agricultural produce brought in any market area for the purpose of processing or export is not processed or exported therefrom as the case may be, or any such produce processed in the market area is not exported therefrom within twenty one days from the date of its arrival therein it shall until the contrary is proved, be presumed to have been bought or sold in the market area, and shall be liable for the levy fees under this section, as if, it had been so bought or sold.

(2) The market fee chargeable under sub-section (1) shall be payable by the buyer, in the manner prescribed.

(3) The fee chargeable under sub-section (1) shall not be levied more than once on a notified agricultural produce in the same notified Market Area."

9. Section 28 empowers the Market Committee to raise money required for carrying out the purposes of this Act on the security of any property vested in and belonging to such Committee and of any fee leviable by it under this Act, with the previous sanction of the State Government. It further provides that a Market Committee may for the purpose of meeting the initial expenditure on land and building for establishing a market obtain a loan from the State Government or the State Bank of India or any other nationalised bank. Sections 29 and 30 of the Act says about Market Committee Fund and application of the said fund to such purpose mentioned therein. Section 33A empowers the State Government to constitute a Board called the Bihar Agricultural Marketing Board for the purpose of exercising superintendence and control over the Market Committee and for exercising such other powers and performing such functions as are conferred or entrusted under the Act. Section 33B provides that such Market Board constituted as aforesaid shall be body corporate and with power to acquire and hold property and to lease, sell or otherwise transfer any such property, subject to the prescribed conditions and restrictions. Section 33J lays down the powers and functions

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of the Board.

10. Now I shall discuss the points raised by the petitioners in this writ application. The contention of Mr. Pasari, learned counsel for the petitioners, is that the respondents have no right to collect rent or licence fee from the occupiers of the shops situated in the market area, as the respondents are bound to provide that facilities to the petitioners for which they are collecting market fee. I do not find any force in the submission of the learned counsel.

11.As noticed above, Section 27 of the Act imposes a liability to pay market fee on the agricultural produce bought or sold within the area. Provisions of the Act are attracted to transactions of buying and selling, even if sale or purchase of an agricultural commodity is not voluntary but under the statutory control. The market fee is payable whenever any of the notified article'is bought or sold'within the market area. The words bought or sold'signifies that market fee is leviable when a licensee for the first time purchases or sells the agricultural produce in the market area. Rule 82 prescribes the machinery for the realisation of market fee from buyer who is not a licensee but purchasing the agricultural produce from seller, who is a licensee. In other words, the realisation of market fee depends upon sale and purchase of agricultural produce in the market area and it has no connection with the enjoyment of the constructed shop situated in the market area by the dealer.

12. The Constitution Bench of the Supreme Court in the case of Belsund Sugar Co. Ltd. v. State of Bihar, (1999) 9 SCC 620 : (AIR 1999 SC 3125) has considered in detail the entire provision of the Market Act and settled the law on the question, inter alia, whether the Market Committee are under obligation to provide services before levying the market fee. In that case the Patna High Court had upheld the legality of imposition of market fee under Section 27 of the Act on purchase of sugarcane by the sugar mill and also on sale of sugar and molasses manufactured out of the purchased sugarcane. The question canvassed before the Supreme Court was whether Market Act could apply to such transaction despite the fact that these transactions were already being regulated by the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 and also under the provisions of Molasses Control Act, 1947. It was contended that the Market Act was not applicable and, alternatively, even if applicable, the market committees were not entitled to recover any market fee from the appellants as there was no return benefit or quid pro quo made available to the appellants by the Market Committees. Answering the question in negative, the Supreme Court held :-

"105. This takes us to the consideration of the alternative contention canvassed by the learned Senior Counsel for the appellant in support of the appeals. Strictly speaking, this alternative contention does not survive for our consideration, in view of our answer to the first contention. However, as we have heard learned counsel for the parties on this alternative contention, we may deal with the same on merits. It has to be kept in view that the market fee levied under the Market Act is a "fee" and not a "tax". The Market Act insofar as it enacts Section 27 levying market fee is referable to Entry 66 of the State List read with Entry 47 of the Concurrent List. Both of them deal with topics of legislation pertaining to fees in respect of the matters enumerated in the respective lists."

Their Lordships further held :-

"107. It becomes at once clear that before justifying levy of market fee on any transaction the services to be rendered by the Market Committee must be in connection with the sale and purchase transactions of agricultural produce falling for regulation under the Market Act, when the purchase and sale of agricultural produce like sugarcane, sugar or molasses are not governed by the Market Act, as we have seen while considering Contention 1, there would remain no occasion for the Market Committee to be statutorily under any obligation to provide any services or infrastructural facilities for covering such transactions so as to be entitled to charge market fee on such transactions. It was vehemently contended by learned Senior Counsel for the respondents that various types of infrastructural facilities are being made available to sugar factories who are purchasing sugarcane in the market area and selling manufactured sugar and molasses in the very same market area."

13. The petitioners in the instant case

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have not made a grievance that the Market Committee has not provided the essential facilities in the market area nor is the case of the petitioners that the other licensees or sellers or buyers,who are in occupation of permanent shops, are not paying market fee on the ground that they have not been provided with such facilities. In that view of the matter, the contention of the petitioners that they are not liable to pay rent of the shops on the ground that they have occupied it in lieu of market fee paid by them, cannot be justified.

14. Section 17 of the Act, as quoted hereinabove, very categorically empowers the market committee to acquire and hold property both movable and immovable and to lease or otherwise transfer any such property. It has been admitted by the petitioners in para 11 of the writ application that the shops in question were let out by the market committee to the petitioners on payment of rent as per the size of the shops and the petitioners have been paying rent since 1992. It has also been admitted by the petitioners that vide resolution dated 17-7-99 the Market Committee took a decision to impose rent at the rate of Rs. 1.25 per square feet with effect from 1-9-90 and at the rate of Rs. 2.00 per square feet with effect from 1-2-97.

15. The next question, therefore, falls for consideration is as to whether the Market Committee or the Board, by resolution unilaterally enhanced or fixed the rent of the shops premises situated in the market yard. There is no specific provision under the Act or the Rules made thereunder whereby the market committee or the Marketing Board has been empowered to enhance the rent or the licence fee of the shops by passing a resolution. Of course, the Market Committee under Sections 17 and 18 of the Act and the Marketing Board under Chapter IV-A of the Act has been empowered to exercise power to regulate and control the market area and to give effect to the entire provisions of the Act. However, such power, in my opinion, cannot and shall not be exercised by the authorities under the Market Act unilaterally and ex parte without complying the requirement of the principle of natural justice.

16. It is well settled that when the authorities were entrusted to act judicially, obligations to follow principle of natural justice, even if not imposed expressly, must be followed. The object of underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. Rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on administrative authority. Even quasi judicial orders must be supported by reasons and this principle is a part of basic principle of natural justice and it must be observed in its proper spirit and mere pretence of compliance with it, would not satisfy the requirement of law. In this connection reference may be made to the decision of the Supreme Court in the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India, AIR 1976 SC 1785 and S. N. Mukherjee v. Union of India, AIR 1990 SC 1984.

17. As noticed above, the respondents-authorities without complying the mandatory requirement of the principle of natural justice, have fixed the rent of the shops at the rate of Rs. 1.25 per square feet, vide order dated 2-9-1988. It has been admitted by the respondents in para 11 of the counter-affidavit that the places with biggest market potential were placed in category-A which included places like Patna, Ranchi, Jamshedpur and Dhanbad etc. and instead of arbitrary fixing the rate of rent it was fixed at the rate of Rs. 1.25 per sqare feet. It is not the case of the respondents that before fixing the rent of the shops the Marketing Board or the competent authority gave show cause notices to all the occupiers of the shops and after hearing them took a decision to fix the rent, rather it is a case where the rent was initially fixed by the authorities at the rate of Rs. 1.25 per square feet. When another officer joined as the competent authority, he or she enhanced the rent from Rs. 1.25 to Rs. 4.00 and again it was reconsidered by the successor in the office of the competent authority and reduced it to Rs. 2.00. It is, therefore, clear that the authorities of the Marketing Committee are not following any rules or procedures in the matter of fixation of rent. It is well settled that even administrative order, which involves civil consequences has to be passed consistently with the rules of natural justice. The decision of the authorities fixing the rent of the shops cannot, therefore, be sustained in law.

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18. For the reason aforesaid, this writ application is, therefore, allowed in part and the impugned orders issued by the respondents fixing rent so far the shops in occupation of the petitioners are concerned, are set aside. Consequently, the impugned demand notice issued by the respondents for recovery of arrears of rent is set aside. The respondents-competent authorities are directed to take a fresh decision in the matter of enhancement of rent of the shops premises in question after giving a reasonable opportunity of hearing to the petitioners.

19. It appears that on the first date when this case was taken up for hearing, this Court, while directing the counsel for the Market Committee to seek instruction and file counter-affidavit, passed interim order to the effect that no coercive step shall be taken against the petitioners for recovery of arrears of rent at the new rate subject to the conditions that the petitioners shall pay the entire arrears of rent, if any, and also the current rent as per the rate last paid. It is directed that the interim order shall continue till the respondents authorities take a fresh decision in the matter of fixation of rent of the shops premises in question.

Application partly allowed.

AIR 2002 JHARKHAND 64 "Plywood v. State of Jharkhand"

JHARKAND HIGH COURT

Coram : 1 S. J. MUKHOPADHYA, J. ( Single Bench )

M/s. Plywood and others, Petitioner v. State of Jharkhand and others, Respondents.

Civil Writ Jurisdiction Case No. 4230 of 2000, D/- 7 -12 -2001.

Bihar Agricultural Produce Markets Act (16 of 1960), S.39, Sch.3 and S.4 - AGRICULTURAL PRODUCE - Realisation of market fee - Jurisdiction - Inclusion of ply wood, ply board, ply patti, core, fali and vaneer as forest produce in Schedule - No further notifications is required to be issued under Ss. 3, 4, of Act for collection of market fee in respect of these products. (Para 6)

Cases Referred : Chronological Paras

Edward Keventer Pvt. Ltd. v. Bihar State Agricultural Marketing Board, AIR 2000 SC 1796 : 2000 AIR SCW 1278 : 2000 (6) SCC 264 4

Sarita Lamination Pvt. Ltd. v. State of Bihar, C.W.J. C. No. 3580 of 2000, D/- 17-10-2000 (Jhar) 5

Belsund Sugar Co. Ltd. v. State of Bihar, AIR 1999 SC 3125 : 1999 AIR SCW 3074 : 1999 (9) SCC 620 3

Sasa Musa Sugar Works v. State of Bihar, AIR 1997 SC 188 : 1996 AIR SCW 4355 : 1996 (9) SCC 681 6

Tata Oil Mills Co. Ltd. v. Director Marketing Board, 1986 Pat LJR 172 5

Ranchi Timber Traders Asso. v. State of Bihar 1985 BLJ 58 (Report) 3

Shree Biharijee Mills Ltd. v. State of Bihar, 1983 Pat LJR 408 3

Ram Chandra Kailash Kumar and Co. State of U.P., AIR 1980 SC 1124 4

Commissioner I.T. v. Taj Mahal Hotel, AIR 1972 SC 168 : 1972 Tax LR 54 4

Shankar Lal Agarwal, for Petitioner; Ram Janam Ojha Sr. Adv. V.P. Singh, for Market Committee; S.Jha, J.C. to G.P. II, for Repondents.

Judgement

ORDER :- The writ petition has been preferred by petitioners for direction on the respondents to refund the market fee already collected from the petitioners in pursuance of Notification No. 2561 dated 31-8-2000 and to restrain the respondent Market Committee from realising the market fee

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in respect of plywood, ply Board, ply Patti, Core, Fali and Veneer pursuant to the said notification No. 2561 dated 31-8-2000.

2. The petitioners are proprietorship firms except petitioner No. 2 which is a registered partnership firm. They claimed to be carrying business in selling plywood, ply Board, ply Patti, Core, Fali, Veneer and have got their place of business at their respective places. The State of Bihar vide S.O. 256 dated 31-8-2000 added plywood, ply Board, ply Patti, Core and Veneer in the schedule attached to the Bihar Agricultural Produce Market Act, 1960 under Section 39 of the said Act. Since such notification, the Market Committee started realising market fee from petitioners and others in respect to sale/purchase of plywood, ply Board, ply Patti, Core, Fali and Veneer. In support of which purchase/sale receipt dated 20-11-2000 has been enclosed as Annexure-2.

The petitioners through their association, namely, Bihar Plywood Manufacturer Association protected against the addition of the aforesaid items in question by letter dated 14-1-2000 to the Managing Director of the Bihar State Agriculture Market Committee (Market Committee for short) whereinafter no action having taken, the writ petition has been preferred by petitioners.

The petitioners have challenged the jurisdiction of Market Committee to collect market fee in respect to items in question on different grounds including the action of respondents in not calling objection under Section 3 of the Act and not declaring a market area on receipt of such objection under Section 4 of the Act.

2A. According to petitioners, the plywood, ply Board are made of selected high density timber manufactured from forest wood with the help of other chemicals. The ratio of wood is 50% and other concentrates about 50% entirely a different commodity being by-product of wood.

The case of the petitioners is that though the commodities in question had been specified in the schedule under Section 39 of the Act vide Notification dated 30-9-2000 but after such inclusion in the schedule, a notification was required to be issued under Section 3 of the Act declaring the intention of the State that it wanted to regulate the purchase, sale, storage and processing of those commodities in such area by specifying the items in the notification.

Further case of the petitioners is that no notification under Section 3(2) of the Act inviting objection from aggrieved persons has been issued though no such objection was required to be called for at the time of inclusion of items in the schedule under Section 39 of the Act in view of Section 4A of the Act.

It is pleaded that since no objection under Section 3 of the Act has been invited, the provision of Section 4 of the Act has not been complied in respect to items in question specifying or declaring the market area in respect of agricultural produce in question, namely, Plywood, Ply Board, Ply Patti , Core, Fali and Veneer.

3. Counsel for the petitioners submitted that mere inclusion of items in the schedule does not automatically permit the respondents to collect market fee on any of the commodities till procedure under Sections 3 and 4 of the Act is followed. Reliance was placed on the decision of the Patna High Court in Shree Biharijee Mills Ltd., reported in 1983 PLJR 408 and the decision of the Supreme Court in Belsund Sugar's case, reported in (1999) 9 SCC 620 : (AIR 1999 SC 3125).

It was pointed out that in the instant case though wood'has been notified as Item No. XII Misc. at Serial No. 15, Bomboo'is Item No. 14 and Wood Dhoop'Item No. 16 but Plywood', Ply Board'and other commodities notified in the notification No. 2561 dated 31-8-2000 do not find place in the schedule prior to its inclusion made under Section 39 of the Act.

It was suggested that the Plywood, Ply Board, Ply Patti, Core, Fali and Veneer are different than the wood and in common parlance, the meaning of these items are different than the wood. Reliance was placed on Ranchi Timber's case, reported in 1985 BLT 58 (Report), wherein it was held that a standing bamboo clumps and trees in coups of forest do not come within the ambit of bamboo and wood.

4. Counsel for the petitioners also placed reliance on the decision of the Supreme Court in Commissioner of I.-T. A.P. v. Taj Mahal Hotel, reported in AIR 1972 SC 168 : (1972 Tax LR 54) to suggest that definition of a word if not given should be construed in its popular sense if it is a word of everyday

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use. "Popular sense" means "that some which people conservant with the subject matter with which the statute is dealing, would attribute to it."

Counsel for the petitioners relied on Section 27 of the Act relating to levy and collection of market fee on the agricultural produce. It was suggested that the illustration attached to Section 27 of the Act that the Paddy sold in a market area as well as rice produced from such paddy both shall be leviable has been inserted vide Act, 60 of 1982 in view of judgment in Ram Chandra Kailash Kumar and Company v. State of U.P., reported in AIR 1980 SC 1124, wherein the Court held that the notification under the U.P. Act do not impose multi point levy of market fee either in the same market area or in different market area and held that paddy is purchased in a particular market area by rice miller and if the same paddy is converted into rice and sold then the rice miller will be liable to pay market fee on his purchase. He cannot be asked to pay market fee over and again under sub-section (3) of the said Act in relation to transaction of rice.

Reliance was also placed on the decision of the Supreme Court in Edward Keventer Pvt. Ltd's. case reported in (2000) 6 SCC 264 : (AIR 2000 SC 1796), wherein the Court held that the fruit drinks "frooti" and "Appy" manufactured and marketed by the company were not covered by "Mango" and "Apple" specified in Items No. 1 and 13 of the schedule and as such not agricultural produce. In para-5 of the said judgment, different other agricultural produce have been discussed like wheat which is treated as a separate agricultural produce as compared to its own product manufactured out of "Wheat", namely, "Atta", "Sujji" and "Maida", Similarly, the schedule shows that under the caption "animal husbandary product", milk excluding liquid milk is specified at Item 19 whereas "butter", "ghee", "cream", "chena" and "khoya" which are manufactured out of milk have been separately specified at Items 7, 8, 16, 17 and 19 respectively.

Counsel for the petitioners while relied on the example of "frooti" and "appy" , submitted that in the same manner as after processing/manufacturing wood loses its original identity, not known as wood but a different commodity and those items were not mentions in the earlier schedule, prior to 31-8-2000, no market fee used to be collected by the Market Committee from the trader for Plywood or other items. According to counsel for the petitioners, the respondents had knowledge that the articles in question are different than the wood and others, which was the reason to specify the items in the schedule for the first time on 31-8-2000.

5. Counsel for the respondents relied on (unreported) decision of this Court in Sarita Lamination Private Ltd. v. State of Bihar and others in C.W.J.C. No. 3580/2000 (R), disposed of on 17-10-2000. In the said case, the notification dated 31-8-2000 issued by the State Government under Section 39 of the Act, 1960 amending schedule inserting items like Plywood, Ply Board, Ply Patti, Core, Fali and Veneer etc. was challenged. The said notification was attacked on the ground that if was issued without inviting any objection and complying the provision of Section 3 of the Act, nor any notification under Section 4 followed. In the said case, this Court taking into consideration the provision of Section 39 and Section 4A of the Act, upheld the notification dated 31-8-2000 and held that no separate notification under Section 3 and 4 of the Act was required to be issued. However, the counsel for the petitioners distinguished the aforesaid decision in Sarita Lamination Pvt. Ltd. (supra) and submitted that the petitioners of the present case are not challenging the insertion of the items by amendment of schedule under Section 39 of the Act but for the purpose of realisation of market fee an area to be notified after calling for objection in respect to items following procedure under Section 3 and 4 of the Act, Reliance was placed on gazette notifications issued on 5-12-1989 vide Annexure-4, by way of example thereby one or other area was declared as market area in respect to items like Potato, Onion, Vegetables, Edible oil, Sugar, Mahua etc. It was pointed out that though the aforesaid items are in the schedule but separate notification have been issued after following under Sections 3 and under Section 5(2) of the Act.

Counsel for the respondents placed reliance on Division Bench decision of the Patna High Court in Tata Oil Mills Co. Ltd. v. Director, Marketing Board, reported in 1986 PLJR 172 and the definition of agricultural produce as substituted by Act 60 of 1982.

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The Patna High Court in Tata Oil Mills Co. Ltd. (supra) taking into consideration the new definition of agricultural produce, held that the new definition has been introduced in the background of controversies raised in different Courts as to whether agricultural produce shall include even the manufactured products of agriculture, horticulture, animal husbandary etc. It held that in clear and unambiguous term that agricultural produce'shall mean not only the product of agricultural, horticulture, animal husbandry, forest etc. in its original form, but also what has been proceeded and manufactured from such original products, the definition has to a great extent delinked "agricultural produce" from the schedule of the Act. Reference to the schedule of the Act is only in the context of the agricultural produce and inclusive of all produce of agriculture, horticulture, plantation, animal husbandry, forest, sericulture, pisiculture, livestocks or poultry including the processsed and manufactured products of such produce. Under the new definition whether a produce or product thereof has been specified in the schedule is not of much consequence for being, held as an agricultural produce. The only thing which has to be established is as to whether the item in question in a processed or non processed or manufactured product of agricultural, horticulture, plantation, animal husbandry, forest, sericulture, pisiculture, livestock or poultry. The introduction of the word and includes'is very significant.

6. In the present case, the inclusion in the schedule made in respect to Plywood, Ply Board, Ply Patti, Core, Fali and Veneer under Section 39 of the Act is not under challenge. In the background, it is not necessary to discuss whether any opportunity of hearing before addition of such items in the schedule was required to be given or not.

It may be pointed out that the Supreme Court in Sasa Musa Sugar Works v. State of Bihar, reported in (1996) 9 SCC 681 : (AIR 1997 SC 188) while held that hearing is required in the case of delition, further held that no such hearing required to be given for addition in view of Section 4A of the Act.

The only question arises as to whether after inclusion of Plywood, Ply Board, Ply Patti , Core, Fali and Veneer in the schedule, the provision of Section 3 and 4 of the Act to be followed before realisation of market fee in respect to such items or not.

If it is held that, the wood'includes Plywood, Ply Board, Ply Patti, Core, Fali and Veneer then the question to be answered in negative i.e. no requirement to follow the provision of Sections 3 and 4 of the Act, once the market area for base produce, namely, wood'is notified following the procedure. On the other hand, if it is held that wood'does not include Ply wood, Ply Board, Ply Patti, Core, Fali and Veneer, it is to be answered in positive in favour of petition i.e. the provision of Sections 3 and 4 of the Act is necessary to be followed before collection of market fee.

In the case of Edward Keventer Pvt. Ltd. (supra), the Supreme Court while considering the issue as to whether Frooti'and Appy'as Mango and Apple products respectively or not in the light of definition of agricultural produce, the Court held as follows :

"A perusal of Section 2(1)(a) unambiguously shows that the agricultural produce which is to be covered by the sweep of the Act necessarily has to be specified in the schedule. If any agricultural product not specified in the schedule, it goes beyond the purview of the Act and the respondent has no power to levy fee on such produce. In the schedule under the caption "fruits" mango and apple have been specified as agricultural produce. No further find in the schedule that under the caption "cereals" wheat is specified at Item 3, whereas "wheat atta", "suji" and "Maida" which are the products of wheat are separately specified at Items 14, 15 and 16, respectively. This shows that the agricultural produce "wheat" has been treated as a separate agricultural produce as compared to its own product manufactured out of "wheat" namely, "Atta", "Sujji" and "Maida". "Atta", "Suji" and "Maida" are basically the agricultural products of "Wheat". Similarly, the Schedule shows that under the caption "Animal Husbandry Product", milk excluding liquid milk is specified at Item 19 whereas "butter", "ghee", "cream", "chena" and "khoya" whcih are manufactured out of milk are separately specified at Items 7, 8, 16, 17 and 19 respectively. Under the caption "Miscellaneous", "Mango Pickles" in specified at Item 18. "Mango pickles" are a product of mango, which is a fruit, and specified in the schedule but "mango pickles" have been specified separately. This

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shows that the basic ingredients may be the same but the end product which is known differently is treated as a separate item. It is true that "Frooti" and "Appy" are manufactured out of mango pulp and apple concentrated, but after the mango pulp and apple concentrated are processed and beverages are manufactured, the products become entirely different items and the fruits, mango and apple, lose their identity. In common parlance, these beverages are no longer known as mango and apple or as fruits. In other words, after processing mango pulp and apple concentrated, although the basic character of the mango pulp and apple concentrated may be present in beverages, but the end products are not fruits i.e. mango and apple which are specified in the schedule. Our views also find support from a constitution Bench decision of this Court in the case of Belsund Sugar Co. Ltd. v. State of Bihar, wherein it was held that Lactodex and Raptakos which are baby food do fall under the description milk, specified in the schedule of the Act. Under such circumstances, we find that the products like "Frooti" and "Appy" which are ready - to serve beverages not being specified in the schedule are not covered by the term agricultural produce, as defined in Section 2(1)(a) of the Act."

In the present case, it has not been disputed that Plywood, Ply Board, Ply Patti, Core, Fali and Veneer are agricultural produce which is the reason they have been included in the schedule vide notification dated 31-8-2000 which has been upheld by this Court in Sarita Lamination Pvt. Ltd. (supra).

The petitioners have specifically pleaded that the plywood, ply board are made of selected high density timber. They are manufactured from forest wood with the help of other chemicals having ratio of wood about 50% and other concentrated about 50% and is a by-product of wood. Once it is accepted then it comes within the mischief of amended definition of agricultural produce as laid down under Section 2(1)(a) of the Act as an agricultural produce includes all produce whether processed or non-processed if specified in the Schedule.

In the case of Tata Oil Mills (supra), the Patna High Court taking into consideration the new definition of agricultural produce, held that a produce or product thereof as specified in the Schedule is not of much consequence but only thing which has to be established is as to whether the item in question is a processed or non-processed or manufactured products of agriculture, horticulture, forest etc. or not. The introduction of the words and includes is very significant and relevant for the purpose of such decision. The ply wood, ply board, ply patti, core, fali and veneer having accepted to be a product of forest wood, having manufactured on processing wood with other concentrates and being a by-product of wood having accepted by the petitioners, the market area for wood having notified, no further notification required to be issued under Sections 3 and 4 of the Act for collection of market fee in respect of ply wood, ply board, ply patti, core, fali and veneer.Thus, the question as to whether the wood includes ply wood, ply board, ply patti, core,fali and vaneer having answered in favour of respondents, no relief can be granted as about for by the petitioners.

7. Accordingly, the writ petition is dismissed.

Petition dismissed.

AIR 2002 JHARKHAND 68 "Raj Store v. Bihar State Agrl. Marketing Board"

JHARKAND HIGH COURT

Coram : 1 SUDHANSHU JYOTI MUKHOPADHAYA, JJ. ( Single Bench )

Raj Store and others, Petitioners, v. Bihar State Agricultural Marketing Board and others, Respondents.

Civil Writ Jurisdiction Case No. 3190 of 1998 And C. W. J. C. No. 1212 of 1999, 20 of 2001, D/- 26 -11 -2001.

(A) Bihar Agricultural Produce Markets Act (16 of 1960), S.27, S.18 - Bihar Agricultural Produce Markets Rules (1975), R.61, R.67 - AGRICULTURAL PRODUCE - Marketing Board - Has jurisdiction to charge rent/occupational charges from traders/licensees in occupation of shops/godowns or area. 2001 AIR Jhar HCR 493 Rel on. (Para 24)

(B) Bihar Agricultural Produce Markets Act (16 of 1960), S.27, S.18 - Bihar Agricultural Produce Markets Rules (1975), R.61, R.65 - AGRICULTURAL PRODUCE - Market rent - Enhancement - Prior notice issued to traders/licensees - Enhancement not improper. (Paras 23, 24)

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Cases Referred : Chronological Paras

Jagdish Singh v. Bihar State Agricultural Marketing Board, 2001 AIR Jhar HCR 493 : 2001 (2) Jhar LJR 197; (Rel. on) 22

M/s. Narayan Ranjan Sapan Kumar v. State of Bihar, CWJC. Nos 3695 of 1996 D/- 4-4-1999 (Jharkhand) (unreported) 11

Belsund Sugar Co. Ltd. v. State of Bihar, AIR 1999 SC 3125 : 1999 (9) SCC 620 10

M/s. Ganesh Trading Co. v. Bihar State Agricultural Marketing Board, 1999(2) PLJR 405 11

M/s. Maliram Puranchand v. Bihar Agricultural Produce Markets Committee, 1996 Pat LJR 199 11

M/s. Durga Anna Bhandar v. Agricultural Produce Market Committee, 1996 Pat. LJR 510 11

Kewal Krishan Puri v. State of Punjab, AIR 1980 SC 1008 : 1980(1) SCC 416 17

R. K. Agarwal, S. L. Agarwal, for Petitioner; Raj Janam Ojha Sr. Adv., V. P. Singh, Sat Prakash, Shalini Jha, for Respondent.

Judgement

ORDER :- In all these cases as common question of law is involved, they have been heard together and are being disposed of by this common judgment.

2. The sole question, raised by the petitioners, is whether the Marketing Board constituted under the Bihar Agricultural Produce Markets Act, 1960 has jurisdiction to charge rent of the shops, situated within the market area or not.

3. To determine the issue, it is necessary to look the relevant facts, as pleaded by one or other petitioner (s). The Bihar Agricultural Produce Markets Act, 1960 (Act XVI of 1960) came into effect when published in the Bihar Gazette Extra-ordinary of the 10th September, 1960 to provide for the better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Bihar (now it covers the State of Jharkhand also) and for matters connected therewith.

4. Notifications under Section S (2) of the Act were issued for different Principal Market Yards. For example notification under Section 5 (2) of the Act was issued on 22nd February, 1980 in respect to Jugsalai Market, which is declared as Principal Market Yard. Some other notifications were issued under Section 5 (2) of the Act on 5th December, 1985. Similar notification under Section 5 (2) of the Act was issued in respect to Hazaribagh Market, which was declared as Principal Market Yard.

5. Petitioners of C.W.J.C. No. 3190 of 1998 (R) and C. W. J. C. No. 20 of 2001 are shop-keepers of Jugsalai Market, who shifted to the shops as were constructed in the Principal Market Yard of Parshudih/Jugsalai. Petitioners of C. W. J. C. No. 1212 of 1999 (R) shifted their business in the shops/godowns of Principal Market Yard, Hazaribagh. The respondents charged rent from them for the shops/godowns allotted in favour of the petitioners, which they were paying since their shifting to the allotted shops/godowns.

6. By circular dated 2nd September, 1989 the rate of rent of shops/godowns was enhanced with respect to the shops/godowns, situated in the Principal Market Yard, Parshudih. Demand notices to traders/shop-keepers were also issued on 21st January, 1992, asking them to pay rent at the enhanced rate in respect to the shops/godowns situated in the Principal Market Yard, Earlier the Markting Board fixed rent at the rate of Rs. 1/- per sq. ft. on 15th February, 1990 but even after the enhancement, they accepted the rent at the old rate. The Secretary, Market Committee of Principal Market Yard, Parshudih issued letter on 8th October, 1996 asking the shop-keepers/occupants to deposit rent at the rate of Rs. 1.25 paise per sq. ft., which was subsequently enhanced to Rs. 4/- per sq. ft. on 5th February, 1998. Earlier fixation was withdrawn on 29th January, 1999 and a new rate of Rs. 2/- per sq. ft. was fixed by the Marketing Board.

Similar enhancements of rent of shops/godowns were made by the Marketing Board in respect to the shops/godowns, situated in the Principal Market Yard, Hazaribagh.

7. The petitioners of C. W. J. C. Nos. 3190 of 1998 (R) and 20 of 2001, challenged the decision contained in letter No. 5913 dated 2nd September, 1988, issued by the Managing Director of Marketing Board, Patna whereby, the rent of shops and godowns in the Market Yard were enhanced as also the letter No. 917 dated 15th February, 1990, issued by the Managing Director of Marketing

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Board, Patna, letter no. 597 dated 5th February, 1998 issued by the Market Committee, Parshudih, fixing rent at higher rate with further prayer to restrain the respondents from realising the rent from the occupants of shops and to refund the same to the petitioner, which had already been collected, Additional prayer has been made by the petitioners of C. W. J. C. No. 20 of 2001 to set aside Letter No. 606 dated 1st February, 1999, issued by the Managing Director, Marketing Board, Patna.

8. Petitioners of C. W. J. C. No. 1212 of 1999 (R) while challenged the aforesaid Letter No. 917 dated 15th February, 1990 and Letter No. 606 dated 1st February, 1999, both issued by the Marketing Board, Patna, have also challenged the letters all dated 1st March, 1999 and Letter dated 27th February, 1999, issued by the Market Secretary, Principal Market Yard, Hazaribagh, whereby they have been asked to pay rent for the shops/godowns, occupied by those petitioners at the enhanced rate.

9. The main plea taken by the petitioners is that the Marketing Board, Patna, or the Market Committee have no jurisdiction to charge any rent for the shops/godowns allotted in their favour, the petitioners being licensees and being entitled for basic facilities including facility to retain shops/godowns.

10. According to the petitioners, under Section 27 of the Act, the Market Committee has to levy and collect market fees on the agricultural produce bought or sold in the market area at a given rate. Section 29 while provides creation of fund of market committee, under Section 30 it stipulates the purposes for which market committee fund may be applied. The case of the petitioners is that the fund of the market committee being generated for acquisition of site, maintenance and improvement of market and construction and repair of building, check posts, market gates, the respondents have no jurisdiction to charge any amount towards rent for such shops/godowns, situated with the market yard. Those being the basic facilities, are required to be given. Counsel for the petitioners also placed relevant rules known as Bihar Agricultural Produce Markets Rules, 1975 including Rules 61 and 67 of the said Rules.

Reliance was also placed on Supreme Court's decision in Belsund Sugar Company Ltd. v. State of Bihar, reported in (1999) 9 SCC 620 (AIR 1999 SC 3125).

11. Mr. V. P. Singh learned counsel appearing for the Marketing Board, on the other hand, opposed the prayer, justified and the demand of rent including arrears in respect of shops/godowns occupied by the petitioners and relied on Patna High Court's decisions in M/s. Maliram Puranchand v. Bihar Agricultural Produce Markets Committee, reported in Pat. L. R. 1996 Patna 199, M/s. Durga Anna Bhandar v. The Agricultural Produce Market Committee, reported in Pat. L. R. 1996 Patna 510, M/s Ganesh Trading Company v. Bihar State Agricultural Marketing Board, reported in 1999 (2) P. L. J. R. 405 and unreported decision of this Court in M/s Narayan Ranjan Sapan Kumar v. State of Bihar, C. W. J. C. Nos. 3695 of 1996 and 3696 of 1997, disposed of on 4th April, 1999.

12. To appreciate the arguments, advanced by the parties, it is relevant to refer the relevant provisions like Section 18 i. e. powers and duties of Market Committee, Section 30 i. e. application of Market Committee fund, Section 33J i. e. powers and functions of the Board as also Rule 61 and Rule 67 i. e. the facility to be provided by the Market Committee and the power and duties of the Market Committee respectively. The powers and duties of Market Committee includes duty of Market Committee to provide facilities for marketing of agricultural produce as per the direction of the Marketing Board as may be issued from time to time, apart from other powers and duties. It reads as follows :

"18. Powers and duties of the Market committee :

(1) It shall be the duty of the Market Committee to implement the provisions of this Act, the rule and bye-laws made thereunder in the market area to provide such facilities for marketing of agricultural produce therein as the Board may from time to time direct, and so such other acts as may be required in relation to the superintendence, direction and control of the market, or for regulating the marketing of agricultural produce in any place in the market area, and the purposes connected with the matters, and for that purpose the Market Committee may exercise such powers and perform such

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functions and discharge such duties as may be provided by or under this Act.

(2) Without prejudice to the generality of the foregoing provision, a Market Committee may :-

(i) When so required by the State Government, to establish a market for the market area providing for such facilities as the State Government may, from time to time, direct in connection with the purchase and sale of the agricultural produce concerned;

(ii) Where a market is established under Sub-clause (i) to issue licences in accordance with the rules to traders, brokers, weighmen, measurers, surveyors, were housemans and other persons including persons or firms engaged in the processing, storing or pressing of agricultural produce concerned operating in the market area ;

(iii) to main and manage the principal market yard and to control, regulate and run the market in the interest of the agriculturists and licences in accordance with the provisions of this Act and the rules and the bye-laws made thereunder;

(iv) to act in the prescribed manner as mediator, arbitrator or surveyor in all matters of differences, disputes, claims etc. between licensees inter-se or between them and persons making use of the market as sellers of agricultural produce;

(v) to control and regulate the admission of persons and vehicular traffic to the principal market yard or sub-market yards to determine the conditions for the use of market and to check and prosecute persons trading without a valid licence in the market area;

(vi) to bring, prosecute or defend, or aid in bringing proceeding, application or arbitration in regard to any matter on behalf of the committee, or otherwise when directed by the Board;

(vii) to enforce the provisions of this Act, the rules and bye-laws; and

(viii) to perform such other duties and exercise such other powers as are imposed or conferred upon it by or under this Act, the rules or the bye-laws."

13. On the other hand, Section 30 stipulates the purposes for which the fund generated by Market Committee is to be applied which includes maintenance and improvement of market, construction and repair of building etc. as is evident from Section 30 quoted below:

"30 - Application of Market Committee Fund :-

Subject to the provisions of Section 29, the Market Committee Fund may be applied to the following purposes only, namely;

(i) the acquisition of a site or site for the market;

(ii) the maintenance and improvement of the markets;

(iii) the provision and maintenance of standard weight;

(iv) the construction and repair of buildings, check-posts, market gates and other fixtures necessary for the purpose of such market and for the health, convenience and safety of the persons using it;

(v) the pay, pensions, leave allowances, gratuities, compensations for injuries resulting from accidents, compassionate allowances and contributions towards leave allowances, pensions or provident fund of the officers and servants employed by it;

(vi) the payment of interest on the loans that may be raised for the purposes of the market and the provisions of a sinking fund in respect of such loans;

(vii) the expense of and incidental to elections;

(viii) the construction, repair and maintenance of means of communication which are useful for the purposes of regulation, control and development of a market or for the convenience and safety of the persons using it;

(viii-A) facilities to farmers, for link roads, connecting the main road, from villages in a market area shall be provided on a priority basis from the development fund of the concerned Market Committee;

(ix) the planting and rearing of trees and making arrangement for providing water to the persons and cattle coming to a market and like purposes;

(x) with the previous sanction of the Director or any other officer specially empowered in this behalf, by the Board, and other purposes whereon the expenditures of the market fund is in the public interest;

(xi) such travelling and other allowances of the members of the Market Committee as may be prescribed; and

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(xii) any other purposes which the state Government may notify by a special order."

14. It is not necessary to quote Section 33J i. e. powers and functions of the Board, which has superintendence and control over the working of the Market Committee and other affairs thereof for development of market and market areas and to give direction to the Market Committee in general or in particular, including the power to select new sites to supervise and guide a Market committee for preparation of plans, estimate of construction programme and to execute all works chargeable to Board's fund. The matters to be provided by the Market Committee including maintenance and improvement of any enclosure or building, its construction and repair has also been stipulated under Rule 61, as quoted hereunder;

"61 - Market Committee to provide for certain matters:-

(1) After paying all sums due to Government and/or the Board, the Market Committee shall so far as the funds at its disposal permit but subject to the provisions of the Act and these rules provide -

(a) for the maintenance and improvement of any enclosure or building which may constitute the market;

(b) for construction and repair of buildings, yards and other erections necessary for the purposes of the Market; and

(c) for the health, convenience and safety of the persons using or visiting the market;

(ii) The payment and expenditure under Sub-rule (i) shall be subject to any special contract made in this behalf."

15. Rule 67 prescribes powers and duties of Market Committee including its power to authorise persons to collect fees arranging for temporary storage or stocking of notified agricultural produce, erecting check-posts, gates and other fixtures to prevent evasion of market fee, apart from the power to take other measures.

16. From the relevant Sections and Rules while it is apparent that the respondents can levy market fee and are liable to provide certain basic facilities to the traders of market yard out of funds generated by Market Committee, no specific stipulation is made therein to charge a rent for shops/godowns allotted in favour of one or other dealer/licensee.

17. It is not in dispute that the market fee levied under the Market Act is a fee'and not a tax'. In the case of Kewal Krishan Puri v. State of Punjab, reported in (1980) 1 SCC 416 : AIR 1980 SC 1008 the Supreme Court while upholding the levy of market fee under the Punjab Agricultural Produce Markets Act, 1961, held that the amount of fee realised must be ear-marked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for such purpose. While rendering services in the market area for the purposes of facilitating the transactions of purchase and sale with a view to achieve the objects of the market legislation, it is not necessary to confer the whole of the benefit on the licensee but special benefits must be conferred on them which have a direct, close and reasonable co-relation between the licensee and the transactions. The element of quid pro quo may not be possible or even necessary to be established arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent in rendering services to those on whom falls the burden of fee.

18. The relevant provisions of he Bihar Agricultural Produce Markets Act, 1960 including Section 30 fell for consideration before the Supreme Court in the case of Belsund Sugar Company Ltd. (supra), wherein, the Apex Court held that once the transaction of sale or purchase of any agricultural produce is governed by the Act and once Section 15 of the Act applied to such transaction, the entire machinery of the Act would get attracted to regulate such transaction and the complete infrastructures for which provisions are made by the Market Committee including the facilities available at such markets would become available to the purchasers and sellers of such commodities in the market. For providing those infra-structural facilities, the Market Committee has to spend from its fund which would apply adequate quid pro quo for levy sugar fee on the buyers of commodities sold at its market yard or sub-market yard.

19. Though the decision relating to facilities to be granted by the Market Committee has been given by the Apex Court, no specific finding has been given on the issue as to whether rent can be charged for

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the shops/godowns as allotted to one or other trader/licensee by the Market Committee, as is the case of the petitioners.

20. The aforesaid issue as to whether the Market Committee is justified in demanding rent or arrears of rent of shops and godowns fell for consideration before Patna High Court in the case of M/s. Maliram Puran Chand (supra). The Division Bench of Patna High Court, taking into consideration Section 27 of the Bihar Agricultural Produce Markets Act, 1960 and Rule 98 of the Bihar Agricultural Produce Markets Rule, 1975 held that the power of Market Committee to levy funds from the licensees/traders is altogether different from the provision to realise occupation charges or rental by the Market Committee from the traders, who are allotted shops/godowns in a Principal Market Yard. Such traders/licensees allotted godowns/shops cannot be allowed to question the jurisdiction of the Market Committee to enhance the rate of rent in appropriate cases.

21. Similar view was taken by the Patna High Court in the case of M/s. Durga Anna Bhandar (supra) wherein, the Court held that the Market Committee is justified in demanding the rent or arrears of rent of shops and godowns from the occupier licensees/traders. Such view was also affirmed by Patna High Court in the case of M/s. Ganesh Trading Company (supra).

22. This very issue recently fell for consideration before a Bench of this Jharkhand High Court in the case of M/s. Jagdish Singh v. Bihar State Agricultural Marketing Board, 2001 (2) J. L. J. R. 197. The Court held that the market fee is levied whenever a notified agricultural produce is sold or bought in the market area and it has nothing to do with the enjoyment of the constructed shops/godowns, situated in the market area by the dealer. The Market Committee which already provides essential facilities in the market area, the dealers can not dispute their liability to pay rent for the shops/godowns or arrears, occupied by them. In the aforesaid case of M/s. Jagdish Singh (supra) the Court further held that the authorities empowered to act should act judiciously within the statutory frame-work and judicial orders must be supported by reasons following the principles of natural justice.

23. In the present cases there is no allegation made by one or other petitioner(s) that the enhancement of rent was made without any notice to them. On the other hand, it appears that the circular for enhancement of rent was initially issued in the year, 1989 and the petitioners continued to pay rent as per the rate as was fixed

24. In view of the decisions aforesaid, as it is to be held that the respondents have jurisdiction to charge rent/occupational charge from the traders/licensees in occupation of shops/godowns or area, none of the impugned orders requires any interference, there being no allegation of violation of the rules of natural justice, made by the petitioners.

25. In the facts and circumstances and there being no merit, all the writ petitions are hereby dismissed. However, there will be no order as to costs.

Petitions dismissed.

AIR 2005 KARNATAKA 330 "ITC Ltd. v. State of Karnataka"

KARNATAKA HIGH COURT

Coram : 1 D. V. SHYLENDRA KUMAR, J. ( Single Bench )

M/s. ITC Ltd., Petitioner v. State of Karnataka and others, Respondents.

W.P. No. 39753 of 2004, D/- 8 -2 -2005.

(A) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.8, S.2(21), S.2(14A) - LICENSE - AGRICULTURAL PRODUCE - Licence - Obligation to obtain - Notified agricultural produce brought and stored in market area - Transportation and storing done by business associate of petitioner for benefit of petitioner - And not by petitioner, owner of produce - That does not relieve petitioner who is a market functionary of his obligation to obtain licence - Concept of business process out- sourcing cannot be applied.

The petitioner is the owner of considerable quantities of a notified agricultural produce which is stored in a warehouse situated within the market area, notified to be the market area of the respondent-Market Committee. It is at the behest of the petitioner that such agricultural produce has been brought in the market area and is stored in the market area by petitioner's business associates. The agricultural produce also leaves the market area as per the instructions and directions of the petitioner. Under such facts and circumstances, the petitioner clearly comes within the definition of an 'importer' as defined under S. 2 (14-A) of the Act notwithstanding the fact that, in fact, physically it is the business associate who while acting as an Agent of the petitioner brings the agricultural produce into the market area and stores it in the market area. The definition of the term 'market functionary' under S. 2 (21) includes an importer, a stockist etc. The petitioner answers the definition of not only an importer but also a stockist. The obligation to obtain a licence under S. 8 on such persons is clear and categorical. (Para 34)

The concept of business process outsourcing cannot be applied to such a situation. The subject matter is one of

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regulation of the activities of a person transacting or involved in the transaction of a notified agricultural produce in the market area. Certain obligations such as obtaining a licence are cast on such a person. The obligation is on the very person who carries on such activity within the market area. So long as a person carries on that activity which is an activity within enumerated ones for which obtaining of licence is mandatory under S. 8 of the Act is carried on by a person, there is no escape for that person from the obligation of obtaining a licence. In fact, non-compliance results in penal consequences. A provision which imposes or creates certain obligations on a person, the non-compliance of which attracts penal consequences is not an activity that can be said to be delegated to some other person for the purpose of avoiding the consequences. It is immaterial whether a person carries out or fulfils the obligation by himself or through an agency. The fulfillment is for the purpose of ensuring compliance by the very person and not that of the agent. In the present case, the petitioner definitely answers the test of the market functionary. If so, the obligation of obtaining a licence is on the petitioner. It is no good answer to say that the business associate who carries on the warehousing activity within the market area has obtained a licence. (Para 36)

(B) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.66, S.8 - LICENSE - Market Committee - Power to order production of accounts, entry, search etc. - Provision is for prevention of evasion and malpractices - Its scope cannot be confined by S. 8.

Section 66 is intended not only to check and prevent persons from indulging in the activities for which one has to obtain a licence to prevent one from carrying on the same without obtaining a licence, but also for ensuring that true accounts and state of affairs are revealed so that the loss of revenue is also prevented. The provision also gives a power of entry, search and seizure in favour of the Officers of the Market Committees. The provision being one for prevention of evasion and prevention of malpractice in the market area, the construction should be one which is not necessarily confined to understand the provision as one which is co-extensive with the provisions of S. 8 of the Act but which can go beyond. This is particularly so because there can be persons who are committing acts of infraction of provisions of S. 8 and also infraction of provisions of S. 65 of the Act. The provision acts as an enabling provision for the Market Committee with certain powers for preventing such malpractice. Such limitation that can be placed on a provision like this is that the power should always be exercised bona fide, for the purpose of the Act and within and to the permitted extent and not beyond. (Para 39)

(C) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.65(2), Proviso 2, Expln.(ii) (As amended by Act 22 of 2004) - AGRICULTURAL PRODUCE - AMENDMENT - Market fee - Levy of - Activity of processing imported agricultural produce or activity of storing or stocking agricultural produce in market area - Cannot be subjected to levy of market fee - Expln. 2 to 2nd Proviso to S. 65 (2) added by 2004 amendment does not create charge on such activity.

A reading of the provisions of S. 65 while undoubtedly makes it clear that the charge is only under sub-sec. (2) of S. 65 and on the activity of buying, the further provisions like sub-sec. (3) makes it a single point levy and the two provisos added to sub-sec. to the charging section seeks to reduce the rigor of the levy of situations mentioned therein. While provisos (1) and (2) particularly Proviso (2) as added by the amending Act 22 of 2004 can only have the effect of reducing the rigor of the charging Section i.e. the main provision of sub-sec. (2) of S. 65, it can never have the effect of either roping any more activities within the net of the charging section nor has the proviso achieved any such purpose. Even on a plain reading of the proviso, what it seeks to do is only to extend certain benefit or concession even in respect of the activity of buying of a processed notified agricultural produce. A plain reading of Expln. (ii) clearly indicates that while the proviso extends certain benefits, namely, single point levy even in respect of processed agricultural produces

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so long as the basic agricultural produce has been once subjected to levy of market fee within the State, that benefit is sought to be curtailed and confined to the agricultural produces so produced within the State and does not extend to agricultural produces brought from outside the State and subjected to processing. A reading of the proviso and the explanations clearly indicates that they are in the nature of variation in the scope of levy on this activity subject to fulfilling certain conditions. While, the maximum levy is under sub-sec. (2), the proviso only seeks to reduce to rigor of it. A plain reading of this provision indicates that there is absolutely no hint of enlarging the scope of levy under the provisos or the explanations. So long as the main charging Section which provides for the three essential components of the taxing statute confines the levy of the activity of buying, by addition or deletion of any proviso or any explanation, the scope of that levy cannot be enlarged. Assuming that there is scope for reading any statute or even a taxing statute as a whole that is to read the charging section, provisos and the explanations as a whole, even by such a reading, the second explanation does not achieve or produce the result of subjecting to levy the activities of processing an imported agricultural produce or the activity of storing or stocking agricultural produce within a market area to levy of market fee. (Paras 51, 52)

While the purpose and reason for introducing an amendment, may be perhaps, was to rope in such activities and to augment revenue in favour of the Market Committees, neither the language of the object and reason spell out nor has it been put in that manner in the statute. While providing or not so providing in the statement of objects and reasons in itself would not have been of much consequence in the absence of the very statute having provided for it, by no stretch of imagination or on applying any accepted norm of interpretation can it be understood or described that the amended provision has the effect of subjecting to levy of payment of market fee, a notified processed agricultural produce if it is imported from outside the State and subjected to processing activity in the State. It is not so in the language of the Section. (Para 54)

(D) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.65 - AGRICULTURAL PRODUCE - INTERPRETATION OF STATUTES - Market fee - Provision - Levying fee - Is in nature of taxing statute - Principles of interpretation governing taxing statute - Apply to S. 65 even though 'fee' is levied thereunder and not 'tax'. (Para 50)

Cases Referred : Chronological Paras

Commissioner of Central Excise v. ACER (India) Ltd., AIR 2004 SC 4805 : 2004 AIR SCW 5496 : 2005 CLC 368 : (2004) 8 SCC 173 25

Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd., 2003 AIR SCW 6696 : 2004 All LJ 1 : (2004) 1 SCC 391 18

Mathuram Agarwal v. State of Madh Pra, AIR 2000 SC 109 : 1999 AIR SCW 4069 50

Commissioner of I.-T. v. Kasturi and Sons Ltd., AIR 1999 SC 1275 : 1999 AIR SCW 960 : 1999 Tax LR 425 : (1999) 3 SCC 346 50

The Belsund Sugar Co. Ltd. v. State of Bihar, AIR 1999 SC 3125 : 1999 AIR SCW 3074 18

The Barium Chemicals Ltd. v. A. J. Rana, AIR 1972 SC 591 : (1972) 1 SCC 240 18

Shanthi Bhushan Sr. Counsel, for Mrs. A. Rama and D. Venkatesh, for Petitioner; B. T. Parthasarathy Adv. General, Kempanna HCGP for Respondent Nos. 1 and 2; B. G. Sridharan, for Respondent No. 3.

Judgement

ORDER :- All these petitions are by persons who have dealings in the notified agricultural produce, as the expression occurs within the meaning of sub-section (28) of Section 2 of the Karnataka Agricultural Marketing (Regulation) Act, 1966 (for short, the Act).

2. While most of the petitioners are in fact what is known as 'market functionaries', within the meaning of this phrase as it occurs in sub-section (21) of Section 2 of the Act and are also licenced market functionaries, having sought for and obtained licences to function so within the notified area in respect of the Agricultural Produce Market Committees (APMC), only the petitioner in W.P. No. 39753 of 2004, namely M/s. ITC Ltd., is not a licenced market functionary within the market area of the APMC, Doddaballapur, within which area this petitioner has some activities in relation to the notified agricultural produces namely wheat and other produces.

3. Petitioners have approached this Court even at the threshold praying for certain relief and the common cause made by all these petitioners is with regard to the liability for payment of any market fee under the provisions of the Act, particularly under

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Section 65 of the Act in respect of the activities of stocking of the notified agricultural produce and processing of such produces within the market area. Insofar as this aspect is concerned, while the stand of the respondents is that such activities are also sought to be roped in for levy of market fee under the Act, in the light of the amendment effected to the Act under Section 3 of the Amending Act 22 of 2004 and it is also asserted on behalf of the respondents that such amendment has enabled the respective market committees to levy and collect market fee on such activities of stocking and processing of imported notified agricultural produces, the stand of the petitioners is that the amending Act does not achieve this object; that even after the amendment effected to Section 65 of the Act, by addition of second proviso to sub-section (2) of Section 65 of the Act, and the two explanations following this proviso, has not achieved the object of creating liability for payment of market fee in respect of the activities of stocking and processing of even the imported notified agricultural produces which are imported into the market area.

4. While this controversy is common to all the petitioners, insofar as the petitioner in the first petition is concerned, a further dispute is sought to be raised in the context of certain notices that had been issued by the APMC, Doddabalapur, viz., notices dated 3-8-2004 and 9-8-2004 (Annexures-C and D respectively), which are in the nature of inquisitioned notices issued by the market committee addressed to the petitioner calling upon it to provide for better particulars and full information of the stock of the notified agricultural produces which had been stored in the warehouse at Koralur owned by the Karnataka State Warehousing Corporation, taken on lease by the petitioner for the purpose of storing the notified agricultural produces in this warehouse and for which purpose it is claimed by this petitioner that it has availed of the expertise and services of M/s. Central Warehousing Corporation.

5. The challenge in WP No. 39753 of 2004 is concerned, is to issue of such notices, which were in fact followed by issue of a subsequent legal notice dated 21-9-2004 (Annexure-H), under which the petitioner has been specifically put on notice to comply with several requirements of the Act, non-compliance of which could attract possible penal consequences and which, according to the petitioner, has been suitably replied.

6. While the show cause notice under Annexure-D dated 9-8-2004 has also indicated there could be possible demands on this petitioner for payment of a sum of Rs. 15,50,678/- by way of market fee in the absence of any proper explanation supported by proper and relevant accounts to indicate that the sale of notified agricultural produce has not taken place in respect of a some part of the stock, the notices by themselves as such have not called upon the petitioner to pay any market fee either in respect of the activities of mere storing or even in respect of the activity of mere processing of the imported notified agricultural produce.

7. However, in respect of the petitioner in WP Nos. 31351-54 of 2004, during the pendency of this petition before this Court, the APMC, Yeshwanthpur, Bangalore, has issued a demand notice dated 25-1-2005, produced at Annexure-D along with the application filed under Section 151, C. P. C., etc. on 3-2-2005, to the effect that the petitioner is liable to pay such market fee on account of the fact that certain agricultural produces which this petitioner had imported from outside the State to the market area has undergone certain processing within the market area and as such this petitioner is liable to pay market fee for having processed such quantity of notified agricultural produces within the market area and in this demand, a reference is made not only to the earlier show cause notices, but also a circular dated 8-7-2004, issued by the APMC, which in turn refers to an earlier circular dated 18-5-2004, issued by the Director of Agricultural Marketing Board.

8. The petitioners are generally aggrieved by this circular dated 18-5-2004, issued by the Director of Agricultural Marketing, and followed by the circulars issued by respective APMCs, and have also sought for quashing of such circulars on the premise that the circulars are ultra vires the provisions of Section 65(2) of the Act.

9. While M/s. ITC Ltd., the petitioner in WP No. 39753/2004 has sought for quashing of the notices dated 3-8-2004, 9-8-2004, 3-9-2004, 21-9-2004 and also the circular

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dated 18-5-2004 issued by the Director of Agricultural Marketing, Bangalore, they have also sought for striking down the Explanation-(ii) inserted to the Act in terms of the amending Act 22 of 2004 dated 17-5-2004 as unconstitutional.

10. All other petitioners have confined their challenge to the legality of levy of market fee on the activities of processing as these petitioners are admittedly market functionaries involved in the activity of processing notified agricultural produce and have in this regard sought for similar declaration in respect of Explanation-(ii) as inserted by Act 22 of 2004 to the main Act. They have sought for declaration that the explanation is ultra vires, the main provisions of Section 65(2) of the Act. These petitioners have also sought for quashing of the circular dated 18-5-2004 issued by the Director of Marketing Board and consequential circulars issued by the respective Market Committees.

11. The challenge to the validity of the provisions of the Act as inserted by the amending Act 22 of 2004 is principally on the ground that the respondents have sought to mulct the petitioners with a liability in respect of the activity of processing of notified agricultural produces which takes place in the market area on the premise that the provisions as introduced by the amending Act 22 of 2004 enables them to so levy the market fee. The challenge to the provision is in the context of the stand of the respondents that the provisions added to the main Act by way of this amendment is one which creates a liability for payment of market fee in respect of processing notified agricultural produces in the market area. Incidentally, these petitioners have sought for quashing of the demand notices issued by the respective Market Committee wherever the demand is one quantifying the amount on the premise that the activity of processing also is an activity which attracts levy of market fee. A few facts as pleaded by the petitioners leading to the filing of these writ petitions are as under :

12. Insofar as petitioner in WP No. 39753/2004 namely, M/s. ITC Ltd., Bangalore, is concerned, the pleadings are that the petitioner, a limited company of varied business activities, has been carrying on activities in the processing of even notified agricultural produces; that in the sale of an agricultural produce, the petitioner in the course of its business purchases wheat in the market areas and market yards located within the States of Madhya Pradesh and Uttar Pradesh; that they cause transportation of such wheat through the Railways which reaches Whitefield Railway Station near Bangalore; that they have made arrangements through M/s. Central Warehousing Corporation to have such wheat bags unloaded from the Railway wagons at this place, have it transported by local carriers up to the warehouse located at Koralur village within the notified market area of APMC, Doddaballapur; that they have taken on lease the godown/warehouse at Koralur from M/s. Karnataka State Warehousing Corporation; that M/s. Central Warehousing Corporation who cause transportation of their wheat bags from the Railway Station at Whitefield to the warehouse at Koralur also take care of storing of the wheat bags at the warehouse; that the said M/s. Central Warehousing Corporation as per the directions of the petitioner causes further movement of the wheat bags from the warehouse to various processors with whom the petitioner has arrangements for the purpose of processing the wheat. It is the version of this petitioner that the petitioner while has taken on lease the warehouse, owned and constructed by M/s. Karnataka State Warehousing Corporation for the purpose of storage of wheat and other notified agricultural products which it has purchased within other market areas outside the State and which according to this petitioner has also suffered levy of market fee in that area, the services and expertise of M/s. Central Warehousing Corporation is availed for the purposes of transportation from the Whitefield Railway Station to the warehouse at Koralur, for the actual storing and preserving of the agricultural produces at the warehouse and also for the purpose of further transporting of such produces to the different purchasers who in the present case are all located outside the notified market area of APMC, Doddaballapur.

13. With such admitted facts, contention on behalf of this petitioner is that indulging in such activities by the petitioner by itself does not oblige the petitioner either to obtain a licence in terms of Section 8 of the Act nor does it place the petitioner within the jurisdiction of the APMC, Doddaballapur, for the purpose of exercise of power and for incidental activities

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for which the Market Committees are enabled under the provisions of Section 66 of the Act. It is for this reason, the petitioner has found fault with the notices referred to above whereunder the petitioner had been called upon to furnish certain information, particulars and was also apprised that it may be liable to pay market fee.

14. The further contention of this petitioner is that while the petitioner is not even amenable to the scrutiny by the Market Committee in respect of any of its admitted activities, the question of levy of market fee on the petitioner is far-fetched; that they are not liable to pay any market fee in respect of their admitted activities; that there is no liability created under the Act for payment of any market fee by the petitioner in respect of such activities carried on by the petitioner.

15. In respect of other petitions as noticed above, these petitioners are all market functionaries and have by themselves applied for and have obtained licences under Section 8 of the Act. But, their grievance is confined to levy of market fee on their activity of processing within the market area.

16. On issue of notices, the respondents have entered appearance through their Counsel. While Sri B. G. Sridharan learned counsel has appeared for the APMC, Bangalore, Doddaballapur and Mysore, Sri Thimmegowda, learned Counsel has appeared on behalf of APMC, Bellary, Sri C. S. Patil, learned Counsel has appeared for APMC, Gangavati, learned Advocate General has appeared on behalf of the State and Director of Agricultural Marketing and assisted by Sri Kempanna, learned Government Pleader.

17. Elaborate submissions have made on behalf of the petitioner by Sri Shanthi Bhushan, learned senior counsel and followed by Sri Subhash B. Adi, B. R. Satenahalli, Sri S. V. Subramanyam, Sri E. R. Indra Kumar, M/s. Khaitan and Co., Sri H. Kantha Raja and Kalyan Kumar, Counsel appearing for the petitioners in their respective writ petitions.

18. Appearing on behalf of the petitioner-M/s. ITC Ltd., in WP No. 39753/2004, submission of Sri Shanthi Bhushan, learned senior counsel is that the notices issued by the Market Committee, Doddaballapur, calling upon the petitioner to furnish details, particulars and information in terms of Notices at Annexures-C, D, F and H to this writ petition are without jurisdiction; that they are not supported under the provisions of the Act; that APMC, Doddaballapur, cannot trouble the petitioner for such information; that notices which also indicate that there is a possibility of the petitioner being prosecuted in the event of non-compliance amounts to harassment to the petitioner unless the petitioner is relieved of the obligation to respond to the same; that the activities as narrated in the petition and as pointed out does not bring the petitioner within the meaning of the words 'importer' or 'market functionary' and if so, no obligation on the part of the petitioner to obtain a licence under Section 8 of the Act. It is also the submission of Sri. Shanthi Bhushan, learned senior counsel that the provisions of Section 66 of the Act which reads as under :

"Section 66 : Power to order production of accounts and power of entry, inspection and seizure :-

(1) Any officer or servant of the State Government empowered by it in this behalf, may, for purposes of this Act, require any person carrying on business in any kind of notified agricultural produce to produce before him the accounts and other documents and to furnish any information relating to the stocks of such agricultural produce, or purchases, sales and deliveries of such agricultural produce by such person and also any other information relating to payment of the market fees by such person.

(2) All accounts and registers maintained by any person in the ordinary course of business in any notified agricultural produce and documents relating to the stock of such agricultural produce or purchases, sales and deliveries of such agricultural produce in his possession and the offices, establishments, godowns, vessels or vehicles of such person shall be open to inspection at all reasonable times by such officers and servants as may be authorised by the State Government in this behalf.

(3) If any such officer or servant has reason to suspect that any person is attempting to evade the payment of any market fee due from him under Section 65, or that any person has purchased any notified

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agricultural produce, in contravention of any of the provisions of this Act or the Rules, or the bye-laws in force in the market area, he may for reasons to be recorded in writing, seize such accounts, registers or documents of such person as may be necessary, and shall grant a receipt for the same and shall retain the same only so long as may be necessary for examination thereof or for a prosecution.

(4) For purposes of sub-section (2) or sub-section (3), such officer or servant may enter or search any place of business, warehouse, office, establishment, godown, vessel or vehicle where such officer or servant has reason to believe that such person keeps or for the time being keeps any accounts, registers or documents of his business, or stocks of notified agricultural produce relating to his business.

(5) The provisions of Section 100 of the Cr. P. C., 1973 shall, so far as may be, apply to a search under sub-section (4).

(6) Where any books of account or other documents are seized from any place and there are entries therein making reference to quantity, quotations, rates, receipt or payment of money or sale or purchase of goods, such books of account or other documents shall be admitted in evidence without witness having to appear to prove the same; and such entries shall be prima facie evidence of the matters, transactions and accounts purported to be therein recorded.

(7) If such officer or servant has reason to suspect that any person is attempting to evade payment of any market fee due from him under Section 65, he may, while seizing accounts registers or documents under sub-section (3) also seize so much of the notified agricultural produce as in his opinion would be sufficient to meet the amount of fee which may be found due from such person and also the penalty leviable under Section 65-A, and retain the same with him until the fee and the penalty are paid or for ten days, whichever is earlier. After the expiry of the period of ten days, if the fee or other amount due is not paid, the officer or servant shall dispose of the notified agricultural produce in public auction and adjust the sale proceeds are more than the fee or other amount due, the excess amount shall after deducting the charges incurred by the market committee, be refunded in the prescribed manner :

Provided that in the case of perishable notified agricultural produce, the officer or servant may dispose of the same before the expiry of the period of ten days if in his opinion such disposal is necessary."

Empowers the Market Committees to exercise the authority in the market area and to supervise the activities of market functionaries within the market area and the requirements on the part of the market functionaries to respond to the queries and provide satisfactory answers to the questions posed by the Market Committees vis-a-vis transactions of any agricultural produce in the market area, all should be understood as for the purpose of Section 8 of the Act, the licencing provision and not independent of it; that the provision being one which can make inroads into the freedom and the business activities of a person should be interpreted and understood as one strictly for the purposes of the Act and if so, it should be understood as a provision which can be called-in-aid by the Market Committees for obtaining such information only in respect of such market functionaries who are obliged to obtain a licence under Section 8 of the Act. In this context, learned senior counsel has placed reliance on the following decisions of the Supreme Court.

(a) 'The Belsund Sugar Co. Ltd. v. The State of Bihar (AIR 1999 SC 3125).

(b) 'Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd., 2004 (1) SCC 391 : (2003 AIR SCW 6696).

(c) 'The Barium Chemicals Ltd. v. Sh. A. J. Rana, 1972 (1) SCC 240 : (AIR 1972 SC 591).

19. Learned counsel by drawing attention to the provisions of Section 8 particularly the expression 'operate in the market area' as it occurs in sub-clause (ii) of Clause (b) of sub-section (1) of Section 8 (Section 8(1)(b)(ii)) submits that the petitioner by itself does not operate within a notified market area of the respondent No. 3-Market Committee; that from the stage of transportation of the notified food items from the Whitefield Railway Station to its godown at Koralur, storing it at Koralur, causing that to be further transported to the processor outside the market area are all carried out on its behalf by its appointed agent/business associate M/s. Central Warehousing Corporation with whom they have an agreement

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for such purposes; who are remunerated for rendering such services to the petitioner; that the petitioner by itself does not physically enter the notified market area of the respondent No. 3-Market Committee and if so there is no obligation on the part of the petitioner to obtain a licence. It is further submitted that if there is no obligation even to obtain a licence, then in the light of the interpretation that should be accorded to the provisions of Section 66 of the Act, the Market Committee cannot call upon the petitioner to furnish any information nor threaten the petitioner for any possible penal action for non-compliance with such notices.

20. Further submission of Sri Shanthi Bhushan, learned senior counsel for the petitioner in this regard is that assuming for argument sake, a person whose notified agricultural produce is stored within the notified market area is a market functionary within the meaning of this phrase and as such for such purposes, the petitioner though could have been considered as a person obliged to obtain a licence, still as the petitioner has made proper arrangement for such compliance through its agent namely, M/s. Central Warehousing Corporation, the Market Committee can only look up to such person who actually operates in the market area for compelling it to obtain a licence or even for furnishing of the information and particulars of the notified agricultural produces stored in that market area. In this regard, learned senior counsel submits that we are in the era of what is known as 'business processes outsourcing'; that the practice of business processes outsourcing has come to stay; that it is an accepted business norm and practice which has developed for the past about 10 to 15 years; that a person who is in a business activity which has several stages can depend on the convenience and other commercial considerations delegate some part of the business activities to independent third parties who may have skilled expertise to perform that part of the business activity; that to the extent that some part of the business activity is so entrusted to a third person, the obligations of the person carrying on the business for compliance with various requirements is also passed on to the person to whom such activities are entrusted to i.e., to the extent any part of the business is out-sourced, obligations are fastened on the outsourcee who performs the act and having regard to such current business practices, the petitioner has also sought to apply this practice to its business activity; that the petitioner has hired services of M/s. Central Warehousing Corporation for this precise purpose; that it is open to the petitioner to so arrange its business affairs and activities in such a manner that it is not only commercially profitable for the petitioner but can also relieve the petitioner of certain other statutory obligations and if such business practices which have come to be in vogue are to be recognised, it should be so held that the petitioner by itself is not obliged to comply with the requirements of Section 8 of the Act, but, it can be secured compliance even through its business associate.

21. The submission of learned senior counsel in this regard is that the provisions of Section 8 as also the provisions of Section 66 to the extent it is so permitted in the statute, should be so interpreted as to recognise such current business practices and commands this Court to interpret the provision in such a manner that adoption of business processes outsourcing is not excluded from the purview of the activities of the petitioner. Learned senior counsel has virtually urged this Court to apply and adopt a novel method of interpretation, an interpretation of a statutory provision which should keep in tune with the changing times and the current business trends. Learned counsel submits that, in fact, it is precisely for such purpose and to take advantage of the provision of the statute to the extent that it so enables the petitioner, the petitioner has organised its activities in such a manner that the petitioner by itself does not physically carry out any operations in the market area by itself, but has it carried through its business associate and if that is the factual situation, the petitioner should not be exposed to avoidable harassment at the hands of the respondent No. 3-Market Committee by calling upon the petitioner to furnish particulars, details, information etc., and the threat of possible prosecution if not complied.

22. Learned counsel has submitted in this regard that so long as the business associate of the petitioner has complied with or fulfilled the provisions of Section 8 or even

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the provisions of Section 66 of the Act, the respondent No. 3-Market Committee cannot compel the petitioner also to fulfil the very obligations by calling upon the petitioner to do so.

23. With regard to the liability for payment of market fee on the part of the petitioner, submission is that while the charging section of the Act does not create a liability for payment of market fee in respect of either the activity of storing or the activity of processing of a notified agricultural produce within the market area; even if such activities by themselves could have compelled a person carrying on such activity to obtain a licence in terms of Section 8 of the Act and as according to the learned counsel, the petitioner does not even carry out these operations in the market area by itself, the petitioner being called upon to pay any market fee is too far-fetched, without any authority of law and not even the amendment brought about to the main Act by Act 22 of 2004 has enabled the market committee to call upon either the petitioner or any other market functionaries who do not carry on the activity of buying of a notified agricultural produce within the market area subject to levy of market fee and accordingly submits that any proposal for levy of market fee on the petitioner or demand in pursuance thereto is not tenable; that the action for such purposes deserves to be quashed. Learned counsel in this regard has also drawn my attention to the interpretation of taxing statute; that the taxing statute should be strictly construed for understanding the scope of a charging section and cannot be enlarged or scope of the levy cannot be widened by the process of interpretation etc., that unless the very language of the provision creates a liability, no liability can be fastened on the subject by any other mode or means.

24. Other learned counsel appearing for other petitioners have also adopted the same line of argument and have laid emphasis on the construction of taxing statutes in the context of interpretation of the provisions of Section 65 of the Act and particularly to get over the stand on the part of the respondents that the amending Act 22 of 2004 and the addition of the Explanation-(ii) to the proviso to sub-section (2) of Section 65 has the effect of subjecting to tax the activity of processing of an imported notified agricultural produce subjected to processing within the market area.

25. Sri Subhash B. Adi, learned counsel for the petitioner has cited a decision of the Supreme Court in the case of 'Commissioner of Central Excise, Pondicherry v. ACER (India) Ltd. (2004 (8) SCC 173) : (AIR 2004 SC 4805) for the purpose of interpreting the provision of Section 65 of the Act.

26. Statement of objections have been filed on behalf of the respondent-Market Committee as also on behalf of the State and the Director of Agricultural Marketing.

27. In the statement of objections filed on behalf of respondent No. 3-Market Committee to Writ Petition No. 39753/2004 by M/s. ITC Ltd., it is inter alia contended that the petitioner has been to the knowledge of the respondent-Market Committee carrying on activities in respect of notified agricultural produces within the market area; that the Officials of the respondent No. 3-Market Committee had an occasion to visit and inspect the warehouse at Koralur taken on lease by the petitioner; that they had found large stocks of wheat and other notified agricultural produces being stored there; that it had also come to the notice of the respondent-Market Committee that the records and documents available could not properly explain the source of acquisition of the agricultural produces stored in the warehouse; that while the stand of the petitioner was that the entire quantity of agricultural produces stored in the warehouse had all been acquired by the petitioner i.e., purchased by the petitioner outside the market area, the documents available could not fully support the stand; that the person in-charge of the warehouse also could not give satisfactory explanations and answer all the discrepancies noticed by the Officials of the Market Committee; that it was in such circumstances, it became necessary for the Market Committee to issue notices to the petitioner to place better information and particulars, particularly with regard to the stock of agricultural produce found in the warehouse. It is also the stand of the Market Committee that the activities of the petitioner clearly attracts the provisions of Section 8 and the petitioner is a person who is obliged to obtain a licence; that the petitioner having not obtained such a licence, could expose itself to other consequences as provided for under the Act. It is specifically averred

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that the respondent No. 3-Market Committee has the authority in law to cause the kind of enquiry that it has done; that it is also perfectly justified in not only suggesting that the petitioner should obtain a licence calling upon the petitioner to obtain a licence failing which the petitioner is put on notice about possible penal consequences.

28. It is also the specific stand of the respondent No. 3-Market Committee which, in fact, is the stand of the other Market Committees also, that even a person who is not obliged to obtain a licence under Section 8 of the Act, nevertheless should comply with the requirements pursuant to a query by the Market Committee in exercise of its powers under Section 66 of the Act. On facts, it is asserted that while the petitioner has not obtained a licence from the Committee so far, which is characterized as a shortcoming on the part of the petitioner, it is also asserted that though M/s. Central Warehousing Corporation, through whom the petitioner claims to have been carrying on its activities within the notified market area of the respondent No. 3-Market Committee also had not obtained a licence when the notices were issued by the Market Committee and it is evident that during the pendency of the writ petition before this Court, M/s. Central Warehousing Corporation has applied for and has been given a licence to function as a market functionary as a stockist with effect from 4-12-2004 for the purpose of carrying on activities of storing notified agricultural produces.

29. The respondent No. 3-Market Committee at the threshold had raised a preliminary objection and contended that the writ petition is premature; that it is not required to examine such aspects in the exercise of writ jurisdiction, as the Committee, in fact, had issued notices providing opportunity to the petitioner to comply with the requirements; that there is no cause for the petitioner to approach this Court at such a stage and has prayed for dismissal of the writ petition on this ground itself.

30. The controversy with regard to obtaining a licence under the provisions of Section 8 and also with regard to requirements to comply with any such notices or queries put forth by the Market Committee in exercise of its power under Section 66 of the Act having arisen only in the case of the petitioner in WP No. 39753/2004 filed by M/s. ITC Ltd., I shall deal with this aspect first and then proceed to consider the question of scope of the charging section and the liability for payment of market fee in respect of the activity such as storing or processing of notified agricultural produces within the market area.

31. The Act is a piece of regulatory law with an object of providing for an assured market for the agricultural produces i.e., to provide for stable market to the produce grown by the farmers or agriculturists. It also has the object of protecting the growers from being exploited by traders and business people to the detriment of the growers who have by past experience had been shown to have always suffered in getting a commensurate or reasonable price for their products. The Act is to protect a farmer and to promote his interest by providing for an assured safe market for his produces. It is in this context that the Act provides for declaration of market, market area, market yard and the constitution of the Market Committees who function on a democratic basis providing for self-governance to the committees with representation being over a cross-section of different players in such activities, which is being led on the participation by the growers, the overall supervision by the Marketing Board on the aspects of finance and other regulatory provisions of the Market Committee and to achieve a sustained growth in the development of its markets.

32. The salient provisions are noted in the definition clause which read as under :

"Section 2(1) : 'Agricultural Produce' means the produce or goods specified in the schedule.

Section 2(5) : 'Buyer' or 'Purchaser' means a person who buys or agrees to buy goods.

Section 2(12-A) : 'Director of Agricultural Marketing' means the officer appointed by the State Government as such and includes any other officer or officers empowered by the State Government, by notification to exercise or perform such of the powers or functions of the Director of Agricultural Marketing under the provisions of this Act or the Rules as may be specified in such notification.

Section 2(14-A) : 'Importer' means a person who imports or causes goods to be imported on his own account or as an agent

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for another person from outside the market area into a market area for the purpose of selling, processing, manufacturing or for any other purpose except for one's own domestic consumption, but shall not include a public carrier.

Section 2(18) : 'Market' means any notified area declared or deemed to be declared to be a market under the Act.

Section 2(18-A) : 'Marketing' means buying and selling of agricultural produce and includes grading, processing, storage, transport, packaging, market information and channels of distribution.

Section 2(19) : 'Market Area' means all charges in connection with the handling of agricultural produce such as the commission of commission agents, brokerage, remuneration for weighmen, loading, unloading, cleaning, sorting, counting, sieving and dressing of agricultural produce.

Section 2(20) : 'Market Committee' or 'committee' means a market committee constituted for a market area under this Act.

Section 2(21) : 'Market Functionary' or 'functionary' includes a broker, a commission agent, an exporter, a ginner, an importer, a presser, a processor, a stockist, a trader and such other person as may be declared under the rules or the bye-laws to be a market functionary.

Section 2(22) : 'Market sub-yard' means a specified place declared or deemed to be declared to be a market sub-yard under this Act.

Section 2(23) : 'Market Yard' means a specified place declared or deemed to be declared to be a market yard under this Act.

Section 2(28) : 'Notified Agricultural Produce' means any agricultural produce which the State Government has by notification issued under Sections 4 and 5 declared as an agricultural produce the marketing of which shall be regulated in the market area;

Section 2(32) : 'Process' means a specified place declared or deemed to be declared to be a market sub-yard under this Act.

Section 2(33) : 'Processor' means a person who processes notified agricultural produce by mechanical means.

Section 2(34) : 'Producer' means a person who produces notified agricultural produce on one's own account -

(i) by one's own labour; or

(ii) by the labour of any member of one's family; or

(iii) under the personal supervision of oneself or any member of one's family by hired labour or by servants on wages payable in cash or kind but not in share of the produce.

Explanation :- For the purpose of this clause, a producer's society shall be deemed to be a producer;

Section 2(40) : 'Seller' means a person who sells or agrees to sell goods;

Section 2(43) : 'Stockist' means a person who processes notified agricultural produce by mechanical means.

Section 2(50) : 'Warehouse' means any building, structure or other protected enclosure which is or may be used for the purpose of storing agricultural produce being goods on behalf of the depositors but does not include cloak rooms attached to hotels, railway stations, the premises of other public carriers and the like;

Section 2(52) : 'Yard' includes the market yard, the market sub-yard and the sub-marked yard."

33. The scheme of levy of market fee on the activity of buying of agricultural produce in the market area is another salient aspect of this legislation. The finance aspects for such sustained activities such as providing for markets, developing the markets, providing such facilities to the market functionaries are all sought to be financed by receiving revenue by what is known as 'market fee' on the value of the agricultural produces transacted in the market area. Here again, the levy is sought to be fastened on the buyer and the grower himself is not subjected to any levy or liability.

34. In an enactment of this nature, regulation of the activities in the market, market area and the market yard is inevitable. While exploitation of the grower is to be prevented, realisation of the market fee for maintaining the activities under the Act has to be ensured. The regulation can be for both purposes. It is in this context, it compels every person who is a market functionary and who has his activities within the market area to obtain a licence as provided for under Section 8 of the Act. In fact, Section 8 prohibits the activities referred to therein

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being carried on by other than the person who has obtained a licence. Section 8 reads as under :

Section 8 : Control of marketing of agricultural produce;

(1) After the market is established -

(a) no local authority shall, notwithstanding anything contained in any law for the time being in force establish, authorise or continue or allow to be established, authorised or continued any place in the market area for the marketing of any notified agricultural produce ;

Provided that a local authority may establish or continue any place for retail sale of any notified agricultural produce (other than cattle, sheep and goats) subject to the condition that no market functionary shall operate in such place except in accordance with the provisions of this Act, and the rules and the bye-laws and standing orders of the market committee;

(b) no person shall, without or otherwise than in conformity with the terms and conditions of a licence granted by the market committee in this behalf -

(i) use in any place in the market area for the marketing of the notified agricultural produce; or

(ii) operate in the market area or in any market therein as a trader, commission agent, broker, processor, weighman, warehouseman, or in any other capacity in relation to the marketing of the notified agricultural produce :

Provided that nothing contained in clause (b) shall apply -

(i) to the sale of such agricultural produce if the producer of such produce is himself its seller; or

(ii) to the purchase of such produce if the purchaser is a person who purchases such produce for his domestic consumption.

(2) No place except the market yard, market sub-yard, or sub-market yard, as the case may be, shall be used for purchase or sale of notified agricultural produce.

(3) Nothing in sub-section (2) shall apply to -

(a) the purchase or sale of notified agricultural produce by -

(i) a Taluk Agricultural Produce Co-operative Marketing Society;

(ii) a Primary Agricultural Co-operative Credit Society, and

(iii) any other Co-operative Society permitted by the State Government;

(b) the sale of notified agricultural produce by a retail trader.

What is of particular importance and relevance for the purposes of present petitions is the provisions of Section 8(1)(b)(ii). In this regard, the phrases of 'processor', weighman', 'warehouseman' and the residuary phrase "in any other activity" in relation to the marketing notified agricultural produce is of considerable importance. So far as the petitioner is concerned, on admitted facts, the petitioner is the owner of considerable quantities of a notified agricultural produce which is stored in a warehouse situated within the market area, notified to be the market area of the respondent No. 3-Market Committee. To this extent, there is no dispute. There is also no dispute that it is for the purpose of benefit of the petitioner that such agricultural produces are brought and stored in the warehouse and without any dispute the petitioner has control over the agricultural produces stored in the warehouse. It is at the behest of the petitioner such agricultural produce has been brought in the market area, is stored in the market area and in fact, also leaves the market area as per the instructions and directions of the petitioner. Under such facts and circumstances, the petitioner clearly comes within the definition of an 'importer' as defined under Section 2(14-A) of the Act. On the plain reading of this phrase, the petitioner is an importer notwithstanding the argument relating to the concept of business processes outsourcing and notwithstanding the fact that, in fact, physically it is M/s. Central Warehousing Corporation who while acting as an Agent of the petitioner brings the agricultural produces into the market area and stores it in the market area. While on facts, the argument fails because the warehouse admittedly is taken on lease by the petitioner and if so is in the possession of the petitioner and the petitioner is definitely responsible for the agricultural produce stored or stocked in its warehouse, petitioner, in fact, also happens to be the owner of the very agricultural produce stored in this warehouse. It is the petitioner who causes the goods, namely, wheat and other

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agricultural produces to be brought inside this warehouse in the market area, the petitioner definitely is an importer. The definition of the term 'market functionary' under Section 2(21) includes an importer, a stockist etc. The petitioner answers the definition of not only an importer but also a stockist. Though there can be a debate as to whether the petitioner by itself becomes a warehouseman or not, there cannot be any dispute that the petitioner is an importer and also that the petitioner is a stockist within the meaning of these phrases as it occurs in the definition section of the Act. The obligation to obtain a licence under Section 8 on such persons is clear and categorical.

35. It is precisely for this reason that the petitioner has raised a contention and has put forth an argument that if the practices of business processes outsourcing is to be recognised and even applied for the purpose of understanding the provisions, the petitioner may be relieved of the obligation and consequently that the obligation can be on the person in whose favour the petitioner has outsourced the activity or in the sense entrusted such part of its activity and that should take care of the interest of the petitioner even if the petitioner by itself does not obtain a licence.

36. The practice of business processes outsourcing is a practice that has come into vogue in recent times over the past ten to fifteen years in certain areas of business activities and business management. This is a practice which is particularly prevalent in the light of developments of what is known as 'Information Technology'. There has been an astounding break through in the fields of communication and dissemination of knowledge. The methods of communication have vastly changed. Mode of communication and dissemination of knowledge has also undergone a revolutionary changes. The conventional concept of dissemination of knowledge through the print media has given way to the dissemination of knowledge through digital processes. Break through in science and technology has achieved the wonder of storing vast information at the tip of a point. Access to information is also made easier, quick and without hassle through the medium of digital communication; through the net and through the employment of satellites. Business activities are not necessarily carried out through conventional processes at a place known as office but can also be carried out at the place of the employee, at the place of the business partners wherever they may be located, accessed between one businessman and another located in different parts of the globe without moving from their place has become possible. It is in the development of such break through in science and technology and getting a part of the business activity executed from persons who are not necessarily located at the main place of business of a particular businessman that has brought in the concept of business processes outsourcing. Commercial consideration such as variances in the service charges at different places on the earth has contributed to the growth of this practice. To what extent such concept is relevant or applicable to the present situation is the question. The subject-matter is one of regulation of the activities of a person transacting or involved in the transaction of a notified agricultural produce in the market area. Certain obligations such as obtaining a licence are cast on such a person. The obligation is on the very person who carries on such activity within the market area. So long as a person carries on that activity which is an activity within enumerated ones for which obtaining of licence is mandatory under Section 8 of the Act is carried on by a person, there is no escape for that person from the obligation of obtaining a licence. In fact, non-compliance results in penal consequences. I am of the view a provision which imposes or creates certain obligations on a person, the non-compliance of which attracts penal consequences is not an activity that can be said to be delegated to some other person for the purpose of avoiding the consequences. It is immaterial whether a person carries out or fulfils the obligation by himself or through an agency. The fulfillment is for the purpose of ensuring compliance by the very person and not that of the agent. In the present case, it is already noticed that the petitioner definitely answers the test of a market functionary. If so, the obligation of obtaining a licence is on the petitioner. It is no good answer to say that M/s. Central Warehousing Corporation who carries on the warehousing activity within the market area has obtained a licence. If at all, M/s. Central Warehousing Corporation has obtained a licence, it can save their claim to the extent they were required to obtain a licence

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under the Act. The benefit does not pass on to the person like the petitioner. It could have been a different matter if the agent acts as an agent for the principal, applies licence in the name and on behalf of the principal i.e. the petitioner M/s. ITC Ltd., the licence is so obtained and in fact, necessary compliance are also secured on behalf of the petitioner by the agent. If all such compliances are procured by the agent in the name of the petitioner, perhaps that can be a good answer as the purpose of the Act is served. If the agent answers the queries on behalf of the principal and to the satisfaction of the Committee and nothing further is required to be done. So long as this has not happened, the Market Committee can definitely look up to the petitioner for such information, such particulars and for production of such accounts and documents. In fact, in the present case, it is precisely for this reason, the Market Committee has also issued notices to the petitioner as it was found that the answers given by the persons in charge of the warehouse and documents and accounts produced by them were not to the satisfaction of the Market Committee. The concept of business processes outsourcing cannot be called-in-aid to get over the obligation of obtaining a licence for carrying on an activity which is otherwise permitted only under the licence.

37. The argument that provisions of Section 66 should be construed in the light and for the purpose of Section 8(3), in fact, does not absolve the petitioner in the present case from any obligation as the petitioner is a person who is required to obtain licence by itself. But, the argument having been canvassed, I am examining this aspect also.

38. While the provisions of Section 66 of the Act can definitely be held to be an enabling provision in favour of the Market Committee for effective implementation of the provisions of the Act and subserves such purpose, it should be noticed that the power in favour of the authorities is to the extent indicated in the very provision itself. The provision is one in the context of ensuring prevention of evasion and non-compliances and also enables the Market Committee to take remedial measures by not only realising the amount of market fee sought to be evaded but also by imposing a penalty which enables under Section 65-A of the Act and coercive steps for realisation of the same.

39. While it cannot be doubted that the provision is intended to check and prevent persons from indulging in the activities for which one has to obtain a licence to prevent one from carrying on the same without obtaining a licence, but also for ensuring that true accounts and state of affairs are revealed so that the loss of revenue is also prevented. The provision also gives a power of entry, search and seizure in favour of the Officers of the Market Committees. The provision being one for prevention of evasion and prevention of malpractice in the market area, the construction should be one which is not necessarily confined to understand the provision as one which is co-extensive with the provisions of Section 8 of the Act but which can go beyond. This is particularly so because there can be persons who are committing acts of infraction of provisions of Section 8 and also infraction of provisions of Section 65 of the Act. The provision acts as an enabling provision for the Market Committee with certain powers for preventing such malpractice. Such limitation that can be placed on a provision like this is that the power should always be exercised bona fide, for the purpose of the Act and within and to the permitted extent and not beyond. Whether in a given case, it has been so done or not, is always a question of fact which will have to be examined and answered on the examination of the facts and circumstances of the particular case.

40. This Court has also noticed one more development during the pendency of the writ petition before the Court. When the question of requirement on the part of the petitioner to respond to the notices issued by the Market Committee was being debated, at the suggestion of the Court, the petitioner volunteered, without prejudice to its contentions and rights, to make available the books of accounts and other documents for the scrutiny of the Market Committee and the Market Committee was also directed to furnish a report in the light of the said material being scrutinized. A report of the Market Committee on such scrutiny while indicates that there are considerable discrepancies; that it is possible for the Market Committee to reasonably infer that not all stocks of the agricultural produces stored in the warehouse on the date when inspected have been necessarily brought from outside

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the State and to the extent of such shortcomings, it could have been possibly a local purchase by the petitioner. The petitioner by filing its response to the same has strongly refuted this report; that it is the confirmed stand of the petitioner that the petitioner has not involved in the activity of buying and selling within the market area; that on such sporadic instances it was necessary for it to buy agricultural produces within the local area of any market area; that the petitioner has done it with notice and by complying with necessary provisions etc. It is not necessary for this Court to examine these aspects of the matter any further in this writ petition for the simple reason that there has been no dispute between the petitioner and the respondents that the activity of buying and selling of notified agricultural produces within the market area invariably attracts levy of market fee and as submitted by Sri. Shanthi Bhushan, senior counsel appearing for the petitioner, is ready and willing to pay such market fee as it is liable in respect of such activities, it is no more a disputed aspect except to the extent as to whether there was any such buying and selling within the market area which had not been accounted for by the petitioner. This is a matter which can be verified on facts by the respondent-Market Committee under notice to the petitioner and the matter can be proceeded in accordance with the statutory provisions. Except to notice the developments to this extent, it is not necessary to go into this aspect any further that the report of the Market Committee, the response to it filed by the petitioner are all on record before this Court.

41. In the light of the discussion above, it is inevitable that the petitioner in WP No. 39753/2004 is bound to respond to the notices under Annexures-C, D, F and H. The question of issuing a writ for quashing does not arise. The argument on behalf of the petitioner for relieving the petitioner from the obligation of not only from obtaining a licence, but also from the obligation of answering to the queries under the notices fail and is rejected.

42. The other and common question agitated on behalf of all the petitioners is the question of liability on the part of the petitioners for payment of any market fee in respect of the activities of processing and stocking of notified agricultural produces within the market area. It is significant to note the stand taken by the respondents in this regard and as revealed in the counters filed.

43. The stand of the Market Committees is that the activity of importing a notified agricultural produce to a market area for the purpose of processing also attracts the levy of market fee as is indicated in one of the notices issued to the petitioners. However, the justification for such a levy is as indicated by Sri. B. G. Sridharan, Sri. Thimmegowda and Sri C. S. Patil, learned counsel appearing for the Market Committee is because of the amendment to the Act by Act 22 of 2004 particularly due to the incorporation of Explanation (ii) to the second proviso to sub-section (2) of Section 65 of the Act.

44. Statement of objections on behalf of the State and the Director of Agricultural Marketing also indicates that the activities of processing of an imported agricultural produce were sought to be subjected to levy of market fee; that it had been noticed that many processors have indulged in importing of agricultural produces from outside the State; that the produce was subjected to a process which, in fact, results in value addition to the agricultural produce, but would not sell it within the State but take it out of the State and while the entire activity was bereft of any income or revenue to a Market Committee, it was at the cost of facilities that had been developed by various Market Committees or the State itself, which facility had been extended to such processing units located within the State and as such it was thought proper to subject such activities also to liability of payment of market fee and it was for achieving this object, the amendments by Act 22 of 2004 was carried on to the principal Act and on and after such amendment, the activity of processing by an act of importing notified agricultural produce attracts levy of market fee and, therefore, the levy is justified.

45. Attention is drawn to Explanation (ii) to the proviso added by Act 22 of 2004 and it is indicated that this has the effect of creating a charge for payment of market fee on the activity of importing a notified agricultural produce either for processing or manufacturing etc. Submission of learned Advocate General appearing for the State in this regard is that the experience of the State

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was that persons who are dealing with the notified agricultural produces, persons who are utilizing the notified agricultural produce for the purpose of producing several finished products with considerable value addition and for their benefit; were by clever devices avoiding levy of any market fee by the Market Committee by so arranging their affairs that no levy of market fee was possible on them by not effecting either the sale or not buying notified agricultural produce within the market area and while it had resulted in considerable loss of revenue to the Market Committees, it was not productive for the State also as the services of processing units developed in the State by providing many incentives was being utilized by persons like the petitioners without commensurate revenue or benefit to the State and, therefore, the provision was brought to rope in such persons within the net of the market fee under the Act. Learned Advocate General has made submissions that there is every justification and necessity for including such a provision; that levy of market fee on such persons who have caused imported agricultural produce for processing within the State and by utilizing the services of processing units established within the State is fully justified; that persons who have derived considerable benefit by availing of services of such processing units cannot complain when it comes to the question of paying market fee; that their grievances are not legitimate and, therefore, the writ petitions deserve to be dismissed.

46. The provisions of Section 65 of the Act before and after the amending Act 22 of 2004 reads as under :

Before After

65. Levy of market fees- 65. Levy of market fees-

(1) x x x x (1) x x x x

(2) The market committee shall levy and collect market fees from every buyer in respect of agricultural produce bought by such buyer in the market area, at such rate as may be secified in the bye-laws (which shall not be more than two rupees per one hundred rupees of the value of such produce bought except in case of livestock where the market fee shall not be more than (five rupees per head) of cattle other than sheep or goat, and in the case of sheep or goat such fee shall not be more than (one rupee per head) in such manner and at such times as may be specified in the bye-laws. (2) The market committee shall levy and collect market fees from every buyer in respect of agricultural produce bought by such buyer in the market area, at such rate as may be specified in the bye-laws [(which shall not be more than two rupees per one hundred rupees of the value of such produce bought except in case of livestock where the market fee shall not be more than (five rupees per head) of cattle other than sheep or goat, and in the case of sheep or goat such fee shall not be more than (one rupee per head) in such manner and at such times as may be specified in the bye-laws.

[Provided that in the case of any co-operative society doing business in agricultural produce within a market yard, market fee shall be levied and collected at the rate of eighty per cent of the market fee payable under this Act.] [Provided that in the case of any co-operative society doing business in agricultural produce within a market yard, market fee shall be levied and collected at the rate of eighty per cent of the market fee payable under this Act]

"Provided further that, if on any agricultural produce market fee has already been levied and collected under sub-section (2) in any market area within the State and such agricultural produce is processed and sold in any other market area within the State or exported outside the State it shall be exempted from the levy of market fee.

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Explanation :- Nothing in this proviso shall apply to-

(i) any processed agricultural produce imported from outside the State and sold in any market area within the State; or

(ii) any agricultural produce imported by any person either on his own account or as an agent for another person, from outside the State into any market area within the State for the purpose of processing or manufacturing except for one's own domestic consumption."

(2-A) The market fee payable under this section shall be realised as follows, namely:- (2-A) The market fee payable under this Section shall be realised as follows, namely:-

(i) if the produce is sold through a commission agent, the commission agent [shall] realise the market fee from the purchaser and shall be liable to pay the same to the committee; (i) if the produce is sold through a commission agent, the commission agent (shall) realise the market fee from the purchaser and shall be liable to pay the same to the committee;

(ia) if the produce is sold by an importer to the purchaser, the importer shall realise the market fee from the purchaser and shall be liable to pay the same to the committee; (ia) if the produce is sold by an importer to the purchaser, the importer shall realise the market fee from the purchaser and shall be liable to pay the same to the committee;

(ii) if the produce is purchased directly by a trader from a producer, the trader shall be liable to pay the market fee to the committee; (ii) if the produce is purchased directly by a trader from a producer, the trader shall be liable to pay the market fee to the committee;

(iii) if the produce is purchased by a trader from another trader, the trader selling the produce (shall) realise it from the purchaser and shall be liable to pay the market fee to the committee; and (iii) if the produce is purchased by a trader from another trader, the trader selling the produce (shall) realise it from the purchaser and shall be liable to pay the market fee to the committee; and

(iv) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee to the committee. (iv) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee to the committee.

(2-B) The market fee payable under clause (i), (ia), (ii) or (iii) of sub-sec. (2-A) shall be paid to the market committee within such time as may be specified in the bye-laws. (2-B) The market fee payable under clause (i), (ia), (ii) or (iii) of sub-section (2-A) shall be paid to the market committee within such time as may be specified in the bye-laws.

(3) Notwithstanding anything contained in this Act, if any market committee in the State has already levied and collected market fee under sub-section (2) from a buyer in respect of any agricultural produce as may be specified by the State Government by notification, no market fee shall be levied and collected again in respect of such agricultural produce by any other market committee in the State during such period as may be specified in such notification, subject to production such proof as may be prescribed for having collected the market fee. (3) Notwithstanding anything contained in this Act, if any market committee in the State has already levied and collected market fee under sub-section (2) from a buyer in respect of any agricultural produce as may be specified by the State Government by notification, no market fee shall be levied and collected again in respect of such agricultural produce by any other market committee in the State during such period as may be specified in such notification, subject to production such proof as may be prescribed for having collected the market fee.

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47. Sri B. G. Sridharan, learned counsel appearing for some of the Market Committees has taken me through the Statement of Objects and Reasons provided when the Bill was introduced in the Assembly and also to the provisions of the amending Act and as incorporated into the principal Act. The Statement of Objects and Reasons are extracted and reads as under :

"STATEMENT OF OBJECTS AND REASONS

(As appended to at the time of Introduction)

It is considered necessary to review the present provisions in the Karnataka Agricultural Produce Marketing (Regulation) Act, relating to 'retail sale' and 'retail trader' which prescribes the maximum quintals of agricultural produce that can be stocked by a retail trader to ensure transparency and flexibility to meet the situation arising from time to time, therefore, it is considered necessary to amend Act to provide for;

(1) Fixing of maximum quantity of agricultural produce or goods to be stocked by retail traders in the State by State Government through notification from time to time.

(2) Fixing of such quantity for retail sale by the market committees within the prescribed maximum limit in their bye-laws which enables the consumers to purchase the commodities for domestic consumption and to restrict the same for subsequent sale or processing.

Further the system of levy of market fee on the sale of notified agricultural produce has been rationalized to provide for levy of market fee at single point once in any market committee on the first sale. The subsequent sales of the commodity in any other market area will be exempted from the levy of market fee. Further to this to give impetus to the Agro Processing Sector in the State which ensures value addition to the agricultural produce enabling the farmers to get a better price for their produce and to attract investments from private sector to the Agro Processing Sector which makes the agricultural marketing operations more effective. Therefore, it is considered necessary to amend the Karnataka Agricultural Produce Marketing (Regulation) Act to provide for :-

(1) Exemption from the levy of market fee on agricultural produce on which market fee has already been levied and collected in any market area within the State and such agricultural produce is processed and sold in any other market area within the State or exported outside the State.

Hence, the Bill."

A cursory reading of the Statement of Objects and Reasons indicate that the Bill is introduced for the purpose of amending the Act to ensure that encouragement is given to Agro Processing Sector in the State which in turn has the effect of value addition to the agricultural produce, enhancing their marketability to the benefit of the farmers who can on such favourable marketing facilities and demand get a better price for their products and for the purpose of attracting investments from private sectors to the Agro Processing Sector which makes the agricultural marketing operations more effective. It is to give effect to such objects, amendment has been introduced. While the reading of the Objects and Reasons definitely indicates that the idea is to give encouragement for setting up of more and more processing units by attracting investments from private sectors and the provision is one for giving such incentive, what is actually contended and appears to have understood for implementation is quite contrary. The Object appears to be to give an incentive for increasing the number of processing units and, therefore, there should be a concession extended. The concession extended is by providing an exemption from levy of market fee in respect of processed notified agricultural produces also subject to the condition that prior to such processing the base products had been subjected to levy of market fee once within any market area in the

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State. It is a provision for extending a benefit to the notified agricultural produce otherwise which could be subjected to levy of market fee. That is achieved by providing for the second proviso. However, while providing for such a benefit or extending such concession, it is sought to be restricted to only such notified agricultural produces which are grown within the State and the object of the amended provisions as indicated in the Explanation (ii) is not to extend such a benefit in respect of notified processed agricultural produces brought from outside the State and which are imported to any market area. This is on the face of it what appears to be on a reading of the provisions.

48. Section 65 of the Act is the main charging section. The incidence or the event for levying fee is the activity of buying a notified agricultural produce within the market area. The charge is on the activity of buying of a notified agricultural produce within the market area. Under sub-section (3) of Section 65, the levy of market fee is sought to be made a single point levy, in the sense that, a notified agricultural produce which has been subjected to levy of market fee in any market area if sold even within the precincts of any other market area and subjected to repeated sales thereafter, nevertheless, exempted from payment of any market fee i.e. only the first sale of a notified agricultural produce is subjected to levy of market fee and not subsequent sales of the same produce. It is on perusal of the schedule to the Act which mentions the agricultural produces in respect of which market fee is leviable on the sale of the same within the market area indicates that it not only contains a primary agricultural produce but also some processed agricultural produces and further processed agricultural produces. Paddy is a notified agricultural produce. The processed product of paddy, namely, rice is another notified agricultural produce. Further produce, namely, broken rice is also a notified agricultural produce under the scheme of the Act and as provided for under Section 65(3) is in respect of the very produce and subject to proof of payment. The object of second proviso appears to extend such benefit of single point levy even in respect of the processed items of a notified agricultural produce which has suffered levy of market fee earlier and within the State. While, the understanding of these provisions poses not much difficulty, the matter gets complicated by the stand taken by the State and sought to be implemented by some of the Market Committees who has shown enthusiasm by issuing certain proposition notices and have issued demand notice for payment of market fee in few cases by calling upon the licensee who is a mere processor of agricultural produce and who has imported the said produce from outside the State to pay market fee on the value of the imported agricultural produce meant for processing.

49. As it is contended with some vehemence and assertiveness by the learned Advocate General on behalf of the State, though the vehemence did get reduced as the debate progressed, it has become necessary for this Court to examine the scope of levy and the actual liability that is created under the provisions of the Act.

50. There is no dispute that Section 65 is the only charging section in the Act, particularly, sub-section (2) of Section 65. What stands out now is one for creating charge and charge as noticed earlier is in respect of the activity of buying notified agricultural produce within the market area. If a charge is created in clear and unambiguous terms, the matter ends. It is only to be effectuated. It is only when there is no such charge in express terms, problems arise. The provisions of Section 65 are undoubtedly in the nature of taxing statute. Therefore, the principles of interpretation governing interpretation of taxing statutes necessarily applies though the levy is characterised as a fee. The levy is by an act of Legislature and by far general in nature and on every buyer in the market area. Ultimately, the significance of the term 'fee' can only be in the context of revenue being commensurate to the expenditure incurred for the objects of the particular act, nature of levy is not far from a levy in the nature of taxes. It is by now well settled that there are three basic components of a taxing statute. Firstly, subject of the tax in the present situation, is the activity of buying notified agricultural produce within the market area. Secondly, the person liable to pay the tax, namely, the buyer who buys a notified agricultural produce within the market area and thirdly the rate, being not exceeding 2% of the value of the produce sold in the market area, subject to

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an element of discretion being made to fix the rate in the range of 1% to 2%. It is also well settled that if there is any ambiguity in respect of any of the components in the sense the ambiguity is one which is not capable of resolution by applying any principles of accepted norms of construction, then the very taxing statute fails. It is also a well accepted principle that it is not the function of the Courts to remove the defect but it is the domain of the Legislature to take care of this aspect of the matter. A strict construction of the taxing statute is the accepted norm. To understand the meaning of a section in a taxing statute, the best way is to look into the very section and understand that through the language employed in the section and the language should be understood in its natural meaning and in so far as taxing statute is concerned, the charge of levy is achieved by the very language and not by any other external side. The levy is not by either an intendment or process of reasoning or processes of inference referred to. This is the well accepted path as developed in England and in the decisions of House of Lords which have all been followed by the Supreme Court in a catena of cases. A reference to a few leading cases will suffice for the purpose of our present discussion. One is the case of 'CIT Madras v. Kasturi and Sons Ltd.,' (1999) 3 SCC 346 : (AIR 1999 SC 1275) and with regard to the construction of the taxing statutes and other decision of the Supreme Court in 'Mathuram Agarwal v. State of Madhya Pradesh' (AIR 2000 SC 109) wherein it is indicated that the changes that are required to make a taxing provision either really effective or to achieve the object for which it had been enacted but if had not achieved that purpose by the inelegant use of the language, it is to be set right only by the Legislature and not by the Courts and at any rate not by the Courts adopting a process of interpretation of the provision to enlarge the scope of a charging section.

51. A reading of the provisions of Section 65 while undoubtedly makes it clear that the charge is only under sub-section (2) of Section 65 and on the activity of buying, the further provisions like sub-section (3) makes it a single point levy and the two provisos added to sub-section to the charging section seeks to reduce the rigor of the levy in situations mentioned therein. While proviso (1) and (2) particularly proviso (2) as added by the amending Act 22 of 2004 can only have the effect of reducing the rigor of the charging section i.e., the main provision of sub-section (2) of Section 65, it can never have the effect of either roping any more activities within the net of the charging section nor has the proviso achieved any such purpose. Even on a plain reading of the proviso, what it seeks to do is only to extend certain benefit or concession even in respect of the activity of buying of a processed notified agricultural produce. However, as it is the second explanation to the second proviso which is very strongly relied upon by the learned Advocate General to support the argument that the action on the part of the Market Committee and particularly for the purpose of levy of market fee on the activity of importing of notified agricultural produce for processing is supported by this explanation, it is necessary for me to examine this provision.

52. A plain reading of Explanation (ii) clearly indicates that while the proviso extends certain benefits, namely, single point levy even in respect of processed agricultural produces so long as the basic agricultural produce has been once subjected to levy of market fee within the State, that benefit is sought to be curtailed and confined to the agricultural produces so produced within the State and does not extend to agricultural produces brought from outside the State and subjected to processing. A reading of the proviso and the explanations clearly indicate that they are in the nature of cavitation in the scope of levy on this activity subject to fulfilling certain conditions. While, the maximum levy is under sub-section (2), the proviso only seeks to reduce the rigor of it. A plain reading of this provision indicates that there is absolutely no hint of enlarging the scope of levy under the provisos or the explanations. So long as the main charging section which provides for the three essential components of the taxing statute confines the levy to the activity of buying, by addition or deletion of any proviso or any explanation, the scope of that levy cannot be enlarged. Assuming that there is scope for reading any statute or even a taxing statute as a whole that is to read the charging section, provisos and the explanations as a whole, even by such a reading, the second explanation does not achieve or produce the

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result of subjecting to levy the activities of processing an imported agricultural produce or the activity of storing or stocking agricultural produce within a market area to levy of market fee.

53. On a reading of the circular dated 18-5-2004 issued by the Director of Marketing, which is also sought to be quashed, while it recites that it is issued for the purpose of giving effect to the amended provisions of Section 65 as amended by Act 22 of 2004, it also expressly directs the Market Committees to take action for levying market fee in respect of the value of imported notified agricultural produce in the event of processing of such imported agricultural produce. It is this portion of the circular which is contended on behalf of the petitioners to be going beyond the scope of the provisions of Section 65 and on a total misunderstanding of the actual provision of Section 65 as amended by Act 22 of 2004 and as is sought to be implemented by the Marketing Board as also the Market Committees.

54. I have already indicated that though it was sought to be argued on behalf of the respondents that the provisions of the amending Section 3 of the Act 22 of 2004 achieves the object of levy of market fee on the activity of processing an imported notified agricultural produces, unfortunately, this is not so in the actual language of these provisions and it is not even so as per the statement of objects and reasons appended to the Bill at the time of introduction of this legislation in the Assembly. While, the purpose and reason for introducing an amendment may be perhaps was to rope in such activities and to augment revenue in favour of the Market Committees, neither the language of the object and reasons spell it out nor has it been put in that manner in the statute. While providing or not so providing in the statement of objects and reasons in itself would not have been of much consequence in the absence of the very statute having provided for it, by no stretch of imagination or on applying any accepted norm of interpretation can it be understood or described that the amended provision has the effect of subjecting to levy of payment of market fee, a notified processed agricultural produce if it is imported from outside the State and subjected to processing activity in the state. It is not so in the language of the section.

55. While passing I may also indicate that the only activity that is roped in for levy of market fee under the charging section is the activity of buying of a notified agricultural produce within the market area. So long as any activity is brought within the phrase of buying either as understood or on interpretation of the provisions of the Act or even on common understanding, there is no levy of market fee on any other activity. If the market committee is able to make good that the activity is in the nature of buying of an agricultural produce in the market area, it definitely attracts levy and not otherwise. As the question had been raised in the present case, even in respect of the activities of storing or processing and importing of agricultural produce also could be subject to levy as indicated in some of the notices issued by the Market Committees and in terms of the demand raised, it is for such purpose, it is made clear that such activity did not attract levy of market fee in terms of Section 65(2) of the Act. However, it is also clarified that a mere information for liability for payment of market fee under Section 65(2) is not the criteria for obtaining or not obtaining a licence under Section 8 of the Act. The provisions operate in different area and for purposes mentioned therein. So far as the petitioner in WP No. 39753/2004 is concerned, it is clear that the activities of the petitioner is one that ropes in the petitioner within the meaning of the phrase 'importer' and 'stockist' and is a market functionary obliging the petitioner to obtain licence under Section 8 of the Act. The contention that the petitioner is not obliged by employing the method of what is known as business processes outsourcing and on an interpretation based on such developments cannot be accepted and is rejected.

56. In the result, while, the legal position in so far as charging section is clarified, the demand raised on the petitioners otherwise than in conformity with such charge are not sustainable and as a result demand notices dated 30-7-2004 are quashed by issue of a writ of certiorari. In so far as such of those petitioners who might have paid the market fee as demanded by the market committees on the premise that such fee was payable in respect of the activity of importing, processing and storing also, it is open to such petitioners to seek for refund of the amount so paid subject to satisfying other conditions and the market committees

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shall pass orders on the same within a reasonable time. In respect of other notices and demands it is for the petitioners and the market committee to work out in accordance with the provisions of the Act.

57. In so far as legal notice that has been issued to the petitioner in W.P. No. 39753/2004 is concerned, it cannot be said that they are not without support of law and are sustainable.

58. However, it is open to the petitioner to respond to the same and to take such remedial action to ensure compliance with the provisions of the Act. Sri, B. G. Sridharan, learned counsel appearing for the Market Committee, clearly submits that the time for responding to the notice that had been issued by the market committee to the petitioner is extended by another two weeks within which time they can respond to the same.

59. It is made clear that the circular dated 18-5-2004 issued by the Director of Agricultural Marketing in so far as it is inconsistent to the interpretation placed on the provisions of Section 65 by this Court in this order is not a proper understanding and the Director of Agricultural Marketing is hereby directed to clarify this position and reissue the circular in conformity with the interpretation placed on the scope of Section 65 of the Act in these cases.

60. It is also clarified that circular issued by the respective Marketing Committees based on the circular of the Director of Agricultural Marketing and also to this extent should fall in line and should be corrected. The question of enforcing the same in consistence with the interpretation placed by this Court on the scope of Section 65 of the Act, does not arise.

61. While W.P. No. 39753/2004 is allowed in part and to the extent indicated above in so far as any levy, in respect of activities other than buying of a notified agricultural produce in the market area is concerned, the other petitions are allowed. Rule made absolute in all the writ petitions.

62. I must place on record the valuable assistance rendered by learned counsel appearing for the parties who have advanced arguments rich in substance, well researched and supported by case-laws.

Order accordingly.

AIR 2003 KARNATAKA 157 "Kedari v. State of Karnataka"

KARNATAKA HIGH COURT

Coram : 1 V. GOPALA GOWDA, J. ( Single Bench )

Kedari and others, Petitioners v. State of Karnataka and others, Respondents.

Writ Petn. No. 34551-34576 of 2002, D/- 24 -10 -2002.

Constitution of India, Art.73, Art.14, Sch.7, List 1, Entry 47 - INSURANCE - AGRICULTURAL PRODUCE - National Agricultural Insurance Scheme - Compulsory coverage of crops - Scheme framed by Union of India under Art. 73 - Have statutory force - And is policy matter - Govt. has power to frame the scheme - Said scheme framed to protect farmers from exploitation by Banks or private persons -Not arbitrary or discriminatory - Further, classification regarding crop area made by State Govt. and Co-ordination committee - Is reasonable classification.

The Union of India framed the National Agricultural Insurance Scheme under Art. 73 for compulsory coverage of crops grown by farmers in area notified by State Govt. The objective of the said Scheme are as

(1) To provide insurance coverage and financial support to the farmers in the event of failure of any of the notified crop as a result of natural calamities, pests and diseases.

2. To encourage the farmers to adopt progressive farming practices, high value in-puts

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and higher technology in Agriculture.

3. To help stabilise farm incomes, particularly in disaster years.

Thus, the framed Scheme is to safeguard the interest of the farmers who avail loan from the Nationalised Banks by making them to insure the crops grown in the areas which are determined by the State Government after getting report from the experts. The framing of said Scheme is a policy matter. Said Scheme being framed by invoking executive power under Art. 73 and Entry 7 cannot be said to have no statutory force. (Paras 9, 10)

Having regard to the plight of the framers of the country in the event of natural calamities on account of which various commercial crops and agricultural crops are destroyed and thousands of families are put to great hardship and there have been innumerable suicidal deaths of farmers on account of failure of crops and not clearing the loans raised by them either from the Banks or private persons, therefore to protect the agriculturists in the Rural India the Union of India has rightly framed the said Scheme. Therefore, it cannot be termed as either arbitrary or discriminatory and violative of Art. 14 and it is not the case of the petitioners that, Union of India has no legislative power to enact the law to introduce compulsory insurance Scheme for agricultural crops grown by the farmers in the area that is notified on the basis of relevant material data collected by State Govt. for implementation of the Scheme framed by the Government of India. (Paras 11, 13, 15)

Further, merely because the area is determined under the Scheme by the Committee, the second respondent, it cannot be termed as either arbitrary or discriminatory. The classification regarding the crop of the area made by the State Govt. and the Co-ordination Committee is reasonable classification after taking into consideration of the relevant material data which are collected by the experts of the Committee with regard to crops of the area and whether those crops require coverage of compulsory insurance or not. Such reasonable classification is made by respondents on the basis of relevant material aspects collected by the executives of the Committee and, therefore, it cannot be termed as arbitrary or discriminatory. (Para 12)

Cases Referred : Chronological Paras

Balco Employees, Union (Regd.) v. Union of India, 2001 AIR SCW 5135 : 2002 CLC 171 : AIR 2002 SC 350 14

Narmada Bachao Andolan v. Union of India, AIR 2000 SC 3751 : 2000 AIR SCW 4809 14

State of Madh. Pra. v. Thakur Bharat Singh, AIR 1967 SC 1170 4

Krishna S. Dixit, for Petitioners. Smt. B. V. Prakash Angadi and Smt. Shobha Patil Govt. Pleader, for Respondents.

Judgement

ORDER :- The petitioners who are sugarcane growers of Athani Taluk have questioned the legality and validity of the impugned order dated 29-5-2002 (Annexure-B) (Published in the Karnataka Gazette Notification on 25-7-2002) issued by the first respondent in so far as it relates to sugarcane crop in Athani Taluka of Belgaum District and sought for quashing of the same. Further, in the alternative, the petitioners have sought for issuance of a writ of mandamus to respondents 1 to 3 not to enforce the impugned order against the sugarcane growers who have availed crop loan on or before 25-7-2002, urging various legal contentions.

2. The petitioners are sugarcane growers having their agricultural lands within a distance of about 3 kms. from the Krishna River in Athani Taluk of Belgaum District and they have availed loan from third respondent-Bank. The Government of India formulated the national Agricultural Insurance Scheme (NAIS) called 'Rashtriya Krishi Bima Yojana' (in short 'the Scheme') vide Annexure-A aiming to provide Insurance Coverage in respect of crops in the areas as notified by the State Governments concerned. The State Level Co-ordination committee on Crop Insurance (in short 'the Committee') was constituted under the abovesaid Scheme vide its report dated 4-5-2002 recommended for inclusion of sugarcane crop in Belgaum District and accordingly first respondent vide order dated 29-5-2002 vide Annexure-B has notified Sugarcane Crop in Eight Talukas of Belgaum District for compulsory Crop Insurance including the Taluka of Athani.

3. It is stated that, under the said Scheme the General Insurance Company shall insure the notified crop of the Sugarcane Grower who avail crop loan on the application

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of the financing Agency and the Insurance Premium is fixed by the State Government at 3.85% of sum assured. It is the further case of the petitioners that their Association vide its representation dated 31-8-2002 vide Annexure-C requested respondent-Bank not to debit premium money to their loan accounts and warned that if any debit is made ignoring their request, it is at the risk of the Bank only. Further stated that, the Bank expressed its helplessness saying that under the Scheme it has no discretion. It is urged by the learned counsel appearing for petitioners Sri Krishna S. Dixit that the insurance scheme framed by the first respondent has no statutory force to insure the sugarcane crop compulsorily without the consent and willingness of the concerned grower.

4. The counsel for the petitioners further contended that, the impugned order is without jurisdiction and has been unilaterally passed. Further, second respondent-Committee has not been duly constituted as required under the provisions of the Scheme, compulsory insurance scheme introduced by the first respondent and fixing the area by co-ordination committee the second respondent is a clear case of discrimination and arbitrary in nature. In support of said contention, the learned counsel for the petitioners has placed reliance upon the Judgment of Supreme Court reported in AIR 1967 SC 1170 in the case of State of Madhya Pradesh v. Thakur Bharat Singh wherein at paragraph-6 after interpretation of S. 73 and 162 of the Constitution of India, the Apex Court has laid down the law at Paragraph-6 stating that the said Articles are concerned primarily with distribution of executive power between Union on one hand and States on the other, and not with validity of its exercise. The State or its officers in exercise of executive authority cannot infringe rights of citizens merely because Legislature of State has power to legislate in regard to subject in which executive order is passed.

5. The learned counsel submits that, the Scheme infringes the fundamental rights of the petitioners by making them to compulsorily insure the sugarcane crop grown in the area as notified vide Annexure-B by the committee on the basis of the Scheme framed by the Union of India which is not only discriminatory but also arbitrary in nature. Therefore, the petitioners' counsel has prayed for grant of relief as prayed in these writ petitions which is referred in the earlier paragraph of this order.

6. Heard the learned counsel for the petitioners and also the Government Pleader appearing on behalf of Respondents 1 and 2 at the preliminary hearing stage itself. Smt. Shobha Patil, the learned Govt. Pleader on behalf of respondents 1 and 2 sought to justify the Scheme in question and the order at Annexure-B contending that said Scheme is beneficial to the farmers to take care of their interest and it is the policy of the Government of India to protect the interest of the farmers of the area in question which cannot be said to be neither arbitrary nor discriminatory in nature and without authority of law for which, the Union of India in exercise of its power under Article 73 of the Constitution of India has framed the Scheme which is produced at Annexure but the same is not challenged in these petitions. Therefore, she has submitted that there is no merit in these writ petitions and requested this Court to dismiss them as they are devoid of merit and this Court cannot interfere with the policy matters of the Union of India and grant the relief of quashing the order of the first respondent passed by it to implement the NAIS Scheme framed by the Government of India.

7. After hearing the learned counsel for the parties, I have examined the scheme framed by the Government of India which is an agricultural insurance scheme. The objective of the said Scheme reads thus :

"1. To provide insurance coverage and financial support to the farmers in the event of failure of any of the notified crop as a result of natural calamities, pests and diseases.

2. To encourage the farmers to adopt progressive farming practices, high value in-puts and higher technology in Agriculture.

3. To help stabilise farm incomes, particularly in disaster years."

8. At the outset the reliefs sought for by the petitioners cannot be granted by this court for the reason that the Government of India who has framed the impugned scheme has not been impleaded in these petitions though it is a proper and necessary party and the NAIS Scheme framed by it is exercise of its executive power under Art. 73 of the Constitution of India is not challenged

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in these petitions. Therefore the petitions are not maintainable in law. Further, unless the scheme is not quashed the consequential order of constituting committee for implementation of the scheme by the first respondent-State Government also cannot be granted by this Court for the following reasons :

9. By a careful reading of the abovesaid objectives of the Scheme referred to supra, it is evident that, the Union of India in exercise of its executive power under Article 73 of the Constitution of India has framed a Scheme to safeguard the interest of the farmers who avail loan from the Nationalised Banks by making them to insure the crops grown in the areas which are determined by the State Government after getting report from the experts. In my considered view, the Scheme framed by the Union of India is a policy matter. It is being implemented after collecting necessary data regarding the need and requirement of the farmers with a view to protect their interest to see that farmers interest is safeguarded in the event of natural calamities, pests and diseases which is a laudable object of the Union of the India to protect the farmers in the event of natural calamities to see that they are not exposed to economic hardship that would be caused due to natural calamities which will have far reaching consequences upon their economic conditions.

10. Further, on a careful examination and consideration of the scheme, the contention urged by the petitioners' counsel that the scheme has no statutory force is not tenable in law in view of express provision under Article 73 of the Constitution of India wherein it has been specifically spelt out in the above paid provision stating that subject to the provisions of the Constitution of India, the Union of India has got executive power extending to the matters for administration of laws and the parliament has got power to make laws to exercise such authority and jurisdiction as are exercisable by the Government of India. It is not the case of the petitioners that the compulsory insurance of either sugarcane crop or any other agriculture crop is governed by the law. The contention urged by the learned counsel for the petitioners that framing of compulsory insurance scheme to the agricultural crops falls under Entry No. 14 of List-II 'State List' therefore, framing of scheme by the Government of India under Entry No. 47 of List\_I 'Union List' (VII Schedule) is not sustainable in law and the said legal contention cannot be accepted by this Court for the reason that Government of India has exercised its executive power under Art. 73 in the absence of law enacted by the Parliament on the insurance of Agricultural Crops and it has rightly invoked its executive power in framing the Scheme under Entry-47 of the above list which is relevant for the purpose of framing compulsory Insurance Scheme for the agricultural crops grown by the farmers in the area notified by respondents 1 and 2.

11. Having regard to the plight of the farmers of the country in the event of natural calamities on account of which various commercial crops and agricultural crops are destroyed and thousands of families are put to great hardship and there have been innumerable suicidal death of farmers on account of failure of crops and not clearing the loans raised by them either from the Banks or private persons, therefore to protect the agriculturists in the rural India the Union of India has rightly framed the said scheme. Therefore, it cannot be termed as either arbitrary or discriminatory and violative of Article 14 of the Constitution of India and it is not the case of the petitioners that, Union of India has no legislative power to enact the law to introduce compulsory insurance scheme for agricultural crops grown by the farmers in the area that is notified on the basis of relevant material date collected by respondents 1 and 2 for implementation of NAIS Scheme framed by the Government of India.

12. In view of Article 73 of the Constitution of India, the Union of India has exercised its executive power and framed the scheme by passing the order keeping in view the laudable object of protecting the interest of farmers who constitute larger number of population of the country in Rural India in discharge of its constitutional obligations towards them. Further, merely because the area is determined under the Scheme by the committee the second respondent, it cannot be termed as either arbitrary or discriminatory and therefore it is violative of Art. 14 of the Constitution of India. The classification regarding the crop of the area made

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by respondents 1 and 2 is reasonable classification after taking into consideration the relevant material data which are collected by the experts of the committee with regard to crops of the area and whether those crops require coverage of compulsory insurance or not. Such reasonable classification made by respondents 1 and 2 is on the basis of relevant material aspects collected by the executive of the committee and therefore it cannot be termed as neither (sic) arbitrary nor discriminatory. The reliance placed upon the Judgment of Supreme Court by the learned counsel for the petitioners wherein the Apex court, at Paragraph-6 has laid down the law with reference to executive power of the Union Government under Art. 73 and State Governments under Article 162 of the Constitution of India, has no application to the case on hand. The said Articles are extracted hereunder for the purpose of appreciating legal submission made on behalf of the learned counsel for the petitioners :

"73(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend-

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement :

162. Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws :

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

13. By a careful reading of the exposition of law laid down in the aforesaid case the Apex Court has clearly held that State Government has exercised its executive power as a matter of policy in the interest of citizens. It cannot be termed as violative of fundamental rights guaranteed under Art. 13 of the Constitution of India. Therefore, the statement of law laid down in the aforesaid case justifies the scheme framed by the Government of India in exercise of its executive power under Art. 73 of the Constitution of India.The reliance placed upon the Judgment of Supreme Court referred to supra does not support the case of the petitioners but, on the other hand, it supports the case of respondents in justification of formulation of scheme by the Union of India in exercise of its executive power under Art. 73 of the Constitution of India in the absence of law enacted by the Parliament in exercise of its Legislative power from relevant Entry No.47 of List-I with regard to compulsory insurance coverage of agricultural crops grown by the farmers in the area notified by the State Governments.

14. Further, the Supreme Court has laid down the law in the case of Balco Employees Union (Regd.) v. Union of India reported in 2001 AIR SCW 5135 with regard to Court exercising its extraordinary and discretionary power under Art. 226 of the Constitution of India in the policy matter which is relevant for the present purpose. At Paragraph-86 of the said Judgment, the Apex Court has referred to its earlier majority decision in the Judgment rendered in Narmada Bacho Andolan v. Union of India AIR 2000 SC 3751 : (2000) 10 SCC 664 at paragraphs 232, 233 and 234 : (Para 258, 259 and 260 of AIR) which are extracted hereunder :

"232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the Court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has sought to impinge upon the Court's jurisdiction.

233. At the same time, in exercise of its enormous power the Court should not be called upon to or undertake governmental duties or functions. The Courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The Courts must, therefore, act within their judicially

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permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the Court will not interfere. When there is a valid law requiring the Government to act in a particular manner the Court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the Court itself is not above the law.

234. In respect of public projects and policies which are initiated by the Government the Courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in a public interest to require the Court to go into and investigate those areas which are the functions of the executive. For any project which is approved after due deliberation the Court should refrain from being asked to review the decision just, because a petitioner is filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the Court to go into the matter afresh and, in a way, sit in appeal over such a policy decision."

15. For the reasons stated supra, none of the grounds urged in these petitions warrant interference of this court with regard to either framing of the scheme or constitution of committee or determination of area for growing crops and whether the crops grown in that area are required to be compulsorily insured as the scheme is framed and being implemented for betterment of farmers of the area in question. I do not find any good reason to interfere with the scheme and the order of determination of area for growing crops and applying the scheme for compulsory coverage of the crops raised by raising loans either from Nationalised or Scheduled Banks.

16. For the foregoing reasons, the petitions must fail. Accordingly, the petitions are dismissed.

17. The learned Govt. Pleader is permitted to file memo of appearance within two weeks.

Petition dismissed.

AIR 2003 KARNATAKA 307 "T. T. A. P. Co-op. Mktg. Socy. Ltd. v. Dist. C. D. R. Forum"

KARNATAKA HIGH COURT

Coram : 2 M.F. SALDANHA AND M. S. RAJENDRA PRASAD, JJ. ( Division Bench )

Tiptur Taluk Agricultural Producers Co-operative Marketing Society Ltd., Appellant v. District Consumer Disputes, Redressal Forum and others, Respondents.

Writ Appeal Nos. 4474 and 4915-23 of 2000 c/w. Writ Petn. No. 136 of 1999, D/- 11 -3 -2003.

Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.84(1), S.84(4) - Consumer Protection Act (68 of 1986), S.11, S.2(d)(ii) - AGRICULTURAL PRODUCE - CONSUMER PROTECTION - Settlement of disputes - Exclusive jurisdiction of dispute redressal committee - Monetary claim raised by member of marketing committee against Co-operative Society - Has to be entertained by dispute redressal committee set up by market committee - Such dispute cannot be entertained by - Consumer Disputes Redressal Forum - Consumer forum is a body analogous to Civil Court - Bar under S. 84 covers this forum also. (Para 4)

Smt. Vaishali Hegde and M.N. Umashankar,

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for Petitioner; G.S. Bhat, N. Sukumar Jain, G.S. Visveswara, M.N. Seshagigi Rao and M.N. Aswin Kumar, for Respondents.

\*Against order of single Judge of this Court in W.P. Nos. 18353, 18898-907 of 2000, D/- 9-6-2000.

Judgement

SALDANHA, J. :- This group of appeals as also the connected writ petition all involve a common point of law of some importance namely the question as to whether the Consumer Disputes Redressal Forum has jurisdiction to decide a dispute relating to a monetary claim preferred by a member of the A.P.M.C. against a Co-operative Society or whether, under the A.P.M.C. Act it is the Disputes Redressal Committee of the A.P.M.C. that is invested with the jurisdiction to adjudicate the dispute. The appellants before us as also the petitioners in the companion writ petition are the Tiptur Taluk Agricultural Producers Co-operative Marketing Society Limited. The disputes in question go back to the year 1994 and the brief facts are that the Society was required to receive from the respondents the agricultural produce brought by them for sale to the market yard which was in turn put up for sale in keeping with the procedures prescribed by the A.P.M.C. The price having been fixed, the Society was required to pay the producers on that very date the amount realised irrespective of the fact that the buyer may pay up the amount after some time. The Society contends that the 2 per cent commission that it was entitled to was required to be paid by the buyer and that the respondent - purchasers were not required to pay anything for the services. We need to record here that this aspect has been seriously contested by the learned Advocates representing the respondent-purchasers because it is their contention that out of the aggregate realised from the buyer that the Society was entitled to retain the 2 per cent and pay the rest of the money to the purchasers and that effectively, this 2 per cent commission represented the consideration for the services. We refer to this factual aspect because something does turn on it.

2. According to the respondents they had supplied various quantities of copra to the Society for sale and that the Society did not make the payments to them. In one case it appears that the A.P.M.C. on the basis of a complaint directed the Society to make the payment but in the remaining cases there is no such direction. According to the claimants since the Society refused to pay them for the goods that had been delivered they were left with no option except to file their claims before the District Consumer Redressal Forum. Again, in the first of the cases though notice was issued to the Society it did not appear or contest the proceeding and the order was passed against the Society. In the remaining cases since the Society took up the contention that the claimants were not consumers and that consequently the Forum had no jurisdiction to entertain the claims particularly in view of Section 70 of the Karnataka Co-operative Societies Act which mandates that all disputes between a Society and its member are required to be referred to the Forum set up under the Co-operative Societies Act, the issue of jurisdiction was seriously contested and by a majority judgment, the Forum held that the claimants were consumers in so far as they had availed of the services of the Society and secondly that under the Consumer Protection Act that the Forum did have jurisdiction. One of the members dissented and held that the Forum did not have jurisdiction. The majority judgment was the subject matter of the writ petitions that were filed before the learned Single Judge, who in turn summarily disposed of the writ petitions on the ground that the petitioners namely the Society had their appellate remedies under S. 17 of the Consumer Protection Act and that consequently, the writ petitions were not maintainable. It is against this order that the present appeals have been preferred and the connected writ petition also concerns an identical issue. The appellants' learned Counsel has vehemently submitted before us that there is a complete bar to the claimants approaching the Consumer Forum in so far as according to her, this is a dispute that is squarely covered by the A.P.M.C. Act. Our attention was drawn to S. 84 of the Act which reads as follows :-

"S. 84. Provision for settlement of disputes -

(1) For the purpose of settling disputes between "producers, buyers and sellers, or their agents, including any disputes regarding the quality or weight of, or payment for, any agricultural produce, or any matter in relation to the regulation of marketing of agricultural produce in the market area, the market committee of that area shall appoint a panel of arbitrators periodically consisting of agriculturists, traders and commission agents, and constitute a Disputes

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Committee from among its members in such manner as may be prescribed.

(2) Rules shall be made regulating the procedure for settlement of disputes, the authority or authorities for settling the disputes and appeals from the decisions of such authorities, payment of fees by parties for settlement of disputes, be an arbitrator or arbitrators and all other matters connected with such settlement including the extent to which the provisions of the Arbitration Act, 1940, shall be applicable to arbitrations under this section.

(3) Subject to the rules made under sub-section (2), a market committee may make bye-laws regulating the details in respect of settlement of disputes relating to transactions in notified agricultural produce in the market area.

(4) Notwithstanding anything contained in any law, no suit or other legal proceeding shall be entertained by any Court in respect of disputes referred to in sub-section (1), without the previous sanction of the market committee."

3. Learned Counsel submitted that in the first instance S. 84 is wide enough to cover all disputes of whatsoever nature that take place within the framework of the working of the market yard irrespective of who the contesting parties are. An emphasis was laid on the fact that the Section makes adequate provision for redressal of these disputes in so far as the rules provide for the setting up of a Committee of Arbitrators who in turn are required to examine the dispute and decide on it. A lot of emphasis was laid on the fact that the Section contains a non obstante clause which specifies that no Civil Court shall entertain any proceeding in relation to any such dispute. The submission canvassed was that not only does the Act prescribe for a complete redressal procedure in the event of grievances but secondly that there is a reverse provision which contemplates the decision of all such disputes only by the Committee set up the A.P.M.C. Furthermore, in order to ensure that the parties do not wrongly approach the Civil Court the section very specifically debars the Civil Court entertaining any such dispute notwithstanding anything contained in any other law for the time being in force. Learned Counsel submitted that it is not so much the question as to whether the claimants can answer to the definition of consumers or not because even assuming for purposes of argument that they contend that they must be regarded as consumers that the law still bars jurisdiction of the Consumer Forum and that consequently, the order passed by the Forum holding that it had jurisdiction was erroneous and is liable to be quashed. The further submission canvassed was that the learned single Judge was in error in having mechanically redirected the parties to the appellate forum when it was incumbent on the part of the High Court to have examined the jurisdiction issue and if the appellants were right, to have then redirected the claimants to the A.P.M.C. Committee.

4. As against this position, the respondents' learned Counsel vehemently defended the two orders because it was their contention that as consumers who had availed of the services of the Society for which 2 per cent was deducted out of the price realised that they would come squarely within the ambit of Section 2(d)(ii) of the Consumer Protection Act, 1986 which defines the ambit and scope of the expression 'consumer'. Though this point was argued elaborately before us, we refrain from recording any finding on this issue because we find that it is wholly irrelevant for the reason that S. 84 of the A.M.P.C. Act very clearly mandates that there shall be a bar on any Civil Court entertaining a dispute of this type. The Consumer Disputes Redressal Forum will have to be treated as a body analogous to a Civil Court as has been defined under the Act and in our considered view, the bar prescribed under S. 84 would squarely cover this Forum also. That being the position, irrespective of whether the claimants answer to the definition of consumers or not even if one were to take the highest possible position that the respondents are right in their contention that they would answer to this definition, the Forum would still not have the jurisdiction to entertain and decide the dispute and consequently, we do not need to record any finding with regard to that issue.

5. An interesting submission was canvassed by the learned Counsel on behalf of the respondents who contended that they had approached the Consumer Forum for a special reason because according to them, individual farmers or producers are

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effectively small and powerless persons in the face of an apex body like the A.P.M.C. or for that matter the appellants who are a relatively large and powerful Society. The submission canvassed at the Bar was that in this background the claimants despite complaints to the A.P.M.C. virtually got nowhere because even in one of the cases where the Society was directed to make a payment, they still refused to do so and that consequently, the claimants had no option except to approach the Consumer Redressal Forum. The allied submission was that between the A.P.M.C. and the Society that there would be a level of bias even as far as the Committee is concerned and that the claimants were apprehensive of the fact that they would not get a fair deal. The main contention advanced by the learned Counsel for the respondents and one which requires very serious consideration is that fact that they submitted that if the aggrieved party has options that the choice must be left to the party concerned and the submission was that if between the A.P.M.C. Committee, the Civil Court and the Consumer Forum if the claimants felt confident that they would get a fair and expeditious decision from the Consumer Forum that the Court ought to interfere with their choice. The added submission canvassed was that despite service of notice on the respondents they did not appear, that the Forum exercised jurisdiction and decided one of the cases and that it was only at a belated stage that the issue of jurisdiction was raised and that too before the appellate forum. The contention was that if the respondents have not objected to the jurisdiction at the earliest point of time that they would be estopped in law from doing so and that too after 8 or 9 years of litigation and that consequently, this is not a case in which any interference was called for.

6. We need to mention here that under normal circumstances we would have straightway upheld both these submissions particularly since the respondents' learned Counsel cited a string of judgments both of this Court and the Supreme Court pointing out that even where alternative remedies are available that the Forum can still exercise its jurisdiction. It is true that different views have been expressed in these decisions but the consensus is to the effect that since a Consumer Redressal Forum has been set up under the law for the special purpose of redressing expeditiously the grievances of consumers, that a party opting to approach that Forum should not be prevented from doing so. Unfortunately, in none of the decisions do the Courts deal with a case under the A.P.M.C. Act because in none of these statutes was there an express bar to any Court or authority other than the one set up under the A.P.M.C. Act to permit to exercise of jurisdiction in respect of Disputes Redressal. This is an aspect of the law which distinguishes the present case from all the other ones and it is only because of this specific reason that we are required to uphold the appellants' contention that the Forum would not have jurisdiction to hear and decide the present dispute.

7. It is true that the appellants ought to have appeared before the Forum at the earliest point of time and if according to them, there was a legal bar they ought to have brought it to the notice of the Forum. They have done everything other than this and we do see considerable substance in the very strong and fervent plea advanced on behalf of the respondents that if after nine years of litigation they have to be redirected to the A.P.M.C. Committee that the consequences would be extremely harsh to them because it is their case that in the first instance he have been wrongly deprived of their money, that undoubtedly the value of the rupee has been falling all these years but more importantly, for a small farmer whose economics is fragile the non-receipt of a substantial amount which is a virtual working capital would seriously handicap him. All that we can say is that there is substance in this grievance particularly because the respondents did not raise the issue relating to the A.P.M.C. Act bar at any time during the earlier litigation and they would therefore be squarely liable for the entire period of delay and in the event of the applicants succeeding in their claim, the Committee would undoubtedly, have to bear in mind this aspect of the case and ensure that they are duly compensated also in terms of adequately high interest for the interim period.

8. One of the submissions canvassed before us was that effectively the respondents are being referred to an Arbitration Forum set up under the A.P.M.C. Act and our attention was drawn to a decision of the Supreme Court reported in AIR 2000 SC 2008 wherein the Supreme Court upheld the position that a complaint to the Consumer Forum was tenable even if there was a

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provision for an arbitration clause the reason being that this is a remedy available in addition to the other normal remedies and obviously the Supreme Court upheld the position that where a party has chosen the most expeditious forum that the Court will not debar the party. It was submitted before us on the basis of this decision that the present position being analogous in law and since the Consumer Forum has already exercised jurisdiction that this Court should refrain from interfering at this late stage. This is again an aspect of the law which the Court would normally have upheld except for the fact that the consequences would be extremely disastrous in so far as it would mean that the Consumer Forum would have proceeded to adjudicate on the dispute dehors the fact that in law there was a bar to its exercising jurisdiction and at the end of this long exercise, even if the respondents had succeeded they would have been left with an unenforceable order as it would have been legally stillborn.

9. We have also taken cognizance of another aspect of the law namely the legislative intent behind confining all disputes to the A.P.M.C. The reason for this is obvious because the decision would be quick but more importantly the procedures involved would be familiar and above all, that Committee would be also familiar with the nature and scope of these transactions and would be far more suitable to adjudicate the dispute. Lastly, there is also the cost factor which is of consequence along with the aspect of time and from both angles the parties would be immensely better off before the A.P.M.C. Committee.

10. Having regard to the aforesaid position, it is necessary to set aside the impugned orders passed by the Forum as also the order passed by the learned single Judge and to direct the A.P.M.C., Tiptur to set up the Committee as contemplated under S. 84 of the Act within an outer limit of six weeks from today. In order to conserve time, we direct both the contesting parties to keep in touch with the A.P.M.C. and to appear before the Committee on a date that will be set by it which will be not later than fifteen days after which the Committee is set up. We also need to issue certain directions with regard to the timeframe etc. because we do not desire that this nine year old litigation should continue for another decade. The Committee shall also give an opportunity to the parties to produce whatever evidence they so desire and to make their submissions and the Committee shall ensure that the dispute is resolved strictly in keeping with the procedure prescribed by law. In view of the submissions canvassed before us, we need to bring it to the notice of the A.P.M.C. and the Committee that no cause for grievance should arise. Within the framework of the Act, the A.P.M.C. does have the power to enforce the decisions of the Committee and in the event of the decision being in favour of the respondents who are the claimants the A.P.M.C. shall ensure that the decision is given effect to. We have not said a single word with regard to the merits of the case even though the learned Counsel representing the parties had made several references to the record and to the facts, the reason being that we do not desire to benefit or prejudice either of the parties to the dispute. With these directions, the appeals and the writ petition which are partially allowed to stand disposed of. No order as to costs. We clarify, that the question of the bar of limitation will not arise as far as the reference to the A.P.M.C. Committee is concerned because it is well settled law that since the claimants were agitating their claim before a legal forum all these years that the entire period will be excluded. We also direct that the Committee shall complete the hearing and indicate its decision on a top priority basis but in any event within a period of six months from the date of appointment of the Committee.

Order accordingly.

AIR 2001 KARNATAKA 252 "Tungamma v. State of Karnataka"

KARNATAKA HIGH COURT

Coram : 1 H. RANGAVITTALACHAR, J. ( Single Bench )

Smt. Tungamma and others, Petitioners v. State of Karnataka and others, Respondents.

W.P. No. 1204 of 2001, D/- 9 -3 -2001.

(A) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.145 - AGRICULTURAL PRODUCE - Bifurcation of market area - Is a legislative act - State Government not under obligation to follow principles of natural justice.

Constitution of India, Art.14.

Combined reading of S. 2(19) and Ss. 3 and 4 of the Act, discloses that firstly buying and selling of the notified agricultural commodities should take place only in the notified area and defining persons who are eligible or competent to sell and the conditions under which they should so sell. The application of the rest of the provisions of the Act mainly depend upon this demarcation and definition of Geographical territory. Secondly the provisions of the "Act" applies to all "Buyers" and "Sellers" competent to trade in the MARKET AREA. It does not address to particular cases or groups, but to address to trading community in general. S. 145 empowers the State Government to divide this "Notified Market Area" into two or more market areas; when it is done only the territory of the MARKET AREA originally fixed under Ss. 3 and 4 of the Act is redefined or altered, but the other consequences that flow under Ss. 3 and 4 and other section are not altered viz., the regulation of trade, and its general character of application are not affected. Thus the power exercised under S. 145 is "Legislative" in character and not "Administrative" as it is not addressed to any similar case or any one single instance. Therefore principles of natural justice need not be followed before bifurcating market area. (Paras 22, 23)

(B) Constitution of India, Art.14 - EQUALITY - Allegation made against State Government that order of bifurcation of market area was passed with an ulterior motive - Allegations not proved - Held, exercise of power by State Government cannot be said to be for mala fide purpose. (Para 28)

Cases Referred : Chronological Paras

Sundarjas Kanyanlal Bhathija v. Collector, Thane, AIR 1990 SC 261 14, 25

Baldev Singh v. State of Himachal Pradesh, AIR 1987 SC 1239 24, 25

R. K. Porwal v. State of Maharashtra, AIR 1981 SC 1127 23, 26

Tulsipur Sugar Co. Ltd. v. Notified Area Committee, AIR 1980 SC 882 : 1980 All LJ 401 17

Bates v. Lord Hailsham of St. Marylebone, (1972) 1 WLR 1373 : (1972) 3 All ER 1019 14, 23

F. V. Patil, for Petitioners; Satish, Govt. Pleader (for Nos. 1, 4, 5), Sridharan (for No. 2), C. Shivakumar (for No. 3) and G. M. Chandrashekar (for No. 6), for Respondents.

Judgement

ORDER :- The members of the Elected Committee of the APMC, Davangere have filed this petition, challenging the notification of the State Government of Karnataka bifurcating Davangere AMPC into that of "Davangere" and "Jagalur" in exercise of the powers under S. 145 of the Agricultural Produce Marketing Committee Regulation Act (hereinafter referred to as the Act) in this petition under Art. 226 of the Constitution of India.

2. Petitioner's have contended in the writ petition that, at an election held on 24-7-97 petitioners and 2 others were elected for the committee, while 3 others were nominated to the Committee of Management of Davangere, APMC. The term of Office was for 5 years. The third respondent herein was

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elected as the President of the Committee. While the committee was functioning, respondent No. 1 issued a notification dated 28-6-99 vide Ann. B proposing to bifurcate the AMPC Davangere and inviting objections. Petitioner/committee had passed a resolution opposing the bifurcation; Though respondent No. 1 had notified the proposal but did not take any further action on this proposal, until a vote of no confidence was moved against the 3rd respondent. President on 15-11-2000 charging the later of showing undue favour of allotting certain land to Bapuji Bank under the control of the Hon'ble Minister Mallikarjun, similarly allotting two acres of land to the cold storage to one I. P. Vishwaradhya Chairman of sister concern of Bapuji Education Association besides selling shops to the tenants though the shops were fetching huge rents of Rs. 50,000/- p.m. and without prior sanction awarding contract to the tune of two and half crores. It is only to frustrate this No confidence motion, the 3rd respondent influencing the Minister got the final notification Annexs. E and E1 under S. 145 published. The notification Annexures E and E1 is liable to be quashed on the grounds that the notifications are issued without applying its mind to the objections filed and providing opportunity to personally hear the petitioners and also on the ground of (sic) with a mala fide intention to frustrate the no confidence motion.

3. Respondent 2 and respondents 6 and 7 have filed detailed statement of objections to this writ petition.

4. Respondent No. 2 in his objection statement while denying the petition averments, has specifically denied the charges of irregularities and favouritism.

5. In so far as the charge, of allotting land to Bapuji Bank, it is stated, that what is allotted to the bank was land in a conservancy lane made with the approval of petitioners/committee; similarly the charge of selling 34 shops is denied it is stated that 2nd respondent is only contemplating to allot the said shops on lease/licence basis and it is never contemplating to sell. Respondent also has denied of awarding any contract as alleged; it is stated that it is in the process of inviting tenders. In so far as allotting place for cold storage, it is stated that the same was done only when the committee passed a resolution by majority vote of 12/5 and even the same is pending removal of the Director.

6. Respondent No. 3 has filed separate statement of objections and he has denied the allegations against him of committing irregularities.

7. Sri B. S. Keshva Iyengar, learned counsel for the writ petitioner submitted firstly that the Act of State Government in issuing notification of bifurcation Anns. E and E1 is purely an "Administrative Act", and therefore it should have been preceded by a personal hearing to the affected parties like the petitioner.

8. Secondly, the State Government had not applied its mind to the objections raised, while issuing the impugned notifications.

9. Lastly that the notification Anns. E and E1 is issued with a mala fide intention to help respondent No. 3 and therefore liable to be struck down.

10. In answer to this Sri B. S. Sridhar, learned counsel appearing for the APMC submitted that the power exercised by the State Government under S. 145 of the AMPC Act is "Legislative in character", and hence petitioner is not entitled to be heard before issuing the notification or contend that there must be an application of mind to the objections raised by them to the proposal of bifurcation.

11. On the question of mala fide, learned counsel submitted, that the allegations made against the President are denied as factually wrong besides it is vague. He therefore prayed for dismissal of the writ petition.

12. I will now advert to the contentions of Sr. B. S. Keshva Iyengar. Since the point Nos. 1 and 2 raised by the learned counsel for petitioner Sri B S. Keshava Iyengar are interconnected they are disposed off together.

13. Before considering the contention it is required to state that, it is well recognised that "No person can claim right to be heard before the making of Legislation". Prof. Wade in his Administratie Law 7th Edition page 570 states "There is no right to be heard before the making of Legislation". The author again at Page 895 of the same edition while dealing the Chapter of preliminary consultation has stated "In the case of Rules and orders which are clearly legislative as opposed to Administrative, there is normally

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no room for the principles of natural justice which entitles persons affected to a fair hearing in advance.

14. In Sundarjas Kanyanlal Bhathijha v. Collector, Thane reported in AIR 1990 SC 261, on the question of applicability of rules of natural justice to legislative action. It has been held quoting with approval the following passage in Megarry Jain Bates v. Lord Hailsham in (1972) 1 WLR 1373.

"In the present case, the committee in question has an entirely different function : It is legislative rather than administrative or executive. The function of the committee is to make or refuse to make a legislative instrument under delegated powers. The order, when made, will lay down the remuneration for solicitors generally and the terms of the order will have to be considered and construed and applied in number less cases in the future. Let me accept that in the sphere of the so-called quasi-judicial the rules of natural justice run, and that in the administrative or executive field there is a general duty of fairness. Nevertheless, these considerations do not seem to me to affect the process of legislation, whether primary or delegated. Man of those affected delegated legislation and affected very substantially, are never consulted in the process of enacting that legislation; and yet they have no remedy. Of course, the informal consultation of representative bodies by the legislative authority is a common place; but although a few statutes have specifically provided for a general process of publishing draft delegated legislation and considering objections (see, for example, the Factories Act, 1961, Schedule 4), I do not know any implied right to be consulted or make objections, or any principle upon which the Courts may enjoin the legislative process at the suit of those who contend that insufficient time for consultation and consideration has been given. I accept that the fact that the order will take the form of a statutory instrument does not per se make it immune from attack, whether by injunction or otherwise; but what is important is not its form but its nature, which is plainly legislative".

The rules of natural justice are not applicable to legislative action, plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed".

15. But then the further question then calls for consideration is to make a distinction between a Legislative Act and Administrative Act. On this question, learned Author Prof. Wade states in the same page referred to above :

"A distinction often made between Legislative and Administrative Acts is between the general and particular. A Legislative Act is the creation and promulgation of a general rule of conduct without reference to particular cases. An administrative act cannot be exactly defined, but it includes the adoption of a policy, the making and issue of a specific direction and the application of a general rule to a particular case in accordance with the requirements of a policy or expediency or administrative practice.

16. M. P. Jain and S. N. Jain, in his book on Principles of Administrative Law Third Edition Page 25 Quoting Schwartz "An introduction to American Administrative Law, states as to how to discriminate "Administrative Power from Legislative Power" as "No articulate norms have yet been evolved either in India or other countries to characterise a function of the Administration as "Legislation". A general test usually advocated is that the power to lay down rules of "General applicability is LEGISLATIVE while the power to make orders in specific cases is administrative".

17. In Tulsipur Sugar Co. Ltd. v. Notified Area Committee, AIR 1980 SC 882 (cited by the learned counsel for respondents Sri B. S. Sridhar) another test was laid down viz. "If certain other provisions of any statute is made applicable by any declaration or Act of the State Government" then such declaration or Act was held to be Legislative. This is how it has been held (Para 8 of AIR) :

"We are concerned in the present case with the power of the State Government to make a declaration constituting a geographical area into a town area under Section 3 of the Act which does not require the State Government to make such declaration after giving notice of its intention so to do to the members of the public and inviting their representations regarding such action. The power of the State Government to make a declaration under Section 3 of the Act is legislative in character because the application

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of the rest of the provisions of the Act to the geographical area which is declared as a town area is dependent upon such declaration. Section 3 of the Act is in the nature of a conditional legislation.

(Underlined by me)

18. In the light of the above discussion, point that arises for consideration is "Whether the power of the State Government in issuing notification under Section 145 of the Act is Administrative or Legislative in character and whether the petitioner's were required to be heard personally before issuing the notification of bifurcation.

19. It therefore becomes necessary to examine the nature of power of State exercising under S. 145 of the Act. Section 145 of the Act is extracted for ready reference.

Section 145 : Division of market area into two or more separate market areas :-

(1) Subject to the procedure specified in Sections 3 and 4, the State Government may divide a market area into two or more separate market areas.

(2) When during the term of a market committee the market area for which it is established is divided into two or more separate market areas, the following consequences shall ensue :

(a) the market committee constituted for the market area under this Act shall be deemed to have been dissolved and the State Government shall constitute separate market committees under Section 10 for each of the separate market areas subject to such conditions as may be prescribed, and the (Director of Agricultural Marketing) shall also simultaneously declare a specified area and a specified place as the market and the market yard for each of the new market areas.

(b) the term of office of the newly constituted committees shall be the same as is applicable to the first market committee under sub-section (3) of Section 10;

(c) the assets, rights and liabilities of the dissolved market committee shall be distributed by the State Government between the new market committees in accordance with such Rules as may be prescribed;

(d) any appointment, notification, notice, fee, order, scheme, licence, permission, bye-law or form, made, issued or imposed by the market committee which has been dissolved in respect of any part of the area subject to the authority of the new market commodities shall be deemed to have been made, issued or imposed by such market committee concerned unless and until it is superseded by any notification, notice, fee, order, scheme, licence, permission, rule, bye-law or form made, issued or imposed by it.

(3) If any difficulty arises in giving effect to the provisions of this section, the State Government may by order published in the Official Gazette, as the occasion may require, do anything which appears to it to be necessary to remove the difficulty".

20. Market area has been defined under S. 2(19) of the Act as under :

Section 2(19)- Market area : Means any area declared to be a market area under Section 4.

21. Sections 3 and 4 of the Act provides the procedures and consequences of declaration of "Any area" as a market area. Sections 3 and 4 of the Act reads as under :

Section 3 : Notification of intention of regulating the marketing of specified agricultural produce in specified area :

(1) The State Government, may, by notification, declare its intention of regulating the marketing of such agricultural produce, in such area, as may be specified in the notification. The notification may also be published in Kannada in a newspaper circulating in such area.

(2) The notification shall state that any objections or suggestions which may be received by the State Government within such period as shall be specified in the notification, not being less than thirty days, will be considered by the State Government.

Section 4 : Declaration of market area and the regulation of marketing of specified agricultural produce therein. After the expiry of the period specified in the notification issued under Section 3, and after considering such objections and suggestions as may be received before such expiry, the State Government may, by another notification, declare the area specified in the notification issued under Section 3 or any portion thereof to be a market area and that the marketing of all or any of the kinds of agricultural produce specified in the notification issued under Section 3 shall be regulated under this Act in such market area. A notification under this section may also be published in Kannada in a newspaper circulating

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in such area".

22. A combined reading of Section 2(19) and Sections 3 and 4 of the Act, discloses that firstly that buying and selling of the notified agricultural commodities should take place only in the notified area and defining persons who are eligible or competent to sell and the conditions under which they should so sell. In other words, the application of the rest of the provisions of the Act mainly depend upon this demarcation and definition of Geographical territory. Secondly the provisions of the "Act" applies to all "Buyers" and "Sellers" competent to trade in the MARKET AREA. It does not address to particular cases or groups, but to address to trading community in general.

23. What Section 145, does or empowers is to give power to the State Government to divide this "Notified Market Area" into two or more market areas; when it is done only the territory of the MARKET AREA originally fixed under Ss. 3 and 4 of the Act is redefined or altered, but the other consequences that flow under Ss. 3 and 4 and other sections are not altered viz., The regulation of trade, and its general character of application are not affected. Thus the power exercised under Section 145 is "Legislative" in character and not "Administrative" as it is not addressed to any particular case or any one single instance. This view of mine is also fully supported by the reasoning of the Supreme Court. In R. K. Porwal v. State of Maharashtra, AIR 1981 SC 1127. In the said case before a 3 member bench, of the Supreme Court, the Traders of Maharashtra, Karnataka and Bihar had called in question the act of the Agricultural Produce Marketing Committee of the 3 States asking them to shift their place of business to the market area on many grounds. One of the grounds raised was that before changing the place of market yard, the State Government was obliged to invite and hear objections. Repelling such a contention, the Hon'ble Supreme Court has held that the change of market yard is a Legislative function and the principles of natural justice cannot be invoked before so changing. This is how it has been held :

"In one of the Bihar cases it was further submitted that when a market yard was disestablished at one place and established at another place, it was the duty of the concerned authority to invite and hear objections. Failure to do so was a violation of the principles of natural justice and the notification disestablishing the market yard at one place, and establishing it elsewhere was therefore, bad. It was said that that even as there was express provision for inviting and hearing objections before a "market area" was declared under the Act, so should objections be invited and heard before a "market yard" was established at any particular place. The principles of natural justice demanded it. We are unable to agree. We are here not concerned with the exercise of a judicial or quasi judicial function where the very nature of function involves the application of other rules of natural justice, or of an administrative function affecting the rights of persons, wherefore, a duty to act fairly. We are concerned with legislative activity; we are concerned with the making of a legislative instrument, the declaration by notification of the Government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith. The making of the declaration, in the context, is certainly an act legislative in character and does not oblige the observance of the rules of natural justice. In Bates v. Lord Hailsham, (1972) 1 WLR 1373, Jegarry, J., pointed out that the rules of natural justice do not run in the sphere of legislation.

24. However Sri Keshava Iyengar, learned counsel referring to Baldev Singh v. State of Himachal Pradesh, AIR 1987 SC 1239 contended that a declaration of a notified area by the State Government is an "Administrative decision", and therefore principles of natural justice has to be followed.

25. To this submission, suffice it to refer to Sundarjas's case, AIR 1990 SC 261 where the Hon'ble Supreme Court has rejected such a contention after specifically referring to Baldev Singh's case at Para 27 as under :

"In Baldev Singh v. State of Himachal Pradesh, (1987) 2 SCC 510 : AIR 1987 SC 1239 a similar question arose for consideration. An attempt was made to constitute a notified area as provided under Section 256 of the Himachal Pradesh Municipal Act, 1968, by including portions of the four villages for such purposes. The residents of the villages who were mostly agriculturists

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challenged the validity of the notification before the High Court on the ground that they had no opportunity to have their say against that notification. The High Court summarily dismissed the writ petition. In the appeal before this Court, it was argued that the extension of notified area over the Gram Panchayat limits would involve civil consequences and, therefore, it was necessary that persons who would be affected thereby ought to be given an opportunity of being heard. Ranganath Misra, J., did not accept that contention, but clarified (at p. 515) (of SCC) : (at p. 1242 of AIR)."

26. Even, otherwise, in view of the decision in R. K. Porwal (AIR 1981 SC 1127) presided by a larger Bench than Baldev Singh's case, quoted above the contention deserves to be rejected.

27. For the reasons stated Point Nos. 1 and 2 raised by Sri Keshva Iyengar is answered as holding that, "The Act of bifurcating an established market by a notification under Section 145 of the Act the State Government exercises Legislative power and not "Administrative power" and, therefore, there is no obligation on the part of the State Government to follow the principles of natural justice like hearing the petitioners or considering their objections before issuing the notification.

28. In so far as the next contention raised by the petitioner that the act of the State Government in issuing the notification is for collateral purposes exercising with intention of favouring the 3rd respondent and the decisions referred to by the learned counsel, it has to be stated that there cannot be two opinions that any action of the State Government or notification issued for mala fide purposes is non est. But then, the petitioner in order to succeed has to establish mala fides. In this case, as noted above, the case of the petitioners is that the President-3rd respondent was guilty of irregular exercise of power and it is only when the petitioners moved a resolution to remove him by vote of no confidence at the behest of the 3rd respondent, the State which had kept in cold storage the preliminary notification, suddenly to frustrate the vote of no confidence published the final notification. It has to be stated that the allegations made against the 3rd respondent is denied on affidavit by him and also by the contesting respondent. Secondly, except a bald statement that the respondent 4 from his political influence being the District Minister got the bifurcation notification published, no further facts are pleaded so as to come to a conclusion that the final notification was issued as contended. What was the nature of relationship between the 3rd respondent and the District Minister and whether the Dist. Minister was under the influence of the 3rd respondent and what was the motive for the Dist. Minister to help the 3rd respondent are not pleaded or stated. Hence by mere bare assertions it is not possible to hold that the exercise of power by the State Government was for mala fide purposes on the question of delay in issuing the final notification, it is to be said that by mere fact that there was a delay in publication of the final notification will not lead to only conclusion to hold that it was so done to help the 3rd respondent. It is hard to understand what is the interest of the State to help the 3rd respondent. Therefore, I am not in agreement with the said contention.

29. For the reasons stated above, this writ petition is dismissed. No costs.

Petition dismissed.

AIR 2000 KARNATAKA 278 "Akkirampura Grama Panchayat v. State of Karnataka"

KARNATAKA HIGH COURT

Coram : 1 R. GURURAJAN, J. ( Single Bench )

Akkirampura Grama Panchayat, Petitioner v. State of Karnataka and others, Respondents.

W.P. No. 40486 of 1999, D/- 14 -2 -2000.

Karnataka Panchayat Raj Act (14 of 1993), S.199, S.200 - PANCHAYAT - AGRICULTURAL PRODUCE - Levy of fees - Right of Gram Panchayat - Sale of cattle, sheeps and goat in market area - Gram Panchayat has no jurisdiction to levy and collect fees on sale of cattle etc. in market area in view of S. 8 of Karnataka Act 27 of 1966.

Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.8 (as amended by Act 17 of 1980). (Para 10)

Cases Referred : Chronological Paras

Village Panchayat Naganoor v. Agrl. Produce Mkt. Committee Shorapur, (1981) 1 Kant LJ 190 : ILR (1981) Kant 319 6, 9

Viswanath, for Petitioner; B. H. Satish, Govt. Pleader (for No. 1) and B. G. Sridharan, (for No. 2), for Respondents.

Judgement

ORDER :- This Writ Petition is filed by Akkirampura Grama Panchayat, Tumkur District seeking for a prayer to declare that the petitioner is entitled to levy and collect fees in market area in Akkiramapura village in Koratagere taluk, Tumkur district and further to quash Annexure-B dated 28-10-1999 issued by the second respondent.

2. The petitioner states in the petition that in terms of the provisions of the Panchayat Raj Act, the petitioner is entitled to collect fee and to levy fee under the said Act. He also states that the petitioner has the necessary power and jurisdiction to collect or levy market fee in respect of live-stocks like sheep, cattle and goats. The petitioner had earlier filed W.P. No. 21590/91 on the same cause of action, which came to be withdrawn by the petitioner. The further contention of the petitioner is that the petitioner has right to collect the market fee and such right is not taken away under the provisions of the Agricultural Produce Market Act.

3. On the other hand, the learned standing counsel for Respondent-2, Mr. B. G. Sridharan states that the question involved in this case is a pure legal question. Counsel for 2nd respondent states that Section-8 is the answer to the various contentions urged in the writ petition.

4. This matter is taken up for final disposal with the consent of the parties.

5. Sri Viswanath, counsel appearing for the petitioner Panchayath invites my attention to various sections of the Panchayat Raj Act and contends that the petitioner panchayat has a right to collect the market fee. He also states that there is no violation of any of the provisions of the A.P.M.C., Act.

6. Per contra, Mr. B. G. Sridharan, learned standing counsel for A.P.M.C., states that Section 8 is a non obstante clause and it provides for a bar for any local authority in establishing, authorising or continuing or allowing to establish any place in the market area for the marketing of any notified agricultural produce. He also states that after the amendment of the proviso to Section 8 of the KAPMR Act, by Act 17 of 1980,

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the Village Panchayat has no right to levy market fee on the sale price of cattle, sheeps and goats which were exempted earlier. According to him, the right to establish a market and a right to collect fee has been taken away in terms of the amendment Act 17 of 1980. He states that in an identical circumstances, this Court in (1981) 1 Karnataka LJ 190 upheld the right of the A.P.M.C., in collecting fee on the sale price of cattle in a market, fair or jatra. After hearing learned counsel for either side, I pass the following order.

7. Petitioner is admittedly Grama Panchayat and the said Panchayat is governed by the Karnataka Panchayat Raj Act, 1993. Section-199 of the said Act provides for levy of taxes, rate, etc., by Grama Panchayats. Section-200 provides for recovery of taxes and other dues. The Panchayat Raj Act further provide for 'Market' means a place for the sale of goods or animals publicly exposed where ordinarily or periodically at least four shops, stalls or sheds are set up or where at least ten animals are brought for sale.

8. The material facts narrated in the Writ Petition would show that, what the petitioner wants to do is to collect fees in respect of the cattles, sheeps and goats in the market area. The petitioner's contention cannot be accepted in view of non obstante clause in terms of Section-8 of the A.P.M.C., Act. A.P.M.C. Act is a special Act providing for a levy of fee under the Act in respect of the marketing done in the market area in respect of the notified agricultural produce in the market area. Admittedly, the A.P.M.C., has established sub-market, which is a market area as understood under the Act. Section-8 (Proviso) reads as follows :-

"After the amendment of the proviso to Section-8 of the KAPMR Act, by Act 17 of 1980, the village Panchayat has no right to levy market fee on the sale price of cattle in a market, fair or jatra."

It is a non obstante provision providing for a prohibition for any local authority in either establishing or marketing in respect of any notified Agricultural produce and the proviso of Section-8 is further clear to show that the local authority may establish or continue any place for retail sale of any notified agricultural produce other than cattle, sheep and goats, subject to the condition that no market functionary shall operate in such place except in accordance with the provisions of the APMC, Act.

9. In the present case, admittedly, the petitioner wants to carry on the marketing in the market area in respect of cattle, sheep and goats. The same is prohibited u/S. 8 of the Act. In view of Section-8, I am of the view that the petitioner has no right to levy or collect the fee in respect of the cattle in the market area. I may usefully refer to the judgment of this Court reported in (1981) 1 Kant LJ 190, Village Panchayat Naganoor v. Agrl Produce Mkt. Committee Shorapur. The said judgment is a complete answer to the submission made by the petitioner. Paras 6, 7 and 8 of the said judgment are to the following effect :-

6. Before I examine the correctness of the contention urged for the petitioner, I must refer to the relevant provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (The "KAPMR Act"). Under that Act, the Taluk of Shorapur has been declared to be the market area. The territorial jurisdiction of the petitioner-Panchayat inevitably falls within the limits of the market area. Respondent-1, the Market Committee is concerned only with the notified agricultural produce, but the agricultural produce defined under that Act includes also livestock, cattle, sheep and poultry. They now form part of the schedule as incorporated by Karnataka Act 17 of 1980. S. 7 of the KAPMR Act provides for establishment of markets for regulating of notified agricultural produce in the market area. S. 8 as originally stood provided that after the market was established, no local authority shall, notwithstanding anything contained in any law establish, authorise or continue any place in the market area for the marketing of any notified agricultural produce. The proviso thereunder, however, permitted the local authority to establish a market for retail sale of any notified agricultural produce, subject to certain conditions. But that proviso came to be amended by Karnataka Act 17 of 1980 as follows :

"In Section-8 of the Principal Act in the proviso to Clause (a) of the Sub-section (1), after the words 'agricultural produce' the words 'other than cattle, sheep and goats' shall be inserted."

This amendment has thus brought about a radical change. It has totally deprived of the local authority like the Panchayat, the power to establish or use any place even for

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a retail sale of cattle, sheep and goats.

(7) Coming back to the contention of Sri. Raikote, that the Panchayat Committee has got the power to levy tax on fairs, festivals and entertainments and also levy fees on markets under S. 73 (4) of the KVP and LB Act, it is seen that what has been authorised by S. 73 (4) is only to collect the tax on fairs, festivals and entertainments at the rates not exceeding those specified in schedule-I and also fees on markets. Schedule-I under the said Act (See Clause VII-D) authorises the maximum levy of tax of Rs. 20 on fairs, festivals and entertainments. But that is not what the Panchayat is trying to collect in the present case and that levy, if I may say so, is kept untouched by the provisions of the KAPMR Act. A fee on markets which the Panchayat is empowered to collect under S. 73 (4) of the KVP and LB Act is quite different from the market fee which is liable to be collected under S. 65 (1) of the KAPMR Act. The former is on markets or the establishment thereof; the later is in respect of the agricultural produce bought or sold in the market area. One has nothing to do with the other.

(8) As seen earlier, when the Panchayat has no jurisdiction to establish or continue the market for the sale of cattle, sheep or goats, it necessarily follows that it has no jurisdiction either to levy fees in respect of the sale of the said livestock."

10. The ruling of this Court in the above judgment is binding on me. This Court in identical circumstances, ruled that the petitioner has no jurisdiction to levy fee or collect the same in respect of the sale of livestock, including cattle, sheep and goats etc. In the circumstances, I do not find any justification in the contentions urged by the petitioner. No other contention is urged before me.

11. In the result, the Writ Petition fails and it is dismissed. But without any order to costs.

Petition dismissed.

AIR 2000 KARNATAKA 381 "Shambugowda v. State of Karnataka"

KARNATAKA HIGH COURT

Coram : 1 MOHAMED ANWAR, J. ( Single Bench )

Shambugowda, Petitioner v. State of Karnataka and others, Respondents.

Writ Petn. No. 17031/2000, D/- 14 -7 -2000.

Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.44, S.11 - AGRICULTURAL PRODUCE - Removal of Chairman - No-confidence motion- Determination of 2/3rd strength of total members of Committee - Merely because nominated member of Committee was not given a right to vote in the meeting proceeding - He cannot be excluded from being counted for purpose of calculation of two-third majority - Eleven members out of seventeen supporting to no-confidence motion against petitioner - Would constitute 2/3rd of total members of Committee thereby satisfying requirement of S. 44(2) - Fractional difference of S. 33 is liable to be ignored - Order removing petitioner from post of Chairman pursuant to no-confidence motion, proper. (Paras 9, 11)

Cases Referred : Chronological Paras

Raees Ahmad v. State of U. P., 1999 (10) Supreme 178 5

W.P. No. 6598 of 1999, D/- 3-3-1999 (Karnataka) (unreported), Prabhakar v. State of Karnataka 6, 10

C. H. Jadhav, for Petitioner; B. H. Sathish, HCGP (for Nos. 1 and 2), B. G. Sridharan (for No. 3), M. B. Naragund (for No. 4), Udaya Holla (for No. 5), for Respondents.

Judgement

ORDER :- Heard.

2. The petitioner, who was Chairman of the Agricultural Produce Market Committee, Bagalkot District ('the Committee' for short)

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has prayed to quash the order in No. E:07:Election:2000 dated 27-4-2000 of R-2, Director of Agriculture Marketing, Bangalore, passed removing him from the post of Chairman of the said Committee with immediate effect pursuant to the 'No-confidence Motion' passed by the Committee in its meeting held on 19-4-2000.

Admitted Facts :

3. As on 19-4-2000 the Committee, consisted of 18 members. The post of one of its member was lying vacant and out of its remaining 17 members one was an official member nominated to the Committee by R-2 under Section 11(1)(viii) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 ('the Act' in short). Petitioner was the Chairman of the Committee prior to 19-4-2000. In response to a valid no-confidence motion notice in Form-27 given against him by the prescribed number of members of the Committee as envisaged by Section 44(1) of the Act, a meeting of the Committee was convened on 19-4-2000 to pass its resolution in that regard. The said meeting proceeding was commenced at 10.30 a.m. and was concluded by 11.00 a.m. on 19-4-2000 and 11 members of the Committee were present and participated in the meeting. They all unanimously supported the no-confidence motion against petitioner. Thereafter, at about 11.15 a.m., another member of the Committee, named Pandu Police, also came and was stated to have put his signature in the minute book supporting the said resolution of the Committee.

4. Later, on the same day, R-3 the Secretary of the Committee, submitted his report in No. APMC(B)/186-88/2000-2001 vide Annexure-B to R-2 seeking his further needful action under Section 44(2) of the Act. An objection was raised by the petitioner before R-2 against acceptance of the 'no-confidence motion' resolution against him. The ground of that objection was that the total number of the Committee members being 18, and only 11 of them having participated in the meeting and carried the motion, their number having fallen short of the requisite two-thirds of the total number of the members of the Committee, as required under Section 44(2) of the Act, that resolution was an invalid resolution. That objection of petitioner was overruled by R-2 on the ground that the post of one member of the Committee having been left vacant, and another said official member being a nominated member, who was disqualified under Section 11(1)(viii) of the Act to vote in respect of Committee's any resolution under Section 44, the net number of the Committee members which was required for the purpose of computation of required 2/3rd was 16, and, therefore, 11 members out of this 16 having participated and voted in support of no-confidence motion, the Committee's said resolution was a valid resolution within the meaning of Section 44(1) and (2) of the Act. Accordingly, the impugned order, vide Annexure-D, was passed by R-2.

5. Mr. Jadhav, learned Counsel for petitioner, seeking to rely on a decision of the Supreme Court in Raees Ahmad v. State of U.P., 1999 (10) Supreme 178, assailed the validity of the impugned order of R-2 contending that his finding that the said nominated member cannot be counted for determination of 2/3rd strength of total number of Committee members is legally erroneous and not tenable. It was submitted that if said member is also taken into account, then the total number of the Committee members for the purpose comes to 17. In that event, the no-confidence motion moved and supported by only 11 members will not constitute 2/3rd of the total members of the Committee and thus it does not meet the requirement of sub-section (2) of Section 44, as the signature of said 12th member Pandu Police having been obtained in the resolution subsequent to the meeting he has to be ignored.

6. Mr. Nargund, learned Counsel for R-4, argued per contra. In support of his contention that the nominated member could not be counted as he could not have voted in the said meeting proceeding on account of disqualification attached to him by sub-clause (viii) of Section 11(1), relied on an unreported Single Bench decision of this Court in Writ Petition No. 6598/1999, decided on 3-3-1999 (Prabhakar v. State of Karnataka).

7. To appreciate the rival contentions of both sides in the proper perspective, it is necessary to advert to the relevant provisions of Section 44 and Section 11(1)(viii) of the Act. Section 44 deals with motion of no-confidence against the Chairman or the Vice-Chairman of the Market Committee. Its material provisions are :

"44. Motion of no-confidence.- (1) A motion of no-confidence may be moved by any member against the Chairman or the Vice-Chairman after giving such notice as

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may be prescribed and such notice shall be supported by not less than one-third of the total number of members of the Market Committee. If a meeting for consideration of the no-confidence motion is not directed by the Chairman to be convened within thirty days from the date of the notice, the Secretary of the Market Committee shall convene the meeting :

Provided.........................

(2) If the motion against the Chairman or the Vice-Chairman is carried by a majority of not less than two-thirds of all the then members of the Market Committee, the Chairman or the Vice-Chairman, as the case may be, shall be removed from his office by an order passed to that effect by the Director of Agricultural Marketing. The order shall be communicated to the Secretary of the Market Committee and the Chairman or the Vice-Chairman concerned :

Provided.........................

(3) xxx xxx "

(Emphasis laid)

Section 11 relates to constitution and composition of a Market Committee, envisaging its total strength at 18. The relevant clause (viii) of its sub-section (1) reads :

"(viii) one shall be an officer not below the rank of the Secretary of the concerned Market Committee nominated by the Director of Agricultural Marketing, who shall have no right to vote under Section 41 or Section 44."

8. In the light of these relevant provisions of the Act, now what has to be seen is whether or not the "no-confidence motion" was passed against petitioner by a majority of not less than "two-thirds of all the then members of the Market Committee". Admittedly, the total strength of "the then members of the Market Committee" was 17 at the time when motion for no-confidence against petitioner was moved and passed in the said meeting on 19-4-2000. As already stated, the no-confidence motion in question had been carried in that meeting proceeding by 11 members of the Committee. It is an undisputed fact that after the meeting proceeding was over, one of the said member namely, Pandu Police appeared later whose signature was also said to have been obtained in the Minute book of the Committee. Since he did not actually participate in the proceeding of the meeting, his signature in the Minute book endorsing his approval of the result of the meeting is of no legal consequence and it has to be ignored from consideration.

9. Then the bone of contention between the parties centres around the said nominated member, raising the question whether or not he could be counted together with the said 11 members to determine the two-thirds strength of the total members of the Committee for the purpose of sub-section (2) of Section 44. If he is also accounted, then the total number of members of the Committee will be 17, and 11 members thereof will be little less than its 2/3rd strength. It was strenuously argued by Mr. Jadhav for petitioner, relying on Raees Ahmad's case, supra, that merely because the said nominated member of the Committee was not given a right to vote in the meeting proceeding held on 19-4-2000 in regard to no-confidence motion against petitioner, by reason of sub-clause (viii) of Section 11(1), his number cannot be excluded from being counted for the purpose of sub-section (2) of Section 44. Mr. Naragund argued otherwise drawing support from the unreported decision of this Court in Prabhakar v. State of Karnataka, supra.

10. In the case of Raees Ahmad, identical question had arisen for consideration of Supreme Court under Section 87-A read with Section 9(D) of the U.P. Municipalities Act, 1916 ('the Act of 1916' for short). Section 87-A of the Act of 1916 dealt with no-confidence motion against President of the Municipality. The proviso to Section 9(D) thereof envisaged that the nominated ex-officio members of the Nagar Panchayath (the Municipality) "shall not have the right to vote in the meetings of the Municipality". Sub-section (12) of Section 87-A contemplated :

"(12) The motion shall be deemed to have been carried only when it has been passed by a majority of two-thirds of the total number of members of the municipality."

On behalf of the respondent, it was contended before Supreme Court that, by virtue of disentitlement of the nominated ex-officio members of the Nagar Panchayath to vote in the meetings of the Municipality (vide proviso to Section 9(D) of the Act of 1916) they should not be counted as part of the total number of the members of the Municipality to determine two-third strength thereof for the purpose of Section 87-A(12). Repelling this contention, the Supreme Court held :

"5................ We find it difficult to accept

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this submission, given the plain words of the provisions quoted above. That nominated members may not vote does not imply that they cease to be members of the Municipality or that their number should be ignored in determining whether the President has lost the confidence of two-thirds of the members. So calculated, the vote of confidence against the President had not been carried as required."

This proposition applies with all its force to the instant case for the purpose of determination of the requisite two-thirds of the members of the Market Committee to adjudicate the validity or otherwise of the no-confidence motion carried against petitioner in its meeting held on 19-4-2000. In view of the law so laid down by Supreme Court one number representing said official nominee member of the Committee will have to be counted for calculation of 2/3rd of the said total number of the Committee members i.e., 17 as contended by Mr. Jadhav. So, the decision of the Single Bench of this Court in Prabhakar v. State of Karnataka (supra), striking a contrary view does not hold the field. The order of this Court in the case of Prabhakar was rendered on 3-3-1999. The case in Raees Ahmad was decided by Supreme Court on 10-12-1999. Therefore, the learned Judge in the case of Prabhakar v. State of Karnataka could not have had the advantage of the proposition enunciated by the Supreme Court in Raees Ahmad's case.

11. Another significant factor which reinforces the construction placed by the Supreme Court on the corresponding provisions under Section 87-A read with proviso to Section 9(D) of the Act of 1916 is the amendment effected in sub-section (2) of Section 44 of the Act by Amending Act No. 17 of 1980. The material phrase "two-thirds of all the then members of the Market Committee" now occurring in sub-section (2) of Section 44 was originally worded as "two-thirds of the total number of members of the Market Committee". The effect of amendment of this phrase brought about by the Amending Act No. 17 of 1980 is that the word "all" is added to the then existing phrase, thereby making it crystal clear that it is the "two-thirds" of the number of all the existing members of the Market Committee which will have to be taken into account irrespective of any member/members thereof being a nominated member/members or not. Therefore, as laid down by Supreme Court, the said one nominated official member of the Committee cannot be excluded from the counting and that when his number is also taken into account, then two-thirds of the existing members at the material point of time i.e., 17, comes to 11.33. The crucial point for decision now would be, when 11 members of the Committee had carried no-confidence motion against petitioner and this number falling short of only .33 of an individual number to meet the requisite number envisaged in sub-section (2) of Section 44, what is the legal consequence of shortage by this fraction of one complete number. By any yardstick of calculation in such a situation, it is just and reasonable to hold that since this fraction of difference being less than 50% of a full one number, it is desirable to construe and conclude this difference as negligible and will have to be ignored. If this fractional difference were to exceed 50% of one number, then it ought to be calculated and taken into account as one whole number. Since the difference of .33 is liable to be ignored as of immaterial consequence, it necessarily follows that 11 members of the Committee who supported the no-confidence motion against petitioner make up 2/3rd of all its members fully satisfying the requirement of sub-section (2) of Section 44 of the Act. Therefore, the impugned order does not warrant interference.

12. For the reasons aforesaid, the petition is dismissed.

Petition dismissed.

AIR 1998 KARNATAKA 91 "B. A. Hasanahba v. State of Karnataka"

KARNATAKA HIGH COURT

Coram : 1 M. F. SALDANHA, J. ( Single Bench )

B. A. Hasanahba and others etc. Petitioners v. State of Karnataka and others, Respondents.

W.P. Nos. 15380 with 15982 of 1997, D/- 29 -8 -1997.

(A) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.11(9) (as inserted by Ordinance No. 3 of 1977) - AGRICULTURAL PRODUCE - Agricultural Produce Market Committees - Statutorily structured to be a 100% elected body - Ordinance empowering Govt. to make nominations in sufficient number - Held, sabotaged democratic set up of the committee.

The addition of provision for nominations by Ordinance 3 of 1977 was illtimed and also mala fides in so far as it totally and completely subverts the electoral process whereby the APMCs. are required to be constituted by elected repre-sentatives and not nominated persons. The action runs contrary to the democratic process and to the extent that on the present set of facts it virtually nullifies the effect of the elections. (Para 12)

The structure and scheme of the APMC under the Act is very clearly defined in so far it is a almost 100% elected body barring one ex officio member who is nominated. This presupposes the fact that the essential norms of democratic functioning are inbuilt into this process in so far as members who constitute agriculturists, traders and businessmen and whose interests are controlled by this body are the persons who decide on who will be their representatives through a democratically held election. The Act itself prescribes that the first Market Committee shall be a wholly nominated body which is undoubtedly for good reasons but once this process is over, the constitution of the Market Committee has to be through elections. What is sought to be done through the Ordinance is that this process is sought to be completely and totally nullified by nominating as many as three persons. It is true that three out of a total number of 18 is an insignificant number and that it cannot and will not alter or upset the balance. But when the elections have been fought on a party basis and where the percentages are 36 and 49%, the addition of 3 persons would completely swing the balance in favour of the ruling party. Viewed out at this angle, there is no option except to categories the action as a total and complete sabotage. (Para 6)

The plea that object of nomination was to nominate desirable persons who cannot come through the election process, is untenable. The basic fabric of a democratic set-up pre-supposes the ability to emerge through an electoral process. On the contrary, nominations could in all probability result in back-door entry of undesirable candidates who could never otherwise have got elected. Again, what the Ordinance provides for is an unspecified tenure - not co-extensio with the normal life span of the elected members. Nothing could be more dangerous because it leaves the door wide open for the Government to destabilize the working of the Committee through frequent changes but the even more alarming result of such a seemingly innocuous provision would be that the nominated members whose existence depended on the "pleasure of the Government" would virtually be

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absolute pawns, dancing like puppets to the tune of "His Master's Voice." As the Ordinance is framed, it lacks even a modicum of a guarantee that the power of nomination will be used correctly or responsibly. The power of nomination, even in cases where it is permissible can only be exercised in small doses, for purposes of enhancing the constitution of a body by inducting persons of outstanding merit and expertise whose contribution is of proven significance. Where the objective is to pack a Committee and offset the electoral results, it would be downright mala fide. (Para 6A)

The plea that the powers that flow from Ss. 126, 126A are not sufficient for the Govt. to effectively exercise the requisite supervision and control over the functioning of these bodies which was why it was considered very necessary to resort to the process of making nominations is also untenable. The Secretary of the Committee cannot give effect to any resolution or decision that is against the provisions of law without obtaining the the requisite approval and sanction of the Director. The Govt. itself has an inbuilt safety mechanism whereby all resolutions and decisions are required to be approved of by the Director. The Director is a sufficiently highly placed and responsible Govt. officer and the working experience has shown that the Directors have invariably corrected numerous wrong decisions of the Market Committees and have refused to accord sanction to those which do not qualify for approval. It is therefore fallacious to argue that within the frame work of the statute the Govt. did not have the capaicty to supervise, monitor and control wherever is necessary and that the nominations had to be resorted to for this purpose. (Para 7)

(B) Constitution of India, Art.213, Art.226 - JUDICIAL REVIEW - Promulgation of ordinance - Conditions necessary for, whether existed - Question not absolutely immune from judicial review. (Para 8)

(C) Constitution of India, Art.213, Art.226 - WRITS - Ordinance - Challenge to - Court must examine it with higher degree of care and caution.

An Ordinance unlike an Act is required to be very very carefully scrutinised by a Court if it is challenged because an Ordinance is an unfettered, unbridled power to promulgate provisions which have the effect of law without their going through the constitutionally prescribed process. When a Bill is introduced, it is required to be debated by the House and it is open to scrutiny. It is open to examination by all the elected representatives and more importantly by the opposition. There are numerous instances where a Bill may be withdrawn but in the case of several others need has arisen for serious reconsideration, modification and redrafting and the end result that ultimately emerges is a carefully considered and purified act whereas in the case of an Ordinance, it takes effect in the form in which the Govt. prepares it. To this extent therefore it is extremely important that in the cases where an Ordinance is challenged particularly on the ground of mala fides or on grounds of vires, that a Court must examine it and perhaps with a higher degree of meticulousness than it would in the case of any other enactment. History has shown that there have been scores of instances when Ordinance have contained hurriedly drafted out provisions, several of them have turned out to be draconian, which have been promulgated overnight and in this background, the scrutiny of an Ordinance is something which a Court must undertake with a higher decree of care and caution. (Para 10)

Cases Referred : Chronological Paras

AIR 1994 SC 1918 : 1994 AIR SCW 2946 11, 12

AIR 1987 SC 579 11, 12

AIR 1982 SC 710 : 1982 Cri LJ 340 11, 12

K. S. Desai and Harsh Desai, (in W.P. No. 15380/97) and Ko. Channabasappa and Sri Vijay Kumar (in W.P. No. 15982/97), for Petitioners; R.I. D'Sa, Govt. Advocate and B. G. Sreedharan, for Respondents.

Judgement

ORDER :- Issues of far reaching significance have fallen for decision in these two writ petitions which effectively concern the fate of the Agricultural Produce Market Committees (hereinafter referred to as the A.P.M.Cs) in the State of Karnataka. The question that has ultimately crystallised centres around the issue as to whether motivated nominations to elected bodies made in sufficient number as to alter the

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structure and decision making power of that institution can legitimately be justified as being within the framework of the democratic process and the subsidiary question that has arisen is as to whether an Ordinance issued at a point of time after the election process has been concluded is liable to judicial review and if so, to what extent.

2. There is not much dispute with regard to the factual position because these two writ petitions are effectively representative in character in so far as they concern as many as 134 A.P.M.Cs. in the State. According to the petitioners, these bodies carry out very important functions relating to a sizeable sector of the agricultural and trader community. They deal in transactions worth crores of rupees and it is their case that the functioning of these bodies is required to be essentially left to the aforesaid strata of citizens whose interests they concern. It is pointed out that the elections to these bodies had not been held for about one decade and according to the petrs. several efforts were made including obtaining judicial directions for purposes of ensuring that the elections were held and finally, in the year 1997, a decision was taken to this effect. The elections commenced on 1-3-1997 an ended with the declaration of results on 2-5-1997. The results were notified in the gazette on 5-5-1997. The petrs. have placed before the Court an indication of the relative strength which they have complied on a partywise basis because, like all elections these were also fought on a party affiliation basis. According to the figures placed before the Court, the Congress (I) secured 658 members, the Janata Dal 490 members and others 100 members. In terms of percentage, it workers out that the Congress (I) had approximately 49% of the candidates with the Janata Dal securing about 36% of the candidates. Normally, I would not have even reproduced these figures but I have done it for a limited purpose because the learned counsel appearing on both sides have advanced certain arguments in this regard and it could therefore be useful to have the factual data at hand. The petrs. state that under Sec. 39 of the Act the elected Committee is deemed to have assumed office immediately on the declaration of the results in the gazette and the next stage was that under S. 41 the two office bearers namely the Chairman and Vice-Chairman would have been elected and the APMCs. would have started functioning. The legislature was not in session at this stage and the petrs. allege that taking advantage of this fact, the Govt. hurriedly promulgated the Ordinance on 21-5-1997 whereby Sec. 11 of the Act was amended and sub-sec. (IX) was introduced which reads as follows :-

"Three members shall be persons nominated by the State Govt. who shall have right to vote in all the meetings of the Market Committee and shall hold office at the pleasure of the State Govt." The Ordinance in question is a very short one and significantly enough, there is no statement of objects and reasons, I refer to the last aspect of the matter because one of the heads of challenge presented before me is on the ground of arbitrariness and the petrs. learned counsel have submitted that it is well settled law that if an order or a statute is silent in material particulars that it is impermissible to seek to bolster it up at a later point of time by setting out plausible grounds or reasons.

3. The petrs. have challenged the validity and the vires of the Ordinance and this Court after notice to the Govt. and after hearing the learned Advocate General on behalf of the Govt. as also the petrs. learned counsel admitted the petitions and granted a blanket stay of the operation of the Ordinance. The Govt. carried the matter in appeal and the appeal Court slightly modified the interim order passed by this Court to the extent that the Govt. was permitted to go ahead and make the nominations but it was clarified that the elections to the post of Chairman and Vice-Chairman shall not be held and that the interim relief as granted by this Court subject to the aforesaid modifications would continue. The State has filed its objections and the petitions being of immense importance in so far as it was pointed out to this Court that despite the provisions of S. 39 of the Act, that the elected bodies had virtually been put into cold storage and could not function because of the pendency of the litigation, which was why the petitions were taken up for out of turn hearing. Before proceeding, I need to record here that this Court is deeply indebted to the four learned counsel who have argued the case with a degree of thoroughness and competence particularly with regard tos the relatively delicate and complicated points of law involved in these cases.

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4. The principle ground of attack that has been presented by the petrs. is that the action is motivated and bristles with mala fides. Learned counsel have concentrated on a two pronged thrust. In the first instance, they pointed out that the elections to these bodies were held and completed by the first week of May, 1997 and that according to them, the State Govt. agitated by the outcome of the elections in so far as, according to the learned counsel, the ruling party did not secure the anticipated majority. It is their case that at this late stage, when by virtue of the provisions of S. 39 of the Act the duly elected members had already assumed office and the bodies ought to have started functioning, that the State Govt. in order to stall this operation hurriedly promulgated the Ordinance in question whereby 3 members were sought to be nominated by the State Govt. and inducted on to every APMC with voting rights. What learned counsel have demonstrated is that as a result of this operation which according to them was synonymous with adding weight to the opposite end of a sea-saw, that there would have been an immediate complete change of equation and total swing in the opposite direction towards the ruling party whereby effectively the percentage would jump from 36% to 51% by adding the 402 nominated members giving them a distinct majority both in matters of electing the office bearers as also with regard to decisions which would have to be taken and would necessarily be carried by those in majority. On the basis of this material, learned counsel have alleged that the action was highly motivated. The second limb of the argument proceeded on the footing that if at all there was any bona fide behind the nominations, as has been now pleaded to be the case before this Court, that the Govt. during the long period of time when the decision was being finalised to hold the elections could have indicated that for good reasons it was considered necessary to nominate a certain number of persons. I have already indicated that the Ordinance was promulgated at a point of time after the election results were known and learned counsel have repeatedly emphasized this fact in support of their argument that it is the timing of the action which is the strongest indication of mala fides. The subsidiary argument canvassed in support of the aforesaid one is that under S. 11 of the Act, it is clearly provided that the APMC shall be an elected body and there is only on ex officio nomination that is required to be made out of the total strength of 15. Learned counsel submitted that where the statute very clearly provides for a process of election that it is in consonance with the democratic principles and set up, and that if it can be demonstrated that the Ordinance has the effect of interfering with this process, that they are entitled to challenge the action inter alia on the ground that it is ultra vires of not only the parent statute but basically the provisions of Art. 14 of the Constitution. While advancing their submissions on the point of arbitrariness, the learned counsel have drawn by attention to the wording of the Ordinance which I have reproduced above whereby no norms or guidelines or indications have been set out as to who precisely would be nominated to these bodies. The criticism followed, in so far as learned counsel submitted that there is no guarantee that persons who are of the requisite experience in the field of activity and business relating to market Committees would be nominated and furthermore, they have submitted that the wording of the Ordinance leaves the field wide open for misuse of power and for making political appointments. As far as this last aspect of the matter goes, they have submitted that any such exercise of power would not only be counter productive but would be totally and completely obstructive to the functioning of the APMCs.

5. Shortly before the petitions came up for hearing, one significant development took place. Again, I would not have referred to this even indirectly but for the fact that the petrs. learned counsel have tendered to the Court a transcript of the proceeding of the House and have relied on it very heavily in the course of their arguments. In support of their contention that the power to nominate is politically motivated and that power would be used for making political appointments, they have relied on certain passages from the debate that ensued in the House and in particular, on statements made by the Hon'ble Chief Minister wherein he has stated that even though he fully subscribes to democratic norms, that it was necessary to do this for purposes of furthering the ruling parties interest. Learned counsel have pointed out to me that irrespective of what may have been set out in the pleadings before this Court, that this statement constitutes an

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unequivocal admission that the sole object of bringing out the Ordinance was in order to ensure that the ruling party despsite not having secured a majority in the elections still alters and off-sets the result of those elections by exercising the power of nominating its own candidates.

6. The Govt. while defending its action has set out very convincing grounds in support of the action. It has pointed out that the APMCs. are very important bodies in so far as they virtually handle crores of rupees worth of agricultural produce of all categories on a day-to-day basis. They have large premises and market yards, that they virtually control the interests of the agriculturists and those who trade and deal in agricultural produce, that on the other hand, they are also in charge of funds running into staggering amounts, that they deal in premises and large finance of the Govt. and that to this extent it was considered very necessary that the Govt. must ensure necessary supervision and control in the working of these bodies which was why it was thought fit to nominate three persons. I hardly need to deal with these grounds but I shall do so for the reason that the petrs. learned counsel are right when they pointed out to me that the structure and scheme of the APMC under the Act is very clearly defined in so far it is a almost 100% elected body bringing one ex officio member who is nominated. This presupposes the fact that the essential norms of democratic functioning are inbuilt into this process in so far as members who constitute agriculturists, traders and businessmen and whose interests are controlled by this body are the persons who decide on who will be their representatives through a democratically held election. The Act itself prescribes that the first Market Committee shall be a wholly nominated body which is undoubtedly for good reasons but once this process is over, the constitution of the Market Committee has to be through elections. What is sought to be done through the Ordinance is that this process is sought to be completely and totally nullified by nominating as many as 3 persons. It is true that the learned counsel who represented the Govt. vehemently argued that 3 out of a total number of 18 is an insignificant number and that it cannot and will not alter or upset the balance. I have already indicated that this is not the right perspective of the matter because these elections have been fought on a party basis and where the percentages are 36 and 49%, the addition of 3 persons would completely swing the balance in favour of the ruling party and the petrs. learned counsel are therefore justified when they pointed out to me that what appears to be a seemingly innocent operation is in fact a devious device to totally nullify the electoral process. Viewed out at this angle, there is no option except to categorise the action as a total and complete sabotage.

6A. Mr. D'sa, learned Govt. counsel tried to emphasise that the object of the nominations is well intentioned and that the purpose was in order to provide representation to weaker sections and women. This is nothing but an afterthought and runs counter to the Chief Minister's admission but is a specious and untenable contention because these categories are already catered for in the original constitution and any further additions to these special categories would again completely upset the constitution of the Committee and would also result in reverse discrimination vis-a-vis the other categories of members. Mr. D'sa then tried to convince the Court that there may be desirable persons who cannot come through the election process because of several limitations and that they could be nominated. This can never be accepted because the basic fabric of a democratic set-up pre-supposes the ability to emerge through an electoral process. Ons the contrary, nominations could in all probability result in back-door entry of undesirable candidates who could never otherwise have got elected. Again, what the Ordinance provides for is an unspecified tenure - not co-extenso with the normal life span of the elected members. Nothing could be more dangerous because it leaves the door wide open for the Government to destabilize the working of the Committee through frequent changes but the even more alarming result of such a seemingly innocuous provision would be that the nominated members whose existence depended on the "pleasure of the Government" would virtually be absolute pawns, dancing like puppets to the tune of "His Master's Voice." As the Ordinance is framed, it lacks even a modicum of a guarantee that the power of nomination will be used correctly or responsibly. I need to add here that the power of nomination, even in cases where it is permissible can only be exercised in small doses, for purposes of enhancing the constitution of a

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body by inducting persons of outstanding merit and expertise whose contribution is of proven significance. Where the objective is to pack a Committee and offset the electoral results, it would be downright mala fide.

7. In this context, I need to also observe that having regard to the statement made by the Hon'ble the Chief Minister which has been relied on by the petrs. learned counsel heavily in support of their arguments, it would be impossible to accept the grounds that have been put forward by the State Govt. in defence of the action. I do concede as pointed out by the learned sr. Govt. counsel that these are very important bodies and that therefore, a responsible Govt. is very much concerned about the manner in which they function. This being the objective, nothing prevented the Govt. from taking whatever steps earlier within the framework of law that they considered necessary in order to safeguard the interests of the members as also of the Govt. Having regard to what has subsequently been accepted and admitted, it would be very clear that this is not objective in promulgating the Ordinance. There is an additional reason for this because I have carefully evaluated the further submission canvassed by the learned sr. counsel who represented the Govt. when he pointed out to me the provisions of S. 126 and S. 126A of the Act and he contended that despite these provisions being on the statute book, the plea that the powers that flow from those provisions are not sufficient for the Govt. to effectively exercise the requisite supervision and control over the functioning of these bodies which was why it was considered very necessary to resort to the process of making nominations. I am unable to accept this argument for the simple reason that the Market Committees effectively have the status of a body corporate and that the Secretary of the Committee cannot give effect to any resolution or decision that is against the provisions of law without obtaining the requisite approval and sanction of the Director. The Govt. itself has an inbuilt safety mechanism whereby all resolutions and decisions are required to be approved of by the Director. The Director is a sufficiently highly placed and responsible Govt. officer and the working experience has shown that the Directors have invariably corrected numerous wrong decisions of the Market Committee and have refused to accord sanction to those which do not qualify for approval. It is therefore fallacious to argue that within the framework of the statute the Govt. did not have the capacity to supervise, monitor and control wherever is necessary and that the nominations had to be resorted to for this purpose. Having dealt with the aspect of timing of the action, there is little doubt in my mind that it was hopelessly ill-timed and furthermore, the challenge on the ground of mala fides will also have to be upheld.

8. In the course of his submissions, the learned sr. Govt. counsel advanced the argument that the Ordinance promulgated under Art. 213 of the Constitution has effectively been challenged on the ground that no conditions existed that would justify the exercise of emergency powers by the Governor and he also submitted that as far as this area of challenge is concerned that it is hardly justiciable. I shall deal briefly with the legal position but the argument advanced by the learned counsel is by and large correct except for one small limitation in so far as the Supreme Court while going into the scope of judicial review in relation to situations of this type where a Governor promulgates an Ordinance on where the President exercises his powers under Art. 356 of the Constitution, has laid down more than once that whereas a Court could be very slow in going behind these aspects of the matter, that there do exist a small class of cases or in fact perhaps a microscopic few where the Courts would be required to look into that aspect of the matter for purposes of satisfying itself that the conditions requisite for the exercise of power were existent or that there is a very strong case of mala fides with regard to the end process of the action namely the Ordinance or the order passed. One needs to hasten to point out that the Governor or the President, as the case may be, is only acting on the advice of the council of Ministers and that undoubtedly being high Constitutional dignitaries they do have power to invariably scrutinise the proposed course of action and if the consent is thereafter accorded, that it would invariably be respected and the earlier view was that it was totally and completely beyond question. That doctrine of absolute immunity has now been slightly watered down and therefore it would not be open to the learned sr. Govt. counsel particularly on the facts of the present case to contend that the right of judicial review does not

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extend to an examination of the action.

9. In the course of their submissions, the petrs. learned counsel submitted that an Ordinance is effectively an emergency measure and they have very elaborately and vehemently submitted that in the present situation there was no emergency of any type. They have demonstrated that the decision to hold the APMC election was a carefully thought out and an elaborate process which spread over several months, that the elections were held in normal course and that there was no conceivable ground on which the duly elected candidates could have been stopped from assuming office or the bodies could have been stopped from functioning and that in this background, within the framework of law it was not permissible to alter the constitution of the already elected bodies through any amendments even assuming they were legal and permissible. In this background, they have submitted that the timing of the Ordinance and the recording of satisfaction that the circumstances justified the promulgation of an Ordinance at that point of time is rendered bad in law. To my mind, this is a grey area, because as pointed out to me earlier the Governor was acting on the material put up to him and the advice of the Council of Ministers and ultimately takes a decision with regard to whether in his considered view the circumstances justified the action at that point of time. In the statement of defence, it has been pointed out that the Govt. was of the view that it was very necessary before the APMC started functioning to graft on 3 persons as the elections were to be held and the bodies were to start functioning thereafter and that since the assembly was not in session that an Ordinance was inevitable. If on the basis of this material the Governor was of the view that an Ordinance is justified, it would hardly be open having regard to the law on the point for this Court to go behind that satisfaction. On the facts of the present case, I do not consider it necessary because the petrs. are entitled to succeed on merits and therefore, this aspect of the matter does not assume any importance.

10. The challenge before me is to an Ordinance and the assembly as now in session and as is the requirement of law the Ordinance is required to be replaced through a Bill which would ultimately turn into an Act and the learned Sr. Govt. counsel states that having regard to the passage of time and fact that the Govt. has now tabled a bill before the assembly which will be taken up for consideration very shortly, that it is wholly and completely unnecessary for this Court to examine any aspect of the present challenge in so far as the Ordinance has exhausted itself. He points out to me that the exercise would be rendered academic and that therefore the Court should not embark on it. This submission has been vehemently opposed by the petrs. learned counsel who contend that the action itself was mala fide and they pointed out that had the petrs. not challenged the action before this Court and stopped it, that it would have been given effect to and that the damage would have been irretrievable. They submit that as invariably happens an Ordinance is replaced by an identical amendment and that the petrs. would be driven from pillar to post by having to once again recommence the entire exercise and to this extent therefore they submit that it is imperative for the Court to decide the matter on merits. I am in agreement with the submissions for an additional reason that an Ordinance unlike an Act is required to be very very carefully scrutinised by a Court if it is challenged because an Ordinance is an unfettered, unbridled power to promulgate provisions which have the effect of law without their going through the constitutionally prescribed process. When a Bill is introduced, it is required to be debated by the House and it is open to scrutiny. It is open to examination by all the elected representatives and more importantly by the opposition. There are numerous instances where a Bill may be withdrawn but in the case of several others need has arisen for serious reconsideration, modificat-ion and redrafting and the end result that ultimately emerges is a carefully considered and purified act whereas in the case of an Ordinance, it takes effect in the form in which the Govt. prepares it. To this extent therefore it is extremely important that in the cases where an Ordinance is challenged particularly on the ground of mala fides or on grounds of vires, that a Court must examine it and perhaps with a higher degree of meticulousness than it would in the case of any other enactment. History has shown that there have been scores of instances when Ordinances have contained hurriedly drafted out provisions, several of them have turned out to be draconian, which have been promulgated overnight and in this background,

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the scrutiny of an Ordinance is something which a Court must undertake with a higher degree of care and caution.

11. In the course of their submissions, the petrs. learned counsel drew my attention to the decision of the Supreme Court reported in AIR 1982 SC 710 in Roy's case wherein the Supreme Court came down heavily on that class of Ordinances which are promulgated to subserve political ends. The Court had occasion to consider in detail the ambit and scope of Art. 213 of the Constitution and in particular the question as to whether the aspect of satisfaction is justiciable and the Court laid down very clearly that the 30th (sic) amendment which basically gave rise to the view that it is not justiciable was thereafter deleted in 1978 by the 44th amendment to the Constitution after which it would be permissible in appropriate cases for the Court to examine this question. I need to refer to another decision of the Supreme Court, reported in AIR 1987 SC 579 better known as Wadhwa's case, wherein the Court was dealing with the concept of colourable exercise of power while examining a series of Ordinances that had been promulgated and repromulgated and the Court laid down the very very important principle that promulgation of an Ordinance intended to short circuit the legal process as prescribed under the Constitution is illegal. I would go to the extent of saying that this principle could better be defined as enunciated that an Ordinance is an emergency or a stop-gap measure and the power is required to be used for purposes of subserving, conserving and enhancing the Constitutional process and should not be and cannot be used for purposes of bypassing it. The Supreme Court in the case, reported in AIR 1994 SC 1918 (Bommai's case) was dealing with a more or less analogous power to that which is vested in the Governor of a State namely the power of President of India under Art. 356(1) of the Constitution. The Supreme Court was at pains to reiterate several times in the course of that judgment that two of the essential characteristics of the Indian Constitution are that it is built around the democratic process and the principle of Federalism and while examining the question of whether the aspect of satisfaction of the President was open to judicial review, the apex Court settled the law on the point laying down that it is not immune from judicial review.

12. I have already held that the action was ill-timed, that the challenge to the action on the ground of mala fides is well founded in so far as it totally and completely subverts the electoral process whereby the APMCs. are required to be constituted by elected representatives and not nominated persons and furthermore, that having regard to the principles enunciated by the Courts from time to time and in particular, the law as laid down in Roy's case, Wadhwa's case and Bommai's case, that the action runs contrary to the democratic process and to the extent that on the present set of facts it virtually nullifies the effect of the elections, that it would have to be held that it has resulted in a sabotage of the democratic process.

13. As a necessary consequence of these findings, the Ordinance in question is required to be struck down. The petitions accordingly succeed. It is pointed out to me that by virtue of the interim order passed by the Division Bench, that the Government has already made certain nominations but this action is by virtue of the powers that flow under the Ordinance. The Ordinance itself having been struck down, those powers would automatically be quashed. Learned counsel representing the petrs. have pointed out to me that under the scheme of the APMC Act, the members having been elected, Sec. 39 prescribes that they are required to assume office and start functioning immediately on the results of the elections being declared in the gazette. That process has been completed on the 2nd of May, 1997. Having regard to that position, the APMCs. in question shall proceed forthwith to hold the elections to the post of Chairman and Vice-Chairman.

14. The petitions are accordingly allowed. Rule is made absolute to this extent. In the circumstances of these cases, there shall be no order as to costs.

15. The learned Sr. Govt. counsel states that this is an important decision and that the Govt. is required to consider the judgment carefully before deciding on the future course of action and he therefore prays for continuance of the earlier interim order until a copy is received and it is considered. The petrs. learned counsel have opposed the continuance of the interim order. What they have pointed out is that already almost three months have gone and that the working of all the APMCs. in this State is at a standstill.

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I consider the request of the Govt. reasonable. A copy of the judgment will be made available to all the learned Advocates in the course of the next 2 or 3 days. The interim order shall therefore continue for one week from the date of receipt of the judgment.

Petition allowed.

AIR 1998 KARNATAKA 288 "Sri Venkataram and Co., M/s. v. State of Karnataka"

KARNATAKA HIGH COURT

Coram : 2 G. C. BHARUKA AND CHIDANANDA ULLAL, JJ. ( Division Bench )

M/s. Sri Venkataram and Co., Shimoga City, Appellant v. State of Karnataka and others, Respondents.

Writ Appeal No. 10096 of 1996, D/- 11 -3 -1998.\*

Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.63(1)(b)(iii) - AGRICULTURAL PRODUCE - ALLOTMENT OF PREMISES - Allotment of site by market committee - Cancellation - Validity - Site allotted to appellant for specific purpose of constructing godown within stipulated time - Failure to do so by appellant - Cancellation of allotment by market committee after issuing show cause -

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Is proper - Market committee need not have approached the Court for exercising said power. (Paras 14, 16)

Cases Referred : Chronological Paras

AIR 1987 SC 251 : 1987 Tax LR 1830 17

AIR 1987 Kant 227 : ILR (1986) Kant 1175 13

AIR 1986 SC 872 15

AIR 1936 PC 24 12A

K. I. Bhatta, for S. V. Prakash, for Appellant; Smt. V. Vidya, Govt. Pleader (for No. 1) and B. G. Sridharan (for No. 3), for Respondents.

\*Against order of single Judge of this Court in W. P. No. 3586 of 1996, D/- 24-9-1996.

Judgement

G. C. BHARUKA, J. :- The short question involved in this appeal is as to whether the resolution dated 26-2-1993 passed by the respondent-Agricultural Produce Market Committee purporting to cancel the allotment/sale of site No. 9 in Block-H, measuring 60' x 120' of Sy. No. 1 in Srigandha Kavalu, Kasaba Hobli, Shimoga City, being the notified market yard, can be held to be legally permissible on the part of the said Market Committee. Since the learned single Judge by his impugned order has answered the said question in the affirmative, therefore, the present appeal by the writ petitioner.

2. The respondent-Market Committee has been established under S. 9 of the Karnataka Agricultural Produce Market Committee (Regulation) Act, 1966 (in short "the APMC Act") having the jurisdiction over the entire market area of Shimoga. It is now an accomplished fact that as provided under the provisions of the APMC Act the said Market Committee has been established for ensuring better regulation of buying and selling of notified agricultural produces. For achieving the said objective sub-section (2) of S. 8 of the APMC Act mandates that no place except the market yard, market sub-yard or sub-market yard shall be used for purchase or sale of notified agricultural produces.

3. Section 6 of the APMC Act, inter alia, provides that for every market ara there shall be a market and for every market there shall be a market yard and there may be one or more market sub-yards. Section 69 of the APMC Act empowers the State Government to acquire the lands for carrying out the purposes of the APMC Act by invoking the provisions of the Land Acquisition Act, 1894, and the lands which were acquired on payment of the awarded compensation by the Market Committee shall vest in the Market Committee. Sub-section (2) of S. 9 of the APMC Act declares that every Market Committee established under the APMC Act shall be a body corporate which may sue or be sued in its corporate name. It also provides that the Market Committee shall be competent to make contract and to acquire, hold, lease, sell or otherwise transfer any property and to do all other things necessary for the purpose for which it is established.

4. Section 63 of the APMC Act enumerates the powers and duties of the Market Committee. Clause (b)(iii) of sub-section (1) of the said Section empowers the Market Committee to acquire, hold and dispose of any moveable or immovable property for the purpose of efficiently carrying out its duties. A conspectus of the statutory provisions of the Act, as noticed above, clearly establishes the authority of the Market Committee, established under the APMC Act, to acquire and transfer the immovable properties by way of lease, sale or otherwise, provided that the said transactions can be said to have a reasonable nexus with the object and purpose for which the Market Committee is established, namely, for the better and effective regulation of buying and selling. In other words, if the Market Committee enters into any contract of transfer of any property which is found to be opposed to the object of the APMC Act or which may on appropriate analysis is found to be defeative of the purposes for which the Market Committee is established, then the same will be void in view of S. 23 of the Indian Contract Act, 1872, which reads thus :

"23. What considerations and objects are lawful and what not.

The consideration or object of an agreement is lawful, unless -

it is forbidden by law;

or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration of object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

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ILLUSTRATIONS

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5. Now, coming to the facts of the present case which lie in a narrow compass, respondent-Market Committee under its resolution dated 26-2-1993, took a decision to allot the site in question in favour of a partnership firm, namely M/s. Murugar Arecanut Traders, being the vendor of the appellant, for a total consideration of Rs. 1,666.67 ps. Consequent to the said resolution a registered instrument termed as Sale Deed came to be executed on 24-5-1974, which has been placed at Annexure-A to the writ petition. The preamble of the said instrument reads thus :

"This sale deed is made the Twenty fourth day of May 1974 between the Agricultural Produce Market Committee, Shimoga, Shimoga District, Karnataka State, represented by (1) its Chairman Sri N. D. Thimmappa (2) its I/c Secretary Sri C. Jayappa (hereinafter called the seller) of the one part and M/s. Murugar Arecanut Trader, represented by its Partner Sri V. Subramanyachetty s/o. Sri Vadivelu Chetty, aged about 43 years, resident of Shimoga City, Shimoga District (hereinafter called the purchaser) of the other part.

WHEREAS the seller is the owner and in possession of the market yard known as Sandalwoodkaval situated in Sl. No. 1 of Gopala village, Kasaba Hobli, Shimoga Taluk, Shimoga District, Shimoga, and now included in the limits of Shimoga City Municipality, Shimoga.

WHEREAS the seller has divided a portion of that yard into sites or plots for allotment to licenced traders and commission agents connected with trade carried on in the yard under the supervision, direction and control of the seller in accordance with the provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, and the rules thereunder and the bye-laws and regulations framed by the seller for construction of shop-cum-godown and for providing storage etc., of commodities dealt within the yard; and

WHEREAS the purchaser being a licencee holding a licence from the seller to carry on dealings and trade so supervised, regulated and controlled by the seller has applied for allotment of a site in the Market Yard for construction of shop-cum-godown for the above said purposes and the seller at its meeting held on 26-4-1971 resolved to grant to the purchaser a site No. 9 (nine) block 'H' more particularly described in the Schedule below for a consideration of Rs. 1,666.67 (Rupees one thousand six hundred sixty six and paise sixty seven only) subject to the conditions, reservations and stipulations enumerated hereafter in this Deed which conditions, reservations and stipulations the purchaser has agreed to and has accepted."

6. The material conditions incorporated in the said instrument which are relevant for the present purposes reads thus :

"(a) That the purchaser should construct shop-cum-godown on the said site according to the design previously approved by the seller committee on or before the date prescribed and if the purchaser fails to do so without sufficient reasons the said site may be forfeited and resumed by the seller's Committee without refunding the price or any part of it paid as above or without payment of any compensation or without any extension of time;

(b) That the purchaser can sell the site and the buildings that will be constructed thereon only to permanent licence-holders from the seller' committee and to none else;

(c) That the purchaser should not sell the site and the buildings that will be constructed thereon, within a period of five years from the date of completion of the first building thereon and should the seller be obliged to sell it within this period as a result of his ceasing to carry on business in the Market Yard, he can dispose of or transfer the site or buildings or any other interest thereon to only merchants holding a licence to trade granted by the seller and only with the previous sanction in writing of the seller;"

7. The instrument of transfer in question further makes it abundantly clear that the site in question had been transferred in favour of the petitioner only for the purpose of construction of shop-cum-godown for carrying the wholesale trade in notified agricultural produces as specified from time to time by the Market Committee and it would be impermissible for the buyer to use the said site for residential or any other purpose whatsoever. It was also agreed between the parties that the purchaser cannot store articles, goods or commodities other than those specified by the Market Committee without the permission of the latter. Therefore, as agreed to between the parties, the enjoyment of the site in question was absolutely restricted to bring it in consonance with the object and purpose of the

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APMC Act since any attempt to violate the said legislative mandate would have rendered the contract of transfer entered into between the parties as void.

8. Admittedly, the original allottee namely M/s. Murugar Arecanut Traders did not make any construction on the site in question as stipulated under the deed of transfer for the purpose of carrying on any business till and up to 1989. Instead, they filed an application before the Market Committee on 30-5-1989 seeking their permission to transfer the said site in favour of the present appellant which was acceded to by the Market Committee through its administrator subject to the condition that the appellant should construct shop cum godown within the period of two years failing which action was to be taken in accordance with law. The permission so accorded was communicated by the Secretary of the Market Committee under his letter D/- 14-6-1989 with a copy to the present appellant. Consequent upon the said permission, the original allottee transferred his right, title and interest over the site in question to the appellant herein by a registered deed of transfer D/- 28-6-1989 (Annexure 'B' to the writ petition) which specifically mentions that transfer was being effected subject to the condition laid down by the Market Committee. Subsequently, when it was found that the appellant had failed to make construction on the site in question within the stipulated period of two years, the Market Committee served several notices upon him to show cause as to why the allotment should not be forfeited. In response to one of the said notices D/- 22-9-1992 the appellant filed reply D/- 2-9-1992 stating therein that the business in arecanut had come down and he was facing financial difficulties and as such he could not put up the construction. Since the committee did not find the reply acceptable, therefore, the Market Committee under its meeting held on 26-2-1993 resolved to forfeit the allotment.

9. The aforesaid resolution D/- 26-2-1993 came to be challenged by the appellant after a lapse of almost three years by filing writ Petition No. 3586/96 by raising various legal issues. But the learned single Judge having found no substance in the pleas so raised dismissed the writ petition by the impugned order D/- 24-9-1996 taking the view that the instrument like the present one at Annexure 'A' was only a licence granted by the Market Committee to a trader for specific purpose of constructing a shop cum godown for carrying on wholesale business in notified agricultural produce within a period of two years and since it was found that there was violation of the said condition, therefore revocation thereof was held to be valid.

10. Mr. K. I. Bhatta, learned counsel for the appellant, has submitted that the instrument D/- 24-5-1974 (Annexure 'A' to the writ petition) executed by the Market Committee in favour of the vendor of the appellant evidences absolute sale and therefore keeping in view S. 11 of the Transfer of Property Act ('TP' Act for short), the directions contained therein, for user and enjoyment of site in a particular manner and purpose are of no legal consequence and in that view of the matter it was not competent on the part of the Market Committee to forfeit the allotment for violation of the said direction pertaining to enjoyment and user.

11. On the other hand, Mr. B. G. Sridharan, learned Counsel appearing for the Market Committee, by relying on S. 31 of the TP Act raised the plea that the instrument of transfer at Annexure 'A' merely evidences creation of interest with a condition, namely, construction of shop cum godown should be made within a specified period and on failure to carry out the same, interest ceased to exist.

12. For weighing the rival contentions, it would be better to quote Sections 11 and 31 of the T. P. Act which read thus :-

Section 11. Restriction repugnant to interest created.- Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Where any such direction has been made in respect of one piece of immoveable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.

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Section 31. Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.- Subject to the provisions of Section 12, or on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations

(a) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

12A. In the case of Devendra Prasad Sukul v. Surendra Prasad Sukul, AIR 1936 PC 24 : 63 Ind App 26, the Privy Council, by referring illustration (b) as set out in Section 31 of the T. P. Act quoted above, has held thus.-

"This is an example of a completed transfer subsequently resolves. The interest has already been created, but it is thereafter defeated."

13. In the case of Govindamma v. Secretary, Municipal First Grade College, Chintamani, ILR (1986) Kant 1175 : (AIR 1987 Kant 227) (para 12), this Court, on comparision and analysis of Sections 11 and 31 of the T. P. Act, held that :-

"Transfer of property is always made to convey property to some one or in other words to create an interest in the property in favour of such a person if the interest so created is absolute but in the terms of the transfer there is a direction that such interest shall be applied or enjoyed by the transferee in a particular manner (though the interest created is absolute), provisions of Section 11 of the Transfer of Property Act squarely apply. It is to be noted here that the direction in the terms of the transfer has to be in regard to application of the interest created or enjoyment of the interest created in a particular manner (though the interest has been created absolutely). In such cases, the law makes the term or direction disappear allowing the interest created absolutely to survive. On the other hand, when an interest in the property transferred is created but with a condition that it shall cease to exist on the happening of a specified uncertained event or on the non-happening of specified uncertain event, the provisions of Section 31 of the Transfer of Property Act squarely apply. The absence of the word 'absolutely' in extension of the words 'an interest' in Section 31 is very significant. Illustration (a) to Section 31 takes into consideration a case of limited interest. Illustration (b) to Section 31 appears to take into consideration a case where a limited interest has not been created, but a condition which is unconnected with application of the interest or enjoyment of the interest so created is superadded. These two illustrations, clearly highlight the basic distinction between the provisions in Section 11 and Section 31 of the Transfer of Property Act. In a case falling under Section 31 of the Transfer of Property Act, the superadded condition survives and the interest created disappears.

14. As noticed above, in our opinion, it cannot seriously be disputed that keeping in view the provisions of APMC Act, the Market Committee had no competence to convey or transfer a property absolutely in the sence that a transferee can use and enjoy the same in any manner he likes. If the instrument at Annexure 'A' is considered to have conveyed absolute interest in the site in question permitting unrestricted enjoyment thereof, then, clearly it would be violative of the purpose, intendment and mandate of the APMC Act and thus ultra vires the powers of the Market Committee as envisaged under Section 9(2) of the APMC Act, rendering the whole transaction as void. Therefore, keeping in view the well established rules of construction, even in the instruments, such construction cannot be adopted. Therefore, to save it from being void ab initio as per Section 23 of the Contract Act the only alternative that remains is to hold the instrument as one creating a interest in the site superadded with the condition of putting up construction within the specified time and in case of failure to do so, the interest so created was to be ceased to exist. Therefore, in our considered opinion, no fault can be found with the Market Committee in taking formal decision of cancellation of allotment and that too after compliance of principles of natural justice.

15. Mr. Bhatta has further submitted that even if it be held that the petitioner/appellant has

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forfeited his right, interest and title over the site in question but still it will be unlawful on the part of the Market Committee to enter upon the site and take possession thereof without taking recourse to the due process of law i.e. of obtaining decree of possession from the competent Civil Court. In support of the said ground, he has relied upon the judgment of the Supreme Court in the case of Express Newspapers Pvt. Ltd. v. Union of India, AIR 1986 SC 872 (Para 87), wherein it has been held that-

"The Express Buildings constructed by Express Newspapers Private Limited with the sanction of the lessor i.e. the Union of India, Ministry of Works and Housing on plots Nos. 9 and 10, Bhadurshah Zafar Marg, demised on perpetual lease by registered lease deed dt. March 17, 1958, can, by no process of reasoning, be regarded as public premises belonging to Central Government under Section 2(e). That being so, there is no question of the lessor applying for eviction of the Express Newspaper Private Limited, under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 nor has the Estate Officer any authority or jurisdiction to direct their eviction under sub-section (2) thereof by summary process. Due process of law in a case like the present necessarily implies the filing of the suit by the lessor i.e. the Union of India, Ministry of Works and Housing, for the enforcement of alleged right re-entry, if any, upon forfeiture of lease due to breach of the terms of the lease."

16. In our opinion, the plea so raised is wholly misconceived and misplaced. In a case like the present one, where a person, who had been given the site for specific purpose by a statutory body, in furtherance of the object of the APMC Act, fails to carry out the said purpose, then the statutory body need not approach the Court for exercise of its power. Even otherwise, we have failed to understand as to how any direction of the nature sought for can in any way advance the cause of justice because once the act of forfeiture is held to be valid then recovery of possession will be merely and inevitable consequence which defaulters like the appellant can under no situation avoid. Therefore, apparently, the said plea has been raised only with a mala fide intention as a measure to prolong the dispute to which the writ Court cannot be a party.

17. It is also of much importance that the writ petition of the appellant could not have been at all entertained because of gross laches committed by him inasmuch as in the present case, the resolution of the Market Committee has been questioned under the writ jurisdiction after a lapse of almost three years. In the case of State of M. P. v. Nandlal Jaiswal, AIR 1987 SC 251 (Para 23) it has been held that :-

"Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is any inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may declined to intervene and grant reliefs in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit of belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal."

18. For the reasons discussed above, we are of the considered opinion that the appellant is not entitled to any relief as claimed. The appeal is accordingly dismissed with costs assessed at Rs. 1,100/-.

Appeal dismissed.

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AIR 1991 KARNATAKA 63 "Katwe Jaggery Traders v. State of Karnataka"

KARNATAKA HIGH COURT

Coram : 1 H. G. BALAKRISHNA, J. ( Single Bench )

M/s. Katwe Jaggery Traders, Hubli and etc. etc., Petitioners v. State of Karnataka and others, Respondent.

W.P. Nos. 11896, 11897, 22837 to 22854, 11543 and 11544 of 1989, D/- 28 -5 -1990.

(A) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.3(1) - AGRICULTURAL PRODUCE - INTERPRETATION OF STATUTES - Requirement of publication of notification under, in Kannada - Is mandatory - Word 'may' therein - Has to be construed as shall.

Interpretation of statutes - Meaning of words - Word 'may' - Can be construed as 'shall'.

The word "may" in sub-sec. (1) of S. 3 in regard to the publication of the notification in Kannada in a newspaper circulating in area in which regulation of marketing of specified agricultural produce is proposed, has to be construed as "shall" and, therefore, mandatory in consonance with the word "may" to be found in S.4 where a similar provision is made for notification to be published in Kannada. (Para 19)

Under sub-sec. (1) of S.3 apart from publication of the notification in the official Gazette, the legislative intention is publication of the intention by a notification in Kannada in a newspaper circulating in such area. In short, the publication in Kannada is meant for local consumption through the medium of the official language of the State. The publication in Kannada is also for the purpose of enabling the concerned trading community of the area to prefer objections and offer suggestions. Such a publication in Kannada is also to enable to authorities to consider the objections and suggestions so offered and to take a decision to issue a final notification under S. 4. In the decision making process is accommodated the legal obligation to disseminate the intention of regulating the marketing of specific agricultural produce in the area, the right to information of the persons concerned, and their right to be

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heard. This is a special enactment catering to legislative measures affecting the trading community in the matter of regulation of marketing of specified agricultural produce in the area. Special safeguard is made so that the persons concerned are not deprived of information regarding the intention of the State Government. The special safeguard is publication in the Kannada newspaper circulating in such area. It cannot be construed that such a publication is permissive and not obligatory. The legislative intention for communication of intention in the spoken language of the masses which is Kannada and which is also the official language of the State cannot be ignored. What the Legislature has intended is not only communication of the intention, but also decision after receiving the objection and suggestions by taking into confidence the members who are likely to be affected and this is characteristic of participatory democracy in a welfare State. The Legislature intended that by notifying in Kannada both under Ss. 3 and 4 of the Act, the purpose would be better achieved and the Legislature did not leave any freedom of choice to the authority. What is engrafted in the special enactment cannot be regarded by the use of the word "may" as so superficial as to mean a wasteful verbiage, pandered to the sweet will and pleasure of the authority. The publication envisaged by the Act in Kannada is intended to achieve a meaningful and effective circulation of the intention to fulfil the purpose of the Act.

AIR 1987 SC 1239 and AIR 1976 SC 263, Foll. (Paras 17 and 19)

(B) Constitution of India, Art.226 - RES JUDICATA - WRITS - Writ petition - Res judicata - Applicability - Point becoming non issue in earlier petition because of fraudulent submission of authorities - Decision does not bar consideration of question in subsequent petition.

Civil P.C. (5 of 1908), S.11. (Para 25)

Cases Referred: Chronological Paras

AIR 1987 SC 1239 (Foll.) 21

ILR (1987) Karnataka 262 24

AIR 1986 SC 391 25

AIR 1981 SC 1127 23

AIR 1976 SC 263 : 1975 Cri LJ 1993 (Foll.) 22

AIR 1972 SC 1242 22

AIR 1967 SC 1074 22

AIR 1961 SC 674 : 1961 (1) Cri LJ 760 22

AIR 1956 SC 140 22

Subhash B. Adi, for Petitioners; N. Devadas, Govt. Advocate (for Nos. 1 and 2) and B. G. Sridharan, (for No.3), for Respondents.

Judgement

ORDER:- By consent of the learned Counsel appearing for both the parties, the writ petitions are taken up for final hearing.

2. Propelled by common cause, the petitioners in these cases being traders in Jaggery have approached this Court for quashing the impugned notifications and the notices. They have also sought for a direction to the respondents to comply with the procedure laid-down under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (hereinafter referred to as 'the Act') for the purpose of establishing a market and, on establishment of the same, recover the market fee from the date of such establishment.

3. The operative portion of the impugned notification dated 15-7-1982 reads thus:--

"Now, therefore, in exercise of the powers conferred by S.5 read with S.4 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (Karnataka Act 27) with effect from the date of publication of this notification in the Karnataka Government Gazette, the marketing of Jaggery (gur) and Alasandi (hitherto not regulated) shall be regulated in addition to the agricultural produce already regulated in the market to the Agricultural Produce Market Committee, Hubli."

The other impugned notification dated 3-9-1987 reads as follows:-

(Matter in vernacular Omitted -Ed.)

The impugned notices are issued proposing action under Ss. 114 and 117 of the Act and also calling upon the petitioners to obtain licence and to pay the market fee demanded by the authorities.

4. Since in all these cases the questions of fact and law involved are the same these writ

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petitions are disposed of by a common order.

5. The following are the essential facts :-

In Writ Petition Nos.11896 and 11897 of 1989, the petitioners have shops in Alagundagi Oni, Hubli, situated outside the market sub-yard declared for the purpose of regulating trading in jaggery. After the District of Dharwar became a part of the new State of Karnataka, the Act became applicable. The object of the Act was to regulate the marketing of agricultural produce notified in accordance with the Act from time to time. Actually the object of the Act was two fold. On the one hand regulation of the marketing and on the other to provide better facilities and to establish Market Committee. With the promulgation of the Act, the Bombay Act came to be repealed. In 1980 for the first time the State Government declared its intention to notify jaggery as an agricultural produce. According to the petitioners, the notification declaring the intention under Section 3(1) of the Act was not published and was not made known in the area in question and the petitioners including the concerned persons did not have an opportunity to prefer objections as provided in Section 3(2) of the Act. On 15-7-1982 the State Government issued the impugned notification declaring jaggery as a notified agricultural produce. It was only in 1987 that the final notification declaring separate market sub-yard for the regulation of trading jaggery was issued under Section 6(2) of the Act. As on the date of filing the writ petitions, further notification under Section 7 of the Act intended to notify the date of establishment of the market after making the required arrangements for regulating the marketing of jaggery had not been issued. However, the Market Committee proceeded to levy and demand payment of market fee for the period prior to the establishment of market without issuing a notification under Section 7 of the Act. Therefore, the petitioners are aggrieved.

The petitioners in the other writ petitions are also traders in jaggery and their grievance is similar to those of the petitioners in Writ Petition Nos. 11896 and 11897 of 1989 and, therefore, it is redundant to state the facts again.

6. The learned counsel appearing for the petitioners in all these cases contended that the impugned notifications and notices are contrary to law for the following reasons:-

(1) There is a failure to publish the notification of intention of regulating the marketing of specified agricultural produce in specified area as required under Section 3(1) of the Act and, therefore, the impugned notifications are bad in law;

(2) The statutory compulsion to publish the notification in Kannada in a news paper circulating in such area is mandatory and noncompliance is fatal;

(3) Non-notification in Kannada as aforesaid renders Section 4 of the Act nugatory;

(4) In Section 3(1) of the Act, it is provided that "the notification may also be published in Kannada in a newspaper circulating in such area". The word 'may' in the context should be construed as 'shall' and the Legislature intended it to be so.

7. On the other hand, it was contended by the learned counsel appearing for the respondents that the writ petitions are not maintainable since the impugned notifications have already been upheld in other writ petitions which were disposed of earlier by this Court. Secondly, it was contended that the writ petitions are barred by the principle of res judicata. Thirdly it was contended that the Press Note issued in Deccan Herald is the notification contemplated under Section 3(1) of the Act and though it was published in English, it is in substantial compliance with the requirements of Sections 3(1) of the Act. Lastly it was contended that publication of the notification in Kannada is only directory and not mandatory.

8. According to the learned Counsel appearing for respondent-3, the impugned notifications were questioned in Writ Petition Nos. 8172 to 8189 of 1987 and that the writ petitions were dismissed on merits and hence these writ petitions are barred by the principle res judicata. It was also contended that Writ Appeals against the said order were preferred

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in Writ Appeal Nos. 604 to 621 of 1989 and they were also dismissed by a Division Bench of this Court. Lastly it was contended that the petitioners are indulging in abuse of process of Court and if they are aggrieved they have a remedy before the Supreme Court to which they have already preferred appeals and the said appeals are still pending before the Supreme Court.

9. It was pointed out by the learned Counsel appearing for the petitioners that the petitioners are not parties in the earlier batches of writ petitions disposed of by this Court and, therefore, the principle of res judicata is not attracted. The learned counsel appearing for the respondents maintained that all these writ petitions are liable to be dismissed for laches.

10. In order to ascertain whether the Government notification questioned in these writ petitions was published in Kannada, I called upon the learned counsel appearing for both the A. P. M. C. and the State Government to produce the news paper notification. The stand taken by the State Government and also the A. P. M. C. was that the notification had in fact been published in Kannada. In the earlier writ petitions both the State Government and the A. P. M. C. had categorically stated that the notification under Section 3(1) of the Act was published in Kannada and the learned single Judge who heard those writ petitions was led to believe that it was so and on the assumption that there was a publication in Kannada proceeded to discuss the merits of the case ultimately dismissing the writ petitions. I called for the records of the disposed of writ petitions and I am satisfied that the respondents in those cases consisting of the State as well as the A. P. M. C. had made a false statement supported by affidavit that the publication had indeed been made in Kannada under Section 3(1) of the Act. When I called upon the learned counsel appearing for the respondents in these cases to produce the news paper in which the notification had been published in Kannada, time was taken to produce the same. After a few adjournments both the State and the A. P. M. C. came forward with a new version that only a Press Note was issued in Deccan Herald in English but the publication was not made in Kannada at all. An affidavit was filed to this effect on behalf on the State and also on behalf of the A. P. M. C. Thus the fact became established that the truth was not known to the Court when the earlier writ petitions were disposed of on merits in regard to the non-publication of the impugned notification in Kannada. It is needless to venture to speculate as to what would have been the fate of those writ petitions had the learned single Judge been aware of and told the truth that the notification had not been published in Kannada. But the fact remains that it is only after my persistent efforts, the respondents in these cases came out with the truth. I am shocked and surprised that responsible Government officials who have sworn to the affidavits both in the past and present cases did not have regard for truth while making submissions before the Court and it took considerable coaxing and goading by this Court to elicit the truth. This is a sad commentary on the integrity of the officials who have sworn to false affidavits before this Court. These bureaucrats owe a duty to the Court to tell the truth not only because they are accountable, but also because they are answerable to their own conscience. Whether the notification is valid is to be decided on the question whether there is due compliance with the requirements of law under Section 3(1) of the Act. If this truth had been told before the Court which disposed of the earlier writ petitions, that Court would have had the opportunity of considering on merits whether non-publication in Kannada is fatal to the notification or not. However, on account of what I choose to call as fraudulent representation on the part of the concerned officials, the events took a different turn. The learned Counsel appearing for the A. P. M. C. submitted that the nondisclosure of truth is not a deliberate act of fraud, but it is only a mis-statement and a bona fide mistake. The learned Government Pleader appearing for respondents-1 and 2 adopted the same stand. I cannot persuade myself to accept the explanation offered by the learned Counsel. In my opinion, it is not only a deliberate act of fraud, but also an act intended to misguide the

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Court. In short, in my opinion, there has been a gross abuse of the process of the Court and it is for the concerned authorities to take appropriate action in the matter.

11. It was next contended by the learned Counsel appearing for the petitioners that the impugned Government Notification cannot be sustained for noncompliance with subsection (1) of Section 3 of the Act. According to the learned Counsel, since the notification was not published in Kannada in any news paper circulating in the concerned area, there is a violation of the requirements of law and such a publication in Kannada is mandatory.

12. On the other hand, it was contended by the learned counsel appearing for the respondents that what is mandatory is only the publication of the notification in the Gazette declaring the intention of the State Government of regulating the marketing of specific agricultural produce in such area as may be specified in the notification. The case of the respondents is that the publication of the notification in Kannada in a news paper circulating in such area is not mandatory since the word used is 'may'.

13. In order to examine the merits of the rival contentions, reference has to be made to Section 3 of the Act which reads as follows :-

"3. NOTIFICATION OF INTENTION OF REGULATING THE MARKETING OF SPECIFIED AGRICULTURAL PRODUCE IN SPECIFIED AREA:-

(1) The State Government may, by notification, declare its intention of regulating the marketing of such agricultural produce, in such area, as may be specified in the notification. The notification may also be published in Kannada in a newspaper circulating in such area.

(2) The notification shall state that any objections or suggestions which may be received by the State Government within such period as shall be specified in the notification, not being less than thirty days, will be considered by the State Government."

Sub-section (1) of Section 3 of the Act is capable of division into two parts. The first part refers to the requirement that the State Government may notify declaring its intention of regulating the marketing of such agricultural produce in such area as may be specified in the notification. The second part provides that the notification may also be published in Kannada in a newspaper circulating in such area. The word "notification" is defined in sub-section (27) of Section 2 of the Act. According to the definition notification means a notification published in the official Gazette. Thus, it is clear that any notification contemplated under sub-section (1) of Section 3 of the Act is a notification published in the official Gazette. But sub-section (1) of Section 3 of the Act also provides for notification being published in Kannada in a newspaper circulating in such area. It appears to me that the notification to be published in Kannada in a newspaper circulating in such area is required to be the Kannada version of the Gazette notification. The point for consideration is whether the publication of the notification in the official Gazette is sufficient for the purpose of Section 3(1) of the Act. It appears to me that the word "may" to be found in the first part of sub-section (1) of Section 3 of the Act is mandatory and not directory. If the State Government decides to establish markets, it is required to notify its intention of regulating the marketing of specified agricultural produce in specified area by means of a notification published in the official Gazette. No choice is left to the State Government in this regard. This is not disputed by the learned counsel appearing for the respondents. It also appears to me that the second part of sub-section (1) of Sec. 3 of the Act is equally mandatory though the word used is 'may' it has to be construed that publication in Kannada is mandatory. The only appendage to the word "may" seems to be the word also in regard to publication in Kannada.

14. The purpose of notifying the intention is manifest in sub-section (2) of Section 3 of the Act. The notification shall state that any objections or suggestions which may be received by the State Government within such period as shall be specified in the notification

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not being less than thirty days will be considered by the State Government.

15. In Section 4 of the Act it is provided that after the expiry of the period specified in the notification issued under Section 3 and after considering such objections and suggestions as may be received before the expiry of the stipulated period, the State Government may by another notification declare the area specified in the notification issued under Sec. 3 or any portion thereof to be a market area and that the marketing of all or any of the kinds of agricultural produce specified in the notification issued under Section 3 shall be regulated under the Act in such market area. It is further provided in Section 4 that a notification under Section 4 may also be published in Kannada in a newspaper circulating in such area. Thus, there is a continuity in the process of decision making of what is required to be done before issuing a notification under Section 4 of the Act.

16. At the risk of repetition, the proper construction to be placed on Sections 3 and 4 would be that under sub-section (1) of Section 3 of the Act the State Government is expected to declare its intention by notification of regulating the marketing of such agricultural produce in such area as may be specified in the notification and further publish a notification in Kannada in a newspaper circulating in such area. The content of the notification should disclose that any objections or suggestions which may be received by the State Government within such period as shall be specified in the notification and not being less than 30 days, would be considered by the State Government. Under Section 4 of the Act, after the expiry of the stipulated period aforementioned and after considering such objections and suggestions as may be received before such expiry, by issuing another notification the State Government may declare the area specified in the notification issued under Section 3 or any portion thereof to be a marker area and declare that the marketing of all or any of the kinds of agricultural produce specified in Section 3 notification shall be regulated under the Act in such market area. Section 4 enjoins upon the authority to publish the notification in Kannada in a newspaper circulating in such area. The last sentence in Section 4 of the Act requires to be reproduced and it reads thus:-

"A notification under this section may also be published in Kannada in a newspaper circulating in such area".

Whereas the object of sub-section (1) of Section 3 of the Act is the declaration of intention and that of sub-section (2) is to invite objections or suggestions to the said declaration, the object of Section 4 is to consider the objections and suggestions if any, received before the expiry of the stipulated period and thereafter proceed to issue a final notification specifying as to what shall be the market area wherein the marketing of all or any of the kinds of agricultural produce specified in Section 3 notification shall be regulated under the Act in such market area. The common feature of both Sections 3 and 4 of the Act is that a notification under Sections 3 and 4 may also be published in Kannada in a newspaper circulating in such area. The scheme of the Act is the provision for better regulation of buying and selling of agricultural produce and the establishment and administration of markets for agricultural produce in the State of Karnataka. The object of the Act is to provide for better regulation of marketing of agricultural produce and establishment as well as administration of markets for agricultural produce and matters connected therewith in the State of Karnataka. Chapter II of the Act deals with the establishment of markets, Chapter III refers to constitution of Market Committees, Chapter IV refers to conduct of business, Chapter V refers to the staff of the Market Committee, Chapter VI relates to power and duties of Market Committee, Chapter VII pertains to regulation of trading, Chapter VIII deals with the market fund, Chapter IX is concerned with special commodity markets, Chapter X relates to Mandal Panchayats as agents of Market Committees, Chapter XI relates to State Agricultural Marketing Board, Chapter XII relates to penalties, Chapter XIII pertains to control and

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finally Chapter XIV comprises the miscellaneous provisions.

17. Under sub-section (1) of S.3 of the Act, apart from publication of the notification in the official Gazette, the legislative intention is publication of the intention by a notification in Kannada in a newspaper circulating in such area. In short, the publication in Kannada is meant for local communication through the medium of the official language of the State. The publication in Kannada is also for the purpose of enabling the concerned trading community of the area to prefer objections and offer suggestions. Such a publication in Kannada is also to enable the authorities to consider the objections and suggestions so offered and to take a decision to issue a final notification under Sec. 4 of the Act. In the decision making process is accommodated the legal obligation to disseminate the intention of regulating the marketing of specific agricultural produce in the area, the right to information of the persons concerned, and their right to be heard. This is a special enactment catering to legislative measures affecting the trading community in the matter of regulation of marketing of specified agricultural produce in the area. Special safeguard is made so that the persons concerned are not deprived of information regarding the intention of the State Government. The special safeguard is publication in the Kannada newspaper circulating in such area. It cannot be construed that such a publication is permissive and not obligatory. The legislative intention for communication of intention in the spoken language of the masses which is Kannada and which is also the official language of the State cannot be ignored. What the Legislature has intended is not only communication of the intention, but also decision after receiving the objections and suggestions by taking into confidence the members who are likely to be affected and this is characteristic of participatory democracy in a welfare State. I am of the opinion that the Legislature intended that by notifying in Kannada both under Sections 3 and 4 of the Act, the purpose would be better achieved and the Legislature did not leave any freedom of choice to the authority.

What is engrafted in the special enactment cannot be regarded by the use of the word "may" as so superficial as to mean a wasteful verbiage, pandered to the sweet will and pleasure of the authority. Appropriate in this regard is to quote the often repeated phrase of Justice Holmes :-

"A word is not a crystal holding its form and its substance through the ages; it is the skin of a living thought".

18. What is material is whether the provisions seek to achieve the declared objective as the prime consideration in a democratic, consultative system.

19. In my opinion, the publication envisaged by the Act in Kannada is intended to achieve a meaningful and effective circulation of the intention to fulfil the purpose of the Act. It is not intended to be an empty ritual. Indeed the tenor of the language is not ritualistic, but it is a recognition of the fact that language is not only the vehicle of thought, but also intention. The word "may" in the context is mandatory consistent with the rigidity of the need. The special act has introduced special words manifesting the purpose. In the context, the word "may" cannot be construed as may not. Communication of intention, inviting objections and suggestions and consideration of the objections and suggestions are the constituents of the principles of natural justice. Both Ss. 3 and 4 of the Act radiate the above principles and it is not permissible to put the words in a straight jacket, for such an endeavour would stultify the intention of the Legislature. I am, therefore, of the opinion that, the word "may" in sub-section (1) of Section 3 in regard to the publications of the notification in Kannada has to be construed as "shall" and, therefore, mandatory in consonance with the word "may" to be found in Section 4 of the Act where a similar provision is made for notification to be published in Kannada.

20. It would be appropriate to observe that it is the spirit and not the form of law that keeps justice alive.

21. As observed by Cardozo :-

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"The more we study law in its making, atleast in present stages of development the more we gain the sense of a gradual striving toward an end shaped by a logic which, eschewing the quest for certainty, must be satisfied if its conclusions are rooted in the probable."

The learned Counsel appearing for the petitioners relied upon the decisions in Baldev Singh v. State of H. P. AIR 1987 SC 1239, for the proposition that the petitioners have a right to be heard before the issue of the impugned notification and that the right is affected is as much as the petitioners did not have knowledge of the intention of the State Government for want of publication of Section 3(1) notification in Kannada. The Supreme Court observed in para 4 of the said decision as follows:-

"...... Citizens of India have a right to decide, what should be the nature of their society in which they live - agrarian, semiurban or urban. Admittedly, the way of life varies, depending upon where one lives. Inclusion of an area covered by a Gram Panchayat within a notified area would certainly involve civil consequences. In such circumstances it is necessary that people who will be affected by the change should be given an opportunity of being heard, otherwise they would be visited with serious consequences like loss of office in Gram Panchayats, an imposition of a way of life, higher incidences of tax and the like."

Again in Para 5, it was observed :-

"......It is a fact that the Orissa Act provides in clear terms a right of hearing whereas Section 256 of the Himachal Act makes no such provision but the settled position in law is that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, the rules of natural justice would apply. We accept the submission on behalf of the appellants that before the notified area was constituted in terms of S. 256 of the Act, the people of the locality should have been afforded an opportunity of being heard and the administrative decision by the State Government should have been taken after considering the views of the residents. Denial of such opportunity is not in consonance with the scheme of the Rule of Law governing our society. We must clarify that the hearing contemplated is not required to be oral and can be by inviting objections and disposing them of in a fair way."

In the instant case. in the absence of publication in Kannada though contemplated under the Act, it can be fairly said that the petitioners did not have the opportunity of having a knowledge of the notification and, therefore, they could not prefer their objections or offer suggestions and the consequences resulting from such a denial did have adverse effect on the rights of the petitioners of being heard in the matter.

22. Reliance also was placed on Govindlal v. Agriculture Produce Market Committee, AIR 1976 SC 263, for the proposition that the word "may" should be construed as mandatory in the circumstances and facts of the instant cases. The Court held in Para 16 as follows:-

"The object of these requirements is quite clear. The fresh notification can be issued only after considering the objections and suggestions which the Director receives within the specified time. In fact, the initial notification has to state expressly that the Director shall consider the objections and suggestions received by him within the stated period. Publication of the notification in the Official Gazette was evidently thought by the legislature not an adequate means of communicating the Director's intention to those who would be vitally affected by the proposed declaration and who would therefore be interested in offering their objections and suggestions. It is a matter of common knowledge that publication in a newspaper attracts greater public attention than publication in the Official Gazette. That is why the legislature has taken care to direct that the notification shall also be published in Gujarati in a newspaper. A violation of this requirement is likely to affect valuable rights of traders and agriculturists because in the absence of proper and adequate publicity, their right of trade

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and business shall have been hampered without affording to them an opportunity to offer objections and suggestions, an opportunity which the statute clearly deems so desirable. By Section 6(2), once an area declared to be a market area, no place in the said area can be used for the purchase or sale of any agricultural produce specified in the notification except in accordance with the provisions of the Act. By S. 8 no person can operate in the market area or any part thereof except under and in accordance with the conditions of a licence granted under the Act. A violation of these provisions attracts penal consequences under Section 36 of the Act. It is therefore vital from the point of view of the citizens' right to carry on trade or business, no less than for the consideration that violation of the Act leads to penal consequences, that the notification must receive due publicity. As the statute itself has devised an adequate means of such publicity, there is no reason to permit a departure from that mode. There is something in the very nature of the duty imposed by Sections 5 and 6, something in the very object for which that duty is cast, that the duty must be performed. "Some Rules", as said in Thakur Pratap Singh v. Sri Krishna (1955) 2 SCR 1029 at p. 1031: AIR 1956 SC 140 at p. 141 are vital and go to the root of the matter; they cannot be broken." The words of the statute here must therefore be followed punctiliously."

Again in para 18, the Court observed:-

"We are therefore of the opinion that the notification issued under Section 6(3) of the Act, tike that under Section 6(1), must also be published in Gujarati in a newspaper having circulation in the particular area. This requirement is mandatory and must be fulfilled. Admittedly, the notification (Ex. 10) issued under Section 6(5) on February 16, 1968 was not published in a newspaper at all, much less in Gujarati. Accordingly, the inclusion of new varieties of agricultural produce in that notification lacks legal validity and no prosecution can be founded upon its breach."

In para 13, the Supreme Court postulated :--

"Crawford on 'Statutory Construction' (Edn. 1940, Art. 261, p.516) sets out the following passage from an American case approvingly: "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other". Thus, the governing factor is the meaning and intent of the legislature, which should be gathered not merely from the words used by the legislature but from a variety of other circumstances and consideration. In other words the use of the word 'shall' or 'may' is not conclusive on the question whether the particular requirement of law is mandatory or directory. But the circumstance that the legislature has used a language of compulsive force is always of great relevance and in the absence of anything contrary in the context indicating that a permissive interpretation is permissible, the statute ought to be construed as peremptory. One of the fundamental rules of interpretation is that if the words of a statute are themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature. Shriram v. State of Maharashtra, (1961) 2 SCR 890 at p. 898 : AIR 1961 SC 674 at pp. 677-678 : 1961 (1) Cri LJ 760 at p. 764. Sec. 6(1) of the Act provides in terms, plain and precise, that a notification issued under the section "shall also" be published in Gujarati in a newspaper. The word 'also' provides an important clue to the intention of the legislature because having provided that the notification shall be published in the Official Gazette, Sec. 6(l) goes on to say that the notification shall also be published in Gujarati in a newspaper. The additional mode of publication prescribed by law must in the absence of anything to the contrary appearing from the context of the provision or its object, be assumed to have a meaning and a purpose. In Khub Chand v.

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State of Rajasthan, (1967) 1 SCR 120 at pp. 124, 125 : AIR 1967 SC 1074 at p. 1077, it was observed that "The term 'shall' in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations". The same principle was expressed thus in Haridwar Singh v. Begum Sumbrui; (1973) 3 SCC 889 at p. 975 : AIR 1972 SC 1242 at p. 1247. "Several tests have been propounded in decided cases for determining the question whether a provision in a statute, or a rule is mandatory or directory. No universal rule can be laid down on this matter. In each case one must look to the subject-matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured."

The above decision is a direct authority on the point in issue in these cases and applying the ratio of the above decision, it has to be held that the word 'may' found in sub-section (1) of Section 3 of the Act is mandatory and not directory.

23. On the other hand, the learned Government Pleader relied upon R. K. Porwal v. State of Maharashtra, AIR 1981 SC 1127. The learned Government Pleader relied upon a particular passage in para 17 of the above decision which reads as follows:-

".........We are here not concerned with the exercise of a judicial or quasi judicial function where the very nature of the function involves the application of the rules of natural justice, or of an administrative function affecting the rights of persons, wherefore, a duty to act fairly. We are concerned with legislative activity; we are concerned with the making of a legislative instrument, the declaration by notification of the Government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith. The making of the declaration, in the context, is certainly an act legislative in character and does not oblige the observance of the rules of natural justice............"

I am afraid, the decision is not applicable to the facts of the instant cases for the reasons that what we are concerned with in the instant cases is whether the word "may" shall be construed as "shall" and whether there is due compliance with the requirement of the statute.

24. The learned Counsel appearing for the A. P. M. C. relied on the decision in T. R. N. Swamy v. Director of Mines and Geology, ILR 1987 Karnataka 262. I have gone through the decision and I am constrained to observe that this decision has no bearing on the cases which are under consideration.

25. The learned counsel appearing for the A. P. M. C. submitted that the principle of res judicata operates against the petitioners and therefore the writ petitions are liable to be dismissed. Reliance was placed on a decision of the Supreme Court in Forward Construction Co. v. Prabhat Mandal (Regd.), Andheri, AIR 1986 SC 391. As pointed out by me in the early part of the order, the question whether the publication contemplated under sub-section (1) of Section 3 of the Act in Kannada did not come in for real controversy in the earlier writ petitions for the reason that false affidavits and fraudulent representations were made by the officials of the State Government and the A. P. M. C. to the effect that the notification under Section 3(1) of the Act had been published in Kannada. But it is now confirmed that no such publication was made and therefore it cannot be said that the principle of res judicata operates and is a bar for the consideration of the question whether non-publication of Section 3(1) notification in Kannada vitiates the impugned notifications. In the earlier decision, the point had

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become a non issue on account of the fraudulent submission made by the respondents. The decision relied upon by the learned Counsel is of no assistance to the respondents.

26. It was further contended by the learned counsel for the respondents that the writ petitions deserve to be dismissed for laches. I do not think that the contention is based on facts. Demand notices which are now questioned in these writ petitions emanated from 3-9-1987 notification earmarking a separate sub-yard for jaggery marketing. In contrast, earlier, the impugned demand notices under the disposed of writ petitions were in execution prior to issue of notification dated 3-9-1987. Further, the process is incomplete on account of noncompliance with the requirement of the provisions of Sections 7 and 8 of the Act. In so far as the petitioners are concerned, it has to be held that there is no delay and the petitioners have acquired the right to sue by virtue of continuing cause of action in the absence of publication of Section 3(1) notification in Kannada. Though it was contended by the learned Counsel for the respondents that some objections had been received in response to the notification published in the Gazette, it does not mean that the petitioners were aware of the notification and that their grievance is not bona fide and further that they have approached the Court belatedly. There is no material on record to hold that the petitioners were aware of the notification. It is not possible to accept the plea of laches.

27. In the result, for the reasons stated above, rule is issued and made absolute. The writ petitions are allowed and the impugned notifications as well as the impugned demand notices are quashed. In the circumstances of the cases, there will be no order as to costs.

28. However, it is open to the authorities to follow the procedure prescribed under the Act for the purpose of establishing a market and on establishing the same, the respondents are at liberty to demand the market fee from the date of such establishment of the market.

It is further directed that the State Government shall take appropriate action in accordance with law against the officials who swore to false affidavits.

Petitions allowed.

AIR 1986 KARNATAKA 169 "Chief Marketing Officer v. Sudhakar"

KARNATAKA HIGH COURT

Coram : 2 V. S. MALIMATH, CJ. AND R. S. MAHENDRA, J. ( Division Bench )

Chief Marketing Officer, Appellant v. Sudhakar Krishnappa Kamath, Respondent,

Writ Appeals Nos. 425 of 1982 etc., D/- 10 -12 -1984.

Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.61 (prior to amendment in 1980) - AGRICULTURAL PRODUCE - EQUALITY - Power of market committee to employ officers and servants and fix their pay scales - Not absolute in nature - It can be exercised only With approval of Chief Marketing Officer - Order of C.M.O. refusing accord to resolutions of market committee - Relevant circumstances for refusal not mentioned - Order suffers from arbitrariness and liable to be quashed.

W. P. Nos. 11368 of 1979, D/-12-2-1982 (Kant), Reversed.

(1981) 2 Kant LJ 593 Overruled.

Constitution of India, Art.226, Art.14

Under all the enactments repealed by the Karnataka Agricultural Produce Marketing (Regulation) Act 1966 a Market Committee was given the power to employ its officers and servants and fix their pay scales etc., subject to the rules made under the Act and the Rule making Authority had framed rules in conformity with the mandate of the relevant provisions of the respective enactments providing for the exercise of this power by a Market Committee with the approval of an authority specified in the rules. These Rules framed under the repealed enactments are not inconsistent with S. 61 of the Act which also confers on the Market Committee the power to employ its officers and servants and fix the pay scales of persons so appointed subject to such conditions as may be prescribed in the rules. No rules in this behalf having been framed under the Act, the rules framed under the repealed enactments which are not inconsistent with S. 61 of the Act are deemed to have been made under the Act and continue in force unless and until Rules in this behalf are framed under the Act, under S. 154 of the Act, Therefore a Market Committee either in the Bombay Area, Hyderabad Area or Mysore Area, had no absolute power under S. 61 of

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the Act to employ its officers and servants and to pay salary or to revise the pay scale, etc., and this power can only be exercised with the approval of the Chief Marketing Officer. This position is now made more explicit by the Legislature amending S. 61 by Karnataka Act; No. 17 of 1980. (Paras 11, 20, 22, 23)

The power conferred on a Market Committee to employ its officers and staff and to pay or revise their pay and allowances has to be exercised in the way prescribed by the statute conferring such a power. Non-compliance with this requirement results in the appointment made, pay or revised pay scales granted unauthorised. An Annual Budget estimate of income and expenditure of a Market Committee is prepared and forwarded to the C.M.O., for approval. One of the statements accompanying the Budget is a statement showing the details of scales of pay and salary of the establishment of the Committee provided for in the Budget which is a routine expenditure. The C.M.O, by approving the Budget only accords sanction to the estimated income and expenditure. By according approval to the budget proposals the C.M.O , does not approve the appointment of each of the officers and servants of the Market Committee or the salary payable to each one of them. The C. M. O. has to accord his approval to the appointment of the officers and staff of the Market Committee as also the salary payable to each of them. Thus where, the C.M.O. has not accorded his approval to the resolutions of the Market Committees proposing revision of pay scales to the petitioners, the Market Committee cannot give the revised pay scales to the petitioners without the approval of the C.M.O. There is therefore no statutory duty on a Market Committee to pay the salary in the revised pay scales without the approval of the C. M. O., merely because the budget approved makes a provision in this behalf. A Writ of Mandamus cannot therefore be issued to them to give effect to or implement the resolution of the Market Committee proposing to revise the pay scales of the petitioners. But the C.M. O., can be compelled to perform his statutory duty and decide whether or not he should accord approval to the resolutions of Market Committee. W. P. Nos. 11368 of 1979, D/- 12-2-1982 (Kant) Reversed. (Paras 25, 28)

It cannot be said that the approval of the C. M. O., is not necessary for revising the pay scales of the employees by a Market. Committee. (1981) 2 Kant LJ 593 Overruled.

(Para 26)

It was alleged on behalf of the C. M. O., that circulars had been issued to the Market Committees not to make any changes in the staff pattern or in the salary payable to them etc., in view of the proposed absorption of the employees of the Market Committees in Government Service and the C. M. O., has in some cases refused to accord approval as there was undue haste to upgrade posts, to give promotions out of turn and to grant premature increments etc. It was also alleged that the C. M. O. has after taking into consideration the financial implications of implementing the resolutions, financial position of the Market Committees and the need to prevent whimsical changes in the staff pattern and grades and promotions as also all other relevant facts and circumstances has passed the impugned orders refusing to accord approval. However the impugned orders of the C. M. O. did not give any reasons as to why approval was not accorded.

Held, the impugned orders in. such circumstances would be liable to be quashed not because the C. M, O., had no competence to make those orders but because those orders suffer from the vice of arbitrariness. (Para 27)

Cases Referred : Chronological Paras

(1982) WA No. 852 of 1981, D/-10-9-1982 (Kant) Mallipapanna v. Chief Marketing Officer 24

(1981) 2 Kant LJ 593 : ILR (1982) 1 Kant 224 26

(1981) WA No. 616 of 1981, D/-11-11-1981 (Kant) Chief Marketing Officer v. K. S.Banakar 26

AIR 1973 SC 1449 : 1973 Tax LR 2264 12

(1967) 1 Mys LJ 651 : 10 Law Rep 441 19

AIR 1966 SC 828 12

AIR 1965 SC 601 12

R. H. Chandanagoudar, Govt. Advocate for Appellant and R-2 and R-3 C.M.O., S. G.Sundaraswamy, for Appellants A. P. M. C., R, C. Goulay, V. S. Gunjal, Mrs. S. Pramila, K. S. Desai, B. G, Sridharan and S. I. G. Sundaraswamy, for Others.

Judgement

MAHENDRA, J.:- These appeals arise out of Writ Petitions filed by Employees of Agricultural Produce Market Committees.

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2. In V. L. Bhat, Giri, G. K. Bhadri and S.P. Pawar v. the Secretary, Agricultural Produce Market Committee, Haliyal, the Agricultural Produce Market Committee, Haliyal and the Chief Marketing Officer, Bangalore, W. P. Nos. 11368, 11368 A, 11368B and 11368C of 1979, the Agricultural Produce Market Committee, hereinafter referred to as the 'Market Committee' passed resolutions proposing to revise the pay scales of the petitioners. The salary and allowances payable to the petitioners were included in the Budget for that year and the proposed Budget was also approved by the Chief Marketing Officer hereinafter referred to as the 'C. M.O,' The Market Committee decided to give effect to its resolutions revising the pay scales without waiting for the approval of the C.M.O. The Secretary of the Market Committee informed the petitioners, by its letter Ext. D. that the resolutions of the Market Committee having not received the approval of the C.M.O. the revised pay could not be given to them. The petitioners prayed for quashing this letter and for a direction to the Market Committee to implement the resolution and give them the benefit of the revised pay scales, Rama Jois, J. held that the C. M. O., must be regarded as having accorded approval to the revision of pay scales to the petitioners as he had accorded approval to the Budget proposals wherein a provision had been made for the revised pay scales and issued a writ in the nature of Mandamus to the Market Committee to give effect to the revised pay scales and give all consequential benefits to the petitioners.

3. In H. Veerappa v. Chief Marketing Officer and Agricultural Produce Market Committee, Harihar - W. P. No, 13183 of 1979 and other cases the Petitioners are the employees of the Agricultural Market Committees at Harihar and other places. Each of the Market Committees passed resolutions to revise the pay scales of its employees and forwarded the resolutions for approval to the C.M.O., who refused to accord the approval in some cases and deferred giving approval in other cases to the resolutions of the Market Committees. The petitioners prayed for quashing of the orders of the C.M.O. and for directions to the Market Committees to give them the benefit of the revised pay scales, Puttaswamy, J. held that the orders of the C.M.O. are unauthorised, quashed his orders and issued a writ in the nature of Mandamus to the respective Market Committees in each of these cases to implement the resolutions and give the revised pay scales to the Petitioners and also to make payments to which they are entitled to. Aggrieved by the orders in all these Writ Petitions the C.M.O., as also the Market Committees have filed appeals separately.

4. The parties are referred to in this order with reference to the position they occupied as petitioners and respondents in the Writ Petitions.

5. A Market Committee it was argued on behalf of the petitioners has absolute power to appoint its officers and servants and pay salary and allowances to them under the unamended S.61 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, and therefore the approval of the C.M.O., for appointment or for paying salary to such officers and staff is not necessary. It was argued on behalf of the Respondents that such a power is not absolute but is subject to the limitations prescribed in the Rules and as the Rules in force provide that the approval of the C.M.O. is necessary, unless the C.M.O., accords his approval a Market Committee has no competence to appoint its officers and staff and pay salary and allowances to them.

6. The Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, hereinafter referred to as the 'Act' came into force with effect from 1st May, 1968. A Market Committee is established for each market area under S. 9 of the Act. A Market Committee gets the power to employ such officers and servants as may be necessary under S. 61 of the Act which reads:

"Section 61. Power of Market Committee to employ other staff: -

1) Subject to such conditions as may be provided in the rules, the market committee may employ such officers and servants other than those specified under S. 58 as may be necessary for the management and regulation of the market and for transacting the affairs of the market committee and may pay such officers and servants such salaries as the market committee may determine.

(2) The market committee may also in the case of any of its officers and servants

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appointed under sub-sec.(1) provide for them such leave, allowances, pension and gratuities as may be provided in the bye-laws and may contribute to any provident fund which may be established for the benefit of such officers and servants.

(3) Notwithstanding anything contained in sub-ss.(1) and (2), the market committee may create temporary posts for a period not exceeding four months and make appointments there to subject to the condition that the maximum monthly pay of such posts shall not exceed one hundred and twenty rupees."

7. A Market Committee has therefore the power or competence to employ such officers and servants other than these specified in S.58, as may be necessary for the management and regulation of the market and for transacting the affairs of the Market Committee and pay such officers and servants salaries as the Market Committee may determine. This power is subject to such conditions as may be provided in the Rules made under the Act. A Market Committee has the power to provide to the officers and staff such leave, allowances, pension and gratuities as may be provided in the Bye-laws made with the previous sanction of the C.M.O. A Market Committee has the power to create posts the monthly salary of which does not exceed one hundred and twenty rupees for a period not exceeding four months and to make appointments to such posts.

8. A Market Committee, under sub-sec. (3) of S. 61 of the Act may on its own and without reference to any other authority or Rule or Bye-law, create only for a period not exceeding four months, posts carrying salary not exceeding Rs. 120/- and appoint to such posts. In the very nature of things these are temporary posts obviously created for short periods to meet the unexpected or urgent requirements of a market committee. The appointments to such posts are not "subject to the conditions as may be provided in the rules". A Market Committee has therefore absolute powers to appoint to such posts under sub-sec. (3) of S. 61 of the Act. The appointment to the other posts and payment of salary to the persons appointed are made "subject to any conditions as may be provided under the rules" and the grant of leave, payment of allowances, pension, gratuity etc., are regulated by the Bye-laws.

9. The Legislature has used the words "subject to any conditions as may be provided in the rules" while conferring power to appoint, on a Market Committee under sub-sec. (1) and not while conferring power to appoint on a Market Committee under sub-sec. (3) of S.61 of the Act. If as argued on behalf of the petitioners the Legislature has conferred absolute power to appoint both under sub-secs. (1) and (3) and S. 61 of the Act, the Legislature would not have used the words "subject to any conditions as may be provided in the rules" in sub-sec. (1) of S. 61 of the Act.

10. In a statutory enactment every word used must receive its full and proper connotation in the construction. An Act or part of the Act cannot be ignored or treated as being meaningless, A Court always presumes that the Legislature has used every word for a purpose and the intention of the Legislature is that every part of a statute should have effect and therefore effect must be given to all the words used in a statutory provision. A Court can only reject words as superfluous if by giving a meaning to every word the intention of Legislature is defeated.

11. These words "subject to such conditions as may be provided in the rules" in sub-sec. (1) of S. 61 of the Act are clear and explicit and we have therefore to give effect to these words, as they speak the intention of the Legislature not to confer on a Market Committee absolute power to employ its officers and servants including the fixation of pay scales to persons so appointed. The power conferred on a Market Committee under sub-sec. (1) of S. 61 of the Act, is therefore not absolute but is subject to the limitations and restrictions provided in the Rules framed under the Act. The real nature and scope of the power conferred on a Market Committee can only be ascertained by a combined reading of or reading together S. 61 of the Act and the Rules framed in conformity with S.61. If they are so read what emerges is that a Market Committee is not conferred with absolute power to employ its officers and servants or and fix pay scales to persons so appointed but the power conferred is regulated, controlled or is made subject to the limitations or restrictions as are provided by the Rules made in conformity with S. 61 of the Act. If the Legislature had not used the words "subject to the conditions as may be provided in the rules", the learned Counsel for the petitioners would

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have been right in contending that a Market Committee is conferred with absolute power to employ its officers and servants and give them pay scales they thought fit. To understand or to interpret sub-sec.(1) of S.61 of the Act, in the way the learned Counsel wants us to it would become necessary to amend S.61(1) of the Act and delete the words "subject to the conditions as may be provided in the rules". We have to understand or interpret the provisions of S.61(1) of the Act as enacted and not by ignoring certain words used therein.

12. Rules framed under the Act, it was argued on behalf of the petitioners, can only provide for the eligibility for appointment and if a rule framed restricts or overrides the power of a Market Committee to employ its officers and servants, the said rule would be ultra vires. In support of this submission reliance was placed on Bishweswar Dayal Sinha v. Bihar University, AIR 1965 SC 601, Venkateswara Rao v. Govt. of Andhra Pradesh, AIR 1966 SC 828. State of Mysore v. Mallick Hashim and Company, AIR 1973 SC 1449.

13. A rule can only be made for carrying out the purpose of the Act. A rule framed cannot override the statutory power conferred on an authority under the Act and confer the said power on an another authority. A rule which is inconsistent with any provision of the Act, to the extent it is inconsistent, must yield to the provision of the Act. The decisions of the Supreme Court relied on behalf of the petitioners supports this contention. It is therefore undisputable that if a rule framed under the Act limits, abridges, overrides or is inconsistent with the powers of a Market Committee conferred under S. 61 of the Act, such a rule would be ultra vires and invalid and has to yield to the provisions of S. 61 of the Act. But we have already held that the power conferred on a Market Committee under S. 61 (1) of the Act, is not absolute but is limited and restricted by a Rule and therefore a rule restricting or limiting the power of a Market Committee is a rule framed in conformity with S. 61 of the Act and is one framed by the rule making authority for carrying out the purpose of the Act. It cannot be said that such a rule is inconsistent with or affects or overrides or abridges the power conferred on a Market Committee under S. 61 of the Act.

14. It is not disputed that no rules on this subject have been framed under S. 61 of the Act after it came into force. It was therefore argued on behalf of the petitioners that the exercise of the power conferred under sub-sec. (1) of S. 61 of the Act being subject to the conditions provided in the rules, no rule in conformity with S. 61 of the Act having been made, the exercise of the power conferred on a Market Committee under sub-sec. (1) of S. 61 of the Act, is not in any way abridged. It was therefore argued that the power conferred on a Market Committee to employ its officers and servants including fixation of pay scales to them is not subject to any approval of the C.M.O. and therefore the impugned orders of the C.M.O. are without competence. In answer it was argued on behalf of the Respondents that the rules framed under the various Acts in force in each of the integrating areas in the State of Karnataka which were repealed by the Act provided for the approval of the C.M.O., for making appointments and for fixing pay scales, by the Market Committees, and they continue to remain in force even after those Acts came to be repealed by S. 154 of the Act. It was therefore urged that the approval of the C.M.O. is necessary for making appointments of officers and servants and for giving revised pay scales to such officers and servants by the Market Committee.

15. In the new State of Karnataka which came into being on 1-11-1956, the Madras Commercial Crops Market Act, 1933 (Madras Act XX of 1933) was in force in Bellary District, and the Madras Area; the Bombay Agricultural Produce Markets Act, 1939 (Bombay Act XXII of 1939) hereinafter referred to as the 'Bombay Act', was in force in the Bombay Area; the Hyderabad Agricultural Market Act, 1339F (Hyderabad Act II of 1939 Fasli), hereinafter referred to as the 'Hyderabad Act' was in force in the Hyderabad Area; the Mysore Agricultural Produce Markets Act, 1939 (Mysore Act XVI of 1939) hereinafter referred to as the 'Market Act', was in force in the Mysore Area and the Coorg Agricultural Produce Markets Act, 1956 Coorg Act VII of 1956), was in force in the Coorg District. On the coming into force the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 with effect from 1st May, 1968 which extends to the whole of the State of Karnataka, the several Acts as in force in the different integrating areas of the State of Karnataka

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came to be repealed by S. 154 of the Act which reads:

"S. 154 Repeal and savings:-

1. The Madras Commercial Crops Markets Act, 1933 (Madras Act XX of 1933), as in force in Bellary District, the Madras Commercial Crops Market Act, 1933 (Madras Act XX 1933), as in force in the Madras Area, the Bombay Agricultural Produce Markets Act 1939 (Bombay Act XXII of 1939), as in force in the Bombay Area, the Hyderabad Agricultural Act, 1339F (Hyderabad Act II of 1339 Fasli), as in force in the Hyderabad Area, the Mysore Agricultural Produce Market Act, 1939 (Mysore Act XVI of 1939), as in force in the Mysore Area and the Coorg Agricultural Produce Market Act, 1956 (Coorg Act VII of 1956), as in force in the Coorg District, are hereby repealed:

Provided that: -

(a) the repeal shall not affect the previous operation of any enactment so repealed, and anything done or action taken (including any appointment, delegation or declaration made, notification, order, rule, direction or notice issued, bye-law framed, market areas, markets, sub-markets and yards declared, established or notified, licences granted, fees levied and collected, instruments executed, any fund established or constituted) by or under the provisions of any such enactment shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act, and shall continue in force unless and until superseded by anything done or any action taken under this Act:

(b), (c), (d) xxx xxx xxx xxx xxx xxx xxx xxx"

16. The repeal of the Acts in force in the several integrating areas does not affect the previous operation of the enactments so repealed and anything done or action taken (including any appointment, delegation or declaration made, notification, order, rule, direction or notice issue bye-law framed, market areas, markets, sub-markets and yards declared, established or notified, licences granted, fees levied and collected, instruments executed, any fund established or constitute by or under the provisions of any such enactment shall in so far as it is not inconsistent with the provisions of this Act are deemed to have been done or taken under the corresponding provisions of this Act and continue in force unless and until superseded by anything done or any action taken under this Act. Rules framed under the repealed enactments touching the power of the Market Committee in so far as the said rules are not inconsistent with S. 61 of the Act are therefore deemed to have been framed in conformity with S. 61 of the Act and continue in force until superseded by rules framed under this Act as no rules art framed in this behalf under the provisions of the Act.

17. We are in these cases concerned with the Market Committees in Bombay Area, Hyderabad Area and Mysore Area of the State of Karnataka. The Bombay Act was in force in the Bombay Area, the Hyderabad Act was in force in the Hyderabad Area and the Mysore Act was in force in the Mysore Area.

18. A Market Committee in the Bombay Area gets the power to appoint its officers and servants under S. 9 of the Bombay Act which reads:

"9. Appointment and salaries of servants of the Market Committee:

(1) The Market Committee may employ such officers and servants as may be necessary for the management of the market and may pay such officers and servants such salaries as the market committee thinks fit. The Market Committee shall, in the case of any officer or servant of Government whom it employs, pay such pension contribution, gratuity or leave allowance as may be required by the conditions of his service under the Government for the time being in force.

(2) The Market Committee may also, in the case of any of its officers and servants, provide for the payment to them of such "leave allowances, pensions or gratuities as it deems proper, and may contribute to any provident fund which may be established for the benefit of such officers and servants.

(3) The powers conferred by this section on the Market Committee shall be exercised subject to any rules which may be made in this behalf by the State Government."

Rule 38 framed under the Bombay Act reads:

"Rule 38 - Servants of the Market Committee:

(1) The Market Committee shall appoint a

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secretary and may employ such other officers and servants as may be necessary and proper for the efficient execution of its duties.

(2) Such officers and servants shall be divided into two classes:

(i) superior officers and servants, and (ii) inferior servants.

Superior officers and servants shall be the secretary, clerks and such officers and servants as the Director may determine. Inferior servants shall be peons, watchmen and other menial servants.

(3) The terms and conditions of service of the superior officers and servants shall be such as are approved by the Director and those of the inferior servants shall be such as the market committee itself may decide.

(4) The appointments of superior officers and servants shall be made by the market committee subject to the approval of the Director. Any punishment, revision in pay or terms of service or dismissal of the superior officers and servants shall also be subject to the Director. All inferior servants shall be under the full control of the market committee, but the committee shall make an immediate report to the Director in regard to their appointments, pay, punishment, dismissal and other matters relating to such servants.

(5) The Director may by order in writing delegate any of his powers and duties under this rule to the Chief Marketing Officer or District Deputy Registrar, Co-operative Societies subject to such conditions as he thinks fit."

19. The validity of sub-rule (4) of R. 38 framed under the Bombay Act requiring the approval of the Director for the appointments by a Market Committee under S. 9 of the Bombay Act was questioned before this Court in Gurubasappa Channappa Makanur v. Agricultural Produce Market Committee, Ranebennur, (1967) 1 Mys LJ 651. In that case the petitioner questioned the validity of sub-rule (4) of R. 38 on the ground that S. 9(1) empowers the Market Committee to employ such officers and servants as may be necessary and to pay such officers and servants such salaries as the Market Committee thinks fit and this absolute power is conferred by the Legislature on the Market Committee and the Rule making Authority had no competence to frame sub-rule (4) of R. 38 to curtail the power of the Market Committee to appoint its officers and servants. A Division Bench of this Court held that a combined reading of sub-ss. (1) and (3) of S. 9 makes it clear that the conferment of the power on the Market Committee is not absolute and has to be exercised subject to the rules as may be made in this behalf and sub-rule (4) of R. 38 is clearly within the competence of the State Government and is in conformity with the provisions of sub-sec. (3) of S. 9 of the Bombay Act and therefore not ultra vires.

20. A Market Committee in the Mysore Area gets the power to appoint its officers and servants under S. 9 of the Mysore Act which reads:

"9 Appointments and salaries of the market committee, -

(1) Subject to such rules as may be made by the Government in this behalf, the market committee may employ such officers and servants as may be necessary for the management of the market and may pay such officers and servants such salaries as the committee thinks fit and shall have power to control and punish them. The Committee may, in the case of any officer or servant of the Government which it employs, pay such pension, contribution, gratuity or leave allowance as may be required by the regulations made by Government in this behalf and for the time being in force.

(2) The Committee may also, in the case of any of its officers and servants, provide for the payment to them of such leave allowances, pensions or gratuities as it deemed proper; and may contribute to any provident fund which may be established for the benefit of such officers and servants.

(3) The powers conferred by this section on the market committee shall be exercised, subject to any rules which may be made in this behalf by the Government.

Rule 32 framed under the Mysore Act reads: "32 Employment of servants: -

(a) The committee may employ a market supervisor and such servants as may be necessary and proper for the efficient execution of its duties, to such number and on such scale "of pay as may be approved by the Chief Marketing Officer and shall have power to

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control and punish them."

A Market Committee is given the power to employ such officers and servants as may be necessary and pay such officers and servants such salaries as the Committee thinks fit and this power is subject to the rules made in this behalf. The conferment of power on the Market Committee is therefore not absolute and has to be exercised subject to the rules framed under the Act and the rules framed in this behalf provide that the powers conferred on the Market Committee under S. 9 of the Act, shall be exercised subject to the approval of the C.M.O. This Rule is in conformity with the provisions of S. 9 of the Act and is therefore not ultra vires.

21. A Market Committee in the Hyderabad Area gets the power under S. 8 of the Hyderabad Act which reads:

"8 Appointment of servants of Market Committee and their salaries.

(1) The Market Committee may employ such officers and servants as it may think necessary for the management of the Market and may pay such salaries to them as it may think proper. If the Market Committee employ an officer or servant who is in the service of the Government it may pay contribution in respect of pension, gratuity or leave allowance in accordance with the rules made by the Government which may be for the time being in force.

(2) The Market Committee may also provide for leave, allowances, pension or gratuity to its officers and servants and may contribute to any provident fund which may be established for the benefit of such officers and servants.

(3) The powers conferred by this section upon the Market Committee shall be exercised subject to the rules made in this behalf by the Government:

Rule 45 framed under the Hyderabad Act reads:

"45 Miscellaneous powers subject to control:-

The Market Committee shall exercise all their powers subject to the general control of the Secretary to Government, Marketing Department and in particular no bye-law or agreement shall be prescribed, no fresh fee levied, no weights or scales approved, no conditions of any agreement or license added to or altered no Market Superintendent or Assistant Superintendent employed or new scales or pay fixed and no allowances, deductions or contributions on account of charity approved, without his previous sanction."

A Market Committee is therefore given the power to employ such officers and servants as it may think necessary and pay such salaries to them as it may think proper and this power to employ its officers and servants and pay them salaries, can be exercised subject to the rules made in this behalf. The conferment of this power is therefore not absolute but has to be exercised subject to the rules framed under the Act and R. 45 made in this behalf provides that a Market Committee shall exercise all its powers under S. 8 of the Act subject to the general control of the Secretary to Government, Marketing Department and no Market Superintendent or Assistant Superintendent employed or new scales of pay fixed without his previous sanction. This Rule is in conformity with the mandate of S. 8 of the Act and is therefore not ultra vires.

22. It is therefore seen that in all these enactments repealed a Market Committee was given the power to employ its officers and servants and fix their pay scales etc., subject to the rules made under the Act and the Rule making Authority had framed rules in conformity with the mandate of the relevant provisions of the respective enactments providing for the exercise of this power by a Market Committee with the approval of an authority specified in the rules. These Rules framed under the repealed enactments are not inconsistent with S. 61 of the Act which also confers on the Market Committee the power to employ its officers and servants and fix the pay scales of persons so appointed subject to such conditions as may be prescribed in the rules. No rules in this behalf having been framed under the Act, the rules framed under the repealed enactments which are not inconsistent with S. 61 of the Act are deemed to have been made under the Act and continue in force unless and until Rules in this behalf are framed under the Act, under S. 154 of the Act.

23. The resulting position therefore is that a Market Committee either in the Bombay Area, Hyderabad Area or Mysore Area, had no absolute power under S. 61 of the Act to employ its officers and servants and to pay

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salary or to revise the pay scale, etc., and this power can only be exercised with the approval of the C.M.O. This position is now made more explicit by the Legislature amending S. 61 by Karnataka Act No. 17 of 1980 which now reads:

"S.61.- Power of Market Committee to employ other staff.-(1) Subject to such conditions as may be provided in the rules 'and with the previous approval of the Chief Marketing Officer, the market committee may appoint by promotion or otherwise such officers and servants other than those specified under Ss. 58 and 59' as may be necessary for the management and regulation of the market and for transacting the affairs of the market committee and may subject to such conditions as may be prescribed and with the previous approval of the Chief Marketing Officer pay such officers and servants such salaries as the market committee may determine.

(2) and (3) xx xx xx xx xx xx xx xx xx"

The power of the Market Committee under S. 61 can now be exercised only with the previous approval of the C.M.O.

24. We are supported in this view by the decision in Mallipapanna v. Chief Marketing Officer, W. A. No. 852 of 1981, Dated 10-9-1982 where a Division Bench of this Court has also taken the view that the rules framed under the Act in force in the Mysore Area continue in operation and the rules so continued in operation require the approval of the C.M.O. for the appointment of officers and servants by a Market Committee in the Mysore Area. Mallipapanna was appointed temporarily as a Market Supervisor by the Market Committee, Sira, in the Mysore Area, subject to the approval of the C.M.O. The Market Committee's budget for that year which also provided funds for meeting his salary and allowances had been approved by the C.M.O. The C.M.O. not having approved this appointment his services were terminated by the Market Committee. He challenged the termination of his service. It was argued on his behalf that the rules framed under the Act did not specifically provide for any approval by the C.M.O. and the Market Committee's budget for the relevant year had provided for paying the salary and allowances of the petitioner, and the C.M.O. having approved the budget it must be held that the C.M.O., had also approved the appointment of the petitioner. This Court rejected these contentions and accepted the contentions urged on behalf of the C.M.O., that the rules made under the earlier enactments which were substituted by the Act specifically provided that such appointments should be approved by the C.M.O., and these rules have continued to be in operation as no corresponding rules have yet been made under the Act. The C.M.O., not having given his approval for the petitioner's appointment this Court declined to grant him any relief. In V. L. Bhat v. The Secretary, A.P. M.C., Haliyal, W. P. Nos. 11368 of 1979, etc dt. 12-2-1982 the learned single Judge has taken the view that the C.M.O. must be regarded as having accorded approved to the revision of pay scales as he had already accorded approval to the Budget proposals wherein a provision has been made for payment of salary etc., in the revised pay scales. In Malipapanna's case the appointment of the petitioner by the Market Committee had not been approved by the C.M.O. The Market Committee's Budget for the year in which the petitioner was appointed had provided funds for meeting his salary and allowances and the C.M.O. had accorded his approval to the Budget. A contention was therefore raised that the appointment of the petitioner had been approved by the C.M.O. This Court did not accept this contention and held that the C.M.O's approval is necessary for the appointment of the petitioner and the C.M O., not having approved the appointment, the petitioner could not have a legitimate grievance regarding the termination of his service. This decision of a Division Bench of this Court in Mallipapanna's case taking a contrary view was not brought to the notice of the Learned single Judge.

25. The power conferred on a Market Committee to employ its officers and staff and to pay or revise their pay and allowances has to be exercised in the way prescribed by the statute conferring such a power. Non-compliance with this requirement results in the appointment made, pay or revised pay scales granted (being) unauthorised. An Annual Budget estimate of income and expenditure of a Market Committee is prepared and forwarded to the C.M.O., for approval. One of the statements accompanying the Budget is a statement showing the details of scales of pay and salary of the establishment

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of the Committee provided for in the Budget which is a routine expenditure. The C.M.O., by approving the Budget only accords sanction to the estimated income and expenditure. By according approval to the Budget proposals the C.M.O., does not approve the appointment of each of the officers and servants of the Market Committee or the salary payable to each one of them. The C.M.O., has to accord his approval to the appointment of the officers and staff of the Market Committee as also the salary payable to each of them. Admittedly, the C.M.O., has not accorded his approval to the resolutions of the Market Committee proposing revision of pay scales to the Petitioners. The Market Committee cannot give the revised pay scales to the petitioner without the approval of the C.M.O. There is therefore no statutory duty on a Market Committee to pay the salary in the revised pay scales without the approval of the C.M.O. merely because the Budget approved makes a provision in this behalf. A Writ of Mandamus cannot therefore be issued to them to give-effect to or implement the resolution of the Market Committee proposing to revise the pay scales of the Petitioners. The decision in V. L. Bhat's case does not lay down the law correctly and we therefore set aside the same.

26. In all the other cases the learned single Judge has followed K. S. Banakar v. Chief Marketing Officer, (1981) 2 Kant LJ 593 and the decision of the Division Bench on appeal in the Chief Marketing Officer v. K. S. Banakar, W. A. No. 616 of 1981, D/-11-11-1981. In Banakar's case the facts are these:

The Market Committee, Ranebennur, passed a resolution on 3-6-1977 to revise the pay scales of the Petitioners who were working as Market Supervisors and forwarded its resolution to the C.M.O., for approval. The C.M.O., refused to accord his approval. It was argued on behalf of the Petitioners that the Market Committee has the competence to revise the pay scales of its employees and the C.M.O. has no competence to interfere with the resolution of the Market Committee. It was also argued that the refusal of the C.M.O. to accord sanction was arbitrary. The learned single Judge held that "the Act and the rules nowhere provide for obtaining the prior approval of the C.M.O. before revising the pay scales of the servants of the Market Committee and make payments to them. The Market Committee the employer has the competence to decide the same and the decision is not made subject to any confirmation or prior approval by the C.M.O. or any other authority functioning under the Act". The learned single Judge also held that there was no justification for the C.M.O. to withhold approval to the resolutions proposing pay revision. He, therefore, quashed the impugned orders of the C.M.O. and issued a Writ in the nature of Mandamus to the Market Committee to implement its resolution to revise the pay scales of the Petitioners. On appeal by the C.M.O. a Division Bench of this Court affirmed the finding that the decision of the C.M.O. was arbitrary and dismissed the appeal. The Court observed thus:

"For the purpose of these appeals, it is sufficient to consider one ground on which the learned single Judge quashed the order of the Chief Marketing Officer. The learned single Judge has pointed out that the Chief Marketing Officer had granted approval for similar resolutions passed by other Market Committees. No reasons had been assigned by the Chief Marketing Officer for not granting his approval for similar revision of pay-scales to the employees of the Agricultural Produce Market Committee, Ranebennur. In the absence of any such reasons, the decision of the Chief Marketing Officer refusing to grant such approval was arbitrary. The learned single Judge was justified in quashing such decision."

The Division Bench has affirmed the view taken by the learned single Judge only on the ground that the decision of the C.M.O. was arbitrary and was not a speaking order. It cannot therefore be said that the Division Bench has affirmed the view of the learned single Judge that it was not necessary for the Market Committee to obtain the approval of the C.M.O., to revise the pay scales and make payments in terms of the revised pay scales. The decision in Banakar's case as affirmed by the Division Bench is therefore no authority to the proposition that the approval of the C.M.O., is not necessary for revising the pay scales of the employees by a Market Committee. The decision in K. S. Banakar v. Chief Marketing Officer, (1981 (2) Kant LJ 593) does not lay down the law correctly and we therefore overrule the same.

27. We will now consider whether the

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Decision of the C.M.O., in each of these cases either refusing to accord approval or deferring to accord his approval is in any way vitiated. We have perused the orders of the C.M.O., in each of these cases. The C.M.O. has accorded his approval to the resolutions of some Market Committees proposing to revise the pay scales is not in dispute. The impugned orders of the C.M.O., do not give any reasons as to why approval is not accorded. It was however argued on behalf of the C.M.O. that circulars had been issued to the Market Committees not to make any changes in the staff pattern or in the salary payable to them etc., in view of the proposed absorption of the employees of the Market Committees in Government Service and the C.M.O. has in some cases refused to accord approval as there was undue haste to upgrade posts, to give promotions out of turn and to grant premature increments etc. It was also argued that the C.M.O. has after taking into consideration the financial implications of implementing the resolutions, financial position of the Market Committees and the need to prevent whimsical changes in the staff pattern and grades and promotions as also all other relevant facts and circumstances has passed the impugned orders. We are not unmindful of the fact that these are relevant facts and circumstances to be taken into consideration by the C.M.O. in deciding whether or not he should accord approval. But the orders of the C.M.O. and the records do not show that any one or other of these facts or circumstances were taken into consideration by him in arriving at the decision. We are satisfied that impugned orders suffer from the vice of arbitrariness and are vitiated. The impugned orders in each of these cases are therefore liable to be quashed not because the C.M.O. had no competence to make these orders but because these orders suffer from the vice of arbitrariness and we accordingly affirm the quashing of these orders by the learned single Judge.

28. The resolution of a Market Committee to become effective has to be approved by the C.M.O. and the Market Committee cannot give effect to its resolution unless it is approved by the C.M.O.. The C.M.O., is under a statutory obligation to consider the resolutions and decide whether or not to accord his approval. If he accords his approval it is then for the Market Committee to decide whether and when to give effect to the resolution approved by the C.M.O. Even after the C.M.O. accords approval the Market Committee in its discretion may not give effect to its resolutions. In these circumstances, no Writ of Mandamus can be issued to a Market Committee to implement its resolution proposing to revise the pay scales but the C.M.O. can be compelled to perform his statutory duty and decide whether or not he should accord approval to the resolutions of Market Committees.

29. In the light of the above discussions, (i) these appeals are allowed in part, (ii) a Writ in the nature of Mandamus issued in each of these cases directing the implementation of the resolution of the Market Committee is set aside and (iii) a Writ in the nature of Mandamus shall be issued in each of these cases directing the C.M.O. to consider the resolutions sent by the Market Committees for his approval and pass appropriate orders in accordance with law and (iv) We direct the parties to beer their own costs.

Order accordingly.

AIR 1985 KARNATAKA 249 "Virupaksha v. A. N. Patil"

KARNATAKA HIGH COURT

Coram : 1 K. A. SWAMI, J. ( Single Bench )

Virupaksha Gowda, Petitioner v. A.N. Patil and others, Respondents.

Writ Petn. No, 11881 of 1983, D/- 4 -2 -1985.

(A) Constitution of India, Art.226 and Art.227 - ELECTION - WRITS - Writ petition challenging rejection of nomination paper - Interim order not passed - Election was held - Remedy was by proceeding under the concerned Act and not by Writ Petition.

Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.11.

Where in the Writ Petition filed to challenge the rejection of the petitioner's nomination paper to contest the election to the Agricultural Produce Market Committee constituted under the Karnataka Agriculture Produce Marketing (Regulation) Act, 1966, the Court had not made any interim order and the election had taken place the petitioner had only to seek his remedy under the provisions of the said Act and not in the Writ Petition. (Paras 2 and 4)

(B) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.16(2)(i) - AGRICULTURAL PRODUCE - ELECTION - Failure to pay the market committee dues - Resultant disqualification ceases on payment - No disqualification if as on date of filing of nomination there were no dues.

Disqualification under S.16(2)(i), Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, to contest the elections to the market committee occurs only when (i) a bill demanding payment of fee or other amount due to the market committee has been presented to the person concerned; (ii) in spite of presentation of such bill, the person concerned has failed to pay the same for more than 15 days from the date of presentation of the bill; (iii) the failure to pay continued on the date of filing of the nomination paper. Therefore if on such date there were no dues there could be no disqualification. (Para 4)

Mr. C.M. Desai, for Petitioner; M.S. Hosamath, for Respondents.

Judgement

ORDER :- In this petition under Arts.226 and 227 of the Constitution, the petitioner has sought for quashing the order D/-10-6-1983, passed by the Returning Officer (respondent 1) rejecting the nomination paper filed by the petitioner for contesting the election to the membership of the Agricultural Produce Market Committee, Kundagol, from Agriculturists Constituency. Respondent 1 has rejected the nomination paper of the petitioner on the ground that the petitioner has not paid the dues within the stipulated time as per S.16(2)(i), Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (for short, the 'Act').

2. It is not possible to grant the relief sought for in this petition. There was no interim order granted. As a result thereof, the election has taken place. After the election, the petitioner ought to have challenged the same under the provisions of the Act, as there is a specific provision contained in the Act for challenging the election.

3. It is submitted by Sri C. M. Desai, learned Counsel for the petitioner, that the petitioner is not so much interested to have the election set aside, but he only apprehends that the impugned order of the Returning Officer may be held against him in the subsequent elections; because the Act does not contain as to for what period such a disqualification should continue.

4. No doubt, under S.16(2)(i) of the Act, if a person who is a voter, is a defaulter for a period of more than 15 days by failing to pay any fee or other amount due to the market committee from the date on which the bill in that regard is presented to him, he is disqualified for being chosen or for being a member of the market committee. In respect of some of the disqualifications, S.16 of the Act, provides for the period for which the disqualifications operate. But, in respect of this disqualification, no period is mentioned. But, in order to attract S.16(2)(i) of the Act, the person concerned must continue to be a defaulter on the date of filing the nomination paper. Before a person is held to be disqualified under S.16(2)(i) of the Act, three things must be satisfied : (i) a bill demanding payment of fee or other amount due to market committee must have been presented to the person concerned; (ii) in spite of presentation of such bill, the person concerned must have failed to pay the same for more than 15 days from the date of presentation of the bill; (iii) the failure

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to pay should have continued on the date of filing of the nomination paper. On the contrary, if prior to the filing of the nomination paper, the person concerned pays the bills in such an event on the date of filing the nomination paper, default will not be subsisting; therefore he will not be disqualified to be chosen as member. The words "If he is a defaulter" occurring in S.16(2)(i) of the Act, are very clear in this regard. Therefore, the person concerned must continue to be a defaulter on the date of filing the nomination paper. That being so, I do not see any basis for the apprehension of the petitioner that the order rejecting his nomination paper will be held against him in the subsequent elections and on the basis of the very default, his nomination paper would again be rejected. The defaulter means, the defaulter on the date of filing the nomination. When the petitioner had already paid the amount by the time of filing the nomination paper, he could not have been considered as a defaulter. But it is not possible to grant relief to the petitioner as he has failed to challenge the election by availing the remedy of an election petition, as such the election has become final.

5. For the reasons stated above, this petition fails and the same is dismissed.

Petition dismissed.

AIR 1984 KARNATAKA 34 "Kotrappa Haldal v. State"

KARNATAKA HIGH COURT

Coram : 1 N. D. VENKATESH, J. ( Single Bench )

Kotrappa Haldal and etc. etc. Petitioners v. State of Karnataka and others, Respondents.

Writ Petns. Nos. 4813, 5038, 5367 and 5754 of 1983, D/- 21 -4 -1983.

(A) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.38(1), Proviso - AGRICULTURAL PRODUCE - Statement of reasons - may be implied.

A Government Notification dated 1-1-83 stated that whereas it was considered necessary to continue for six months the term of the members of a Market Committee which expired on 4-1-83, the Government in exercise of its power under S.38 (1) extended the term up to 3-7-83 or till the elections whichever was earlier.

Held that if the Notification is read applying one's common sense, what is discernible is that that the notification extending the term of the tine had been issued for the reasons that there was no likelihood of another legally constituted elected committee coming into being to time to take its place when its term would expire in the near future. In the circumstances, this could have been the only reason given and that, in fact, is the reason mentioned therein, it cannot be said that the Notification does not contain any reason at all. It could have been more happily worded making it clear even to a layman why they were issuing that notification. However, the aforesaid reason is clearly spelled out is the Notification. (Para 13)

(B) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.38(1), Proviso - AGRICULTURAL PRODUCE - Statement of Reasons - Requirement of - Not mandatory.

The legislature did not want its delegate to exercise its powers arbitrarily. It wanted the executive to apply its mind and for valid reasons to act theirunder. Therefore, as a matter of caution the law provides for giving reasons in the Notification itself. If there are no mala fides in extending the period, and, if otherwise the action extending the term can be justified the Notification would not be bad for the mere fact of not containing reasons in it. If, by inadvertence, reasons are not actually mentioned in the Notification but there is other evidence to show that after careful consideration and deliberations the term of office had been extended such a Notification cannot be dubbed as void. AIR 1962 SC 1694, Applied. (Para 14)

(C) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.130, S.38 - Karnataka General Clauses Act (3 of 1899), S.16, S.21 - AGRICULTURAL PRODUCE - Notification under S.130 of Marketing Act - Validity of - Notification Under S.38 extending term of membership considered by Government as invalid - Fresh Notification under S.130 appointing administrator held invalid.

In the instant case State Government extended, by a Notification under S.38, the

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term of office of the members of a Market Committee by six months. Prior to the expiry of this period, this Notification was considered by the Government as invalid and non est on the ground that it contained no reasons for extension. The Government, therefore, issued another Notification under Sec.130 by which an administrator was appointed for the Market Committee. The validity of this Notification was questioned in the instant proceeding.

Held that it is not easy, under all circumstance, for the Government to treat its own action, taken as a delegate of the legislature, as a nullity. The principle that unless the necessary proceedings are taken at law to establish the cause of invalidity of an order and to get it quashed or otherwise upset, it will remain an effective for its ostensible purpose as the most impeccable of orders must be actually true even where the 'brand of invalidity' is plain; for there also the order can effectively be resisted in law only by obtaining the decision of the Court. Hence the Government could not have treated the earlier Notification as void and proceeded as it did. AIR 1980 SC 1461 and AIR 1966 SC 1408, Dist. AIR 1962 SC 1694, Rel. on. (Para 17, 18)

It cannot be maintained that the authority, having allowed the members of the committee to continue in office, had the powers to remove them, or, having issued a notification extending their term could as well have withdrawn the same. Section 16, Karnataka G.C. Act, is not attracted because this is not a case of an appointment. Section 21 thereof cannot also be invoked because the earlier notification being in fact valid, the same cannot be withdrawn or rescinded. In the first place the later notification does not purport to rescind the earlier notification. Assuming that, in fact, it does so to justify that S.21 cannot be relied upon. The term of office of persons holding elective officers thereby gets itself extended. That cannot be nullified by simply issuing another notification, withdrawing that notification, relying on S.21 of the Karnataka G.C. Act. AIR 1958 SC 1018, Foll. (Para 19)

Cases Referred : Chronological Paras

AIR 1980 SC 1461 : 1980 Lab IC 749 16

AIR 1966 SC 1408 16

AIR 1962 SC 1694 15

AIR 1958 SC 1018 19

M. Subbara, D. L. N. Rao, B.G. Sridharan and B. V. Krishnaswamy Rao, for Petitioners; M. R. Achar, Govt. Pleader, for Respondents.

Judgement

ORDER :- Since common question, of law and facts arise in these cases they were clubbed and heard together.

2. The Petitioner in W. P. No. 4813/ 1983 is the Chairman of the Agricultural Produce Market Committee (APMC), Hagaribornmanahalli, Bellary District. The petitioners 1 and 2 in W. P. No. 50388/83 are respectively the Chairman and Director of the APMC. Kottur, Bellary District. The petitioner is W. P. No. 5367/83 is the Chairman of the A.P.M.C., Siruguppa; and the petitioner in W. P. No. 5754/83 is the Chairman of the A.P.M.C., Kumta, Bellary District.

3. By the notifications impugned in these proceedings respondent 2, State of Karnataka, treating the earlier notifications issued by it extending the term of office of the members of the respective Market Committee as void, appointed respondent 2, the Tahsildar in each case as the Administrator to exercise the powers and duties of the A. P. M. C., concerned and this order is made under S.130, Karnataka Agricultural Marketing (Regulation) Act, 1966 (hereinafter referred to as the Act),

4. It is not in dispute that these four market Committees, which have been, replaced by the Administrators, were Market Committees constituted after elections, as provided in the Act.

5. Under S.38 (1) of the Act the term of office of the members of the Market Committee is four years. The term of four years of the APMC, Hagaribommanahalli expirad on 3-1-1983, and that of Kottur, Siruguppa and Kumta respectively on 21-4-1983, 10-1-1983. and 4-7-1982. The proviso, to S.38 (1) confers power on the State Government to extend the term of office of the members of the Market Committee from time to the for a period not exceeding one year. Exercising its powers under the proviso the State Government extended the term of office of the APMC of Hagaribommanahalli by its Notification dated 1-1-1983 (No. RDC-1-MMD-83) for a period of six months from, 4-1-1983 to 3-7-1983 or till the elections to the said committee is held whichever is earlier (Annexure-A in W. P. No. 4813/83). By similar notifications issued it extended the term of office of APMC, Kottar, up to 24-71983, and that of Siruguppa till 10-7-1983, and that of Kumta till 4-7-1983. It may be noted that Kumta committee's term has been extended twice by two such notifications. In the case of these three Market

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Committees of Kottur, Siruguppa and Kumta Notifications extending the term of office were issued respectively on 6-1-83, 6-1-83 and 5-7-1982 and 3-1-1983. While these Market Committees were thus functioning the State Government on the same day - 5th March, 1983 - have issued the impugned notifications replacing the said Committees by Tahsildars. The Notifications are also worded similarly.

6. It is stated above that the impugned notifications dated 5-3-1983 have been issued by the State Government treating the earlier notifications issued by its extending the terns of office of the Market Committees as void. The Government have given some reasons in the impugned notifications for treating the earlier notifications as void. What they say is that they had issued earlier notifications extending the term without giving any reasons therefor though it was obligatory for them to have given such reasons and that non-furnishing of reasons had made those earlier notifications, as observed by the Supreme Court in several of its decisions as non est, invalid, and inoperative in law, and also that in this connection they had received several representations from others questing the validity of the said notifications. The appointment of Administrators in the impugned notifications have been made by the State Government exercising their powers under Section 130 of the Act.

7. The petitioners' contention in all these cases is that, in issuing these impugned notifications, the State Government had exceeded its powers. The learned counsel for the petitioners argue that the State Government, having once extended the term of office of these Market Committees, exercising their powers under Section 38 of the, Act, had no powers to issue the impugned notifications treating the earlier notifications as void but virtually rescinding the said notifications. Their further contention is that their clients who were holders of office prior to their replacement, should have been heard in the matter, and, since no such opportunities have been given to them by the Government, these notifications were also void being opposed to the principles of natural justice.

8. On the other hand, the learned Government Advocate, supporting the impugned notifications, submitted, that having come to know that the notifications earlier issued by it, being not in compliance with the statutory requirement, were void, had rightly recognised the said fact and, having recognised it, had appointed Administrators to perform the duties of the Market Committees, which, in law, were not at all functioning, since in these Market Committees there were no lawful functionaries at the time of issuing the impugned notifications, he argues, there was no necessity to issue prior notice as to the contemplated action.

9. The only question that arises for consideration in these cases is :

Whether the notifications impugned in these petitions are bad in law having been issued by the State Government in excess of their powers?

10. Section 38 of the Act reads as follows :

"38. TERM OF OFFICE OF MEMBERS :

(1) The members of the Market Committee shall, save as otherwise provided in this Act, hold office for a term of four years

Provided that the State Government may, by notification, for reasons to be stated therein, may extend from time to time the said term for a period or periods not exceeding one year.

(2) Notwithstanding anything contained in sub-section (1), a person who is a member of a Market Committee by virtue of being a representative of any institution shall cease to be such member on his ceasing to be a member of the managing body of the institution concerned by the end of his term of office or otherwise."

The notifications issued earlier under the proviso to sub-section (1) of S.38 are, in terms, similar. I propose to extract one such notification, Annexure-A, produced in W. P. No. 4813 of 1983:

"KARNATAKA GAZETTE PUBLISHED BY AUTHORITY

(EXTRAORDINARY)

PART-IV-26 (ii)

BANGALORE, SATURDAY, JAN. 1, 1983

(PUSHYA 11, SAKA ERA 1904) No. 4

RURAL DEVELOPMENT AND CO-OPERATION SECRETARIAT

Notification No. RDC I MMO 83

Bangalore, Dated 1st January, 1983.

Whereas the term of office of the Agricultural Produce Market Committee, Hagaribommanahalli expires on 3rd January, 1983.

Whereas it is considered necessary to continue the term of office of the members of the Agricultural Produce Market Committee, Hagaribommanahalli for a further period of

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six months i.e., from 4-1-1983 to 3-7-1983, or till the elections to the Committee are held whichever is earlier.

Now, therefore, in exercise of the powers conferred by the proviso to sub-section (1) of S.38, Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (Karnataka Act, No. 27 of 1966) the Government of Karnataka hereby extend the term of office of the members of the Agricultural Produce Market Committee, Hagaribommanahalli, for a further period up to 3rd July, 1983 or till the elections of the Committee are held whichever is earlier.

By order and in the name of the Governor of Karnataka,

Sd/- V. Narasimbamurthy,

Under -Secretary to Government, Rural Development Co-Opn. Dept."

11. While elaborating his arguments the learned Government Advocate makes a two-fold submission. He argues that, as provided in the proviso to sub-section (1) of S.38, reasons ought to have been given while expending the term of office of the Market Committee, and such reasons are not found in the said notifications, that therefore they were bad in law, that they had to be ignored and having thus rightly ignored the said notifications proper steps had been taken by the state Government to manage the affairs of the Committees. Even otherwise, according to him, the action taken can be justified for the reason that the Government had powers to cancel or rescind a notification earlier issued by issuing another notification cancelling or rescinding the same. For this latter submission of his he relies on the provisions of the Karnataka General Clauses Act, 1899.

12. The first part of his submission has to be examined from three angles, Firstly, we must see whether, in fact, those notifications issued under the proviso contain no reasons for issuing them. Secondly, we have to see as to whether the requirement in the proviso to furnish reasons is mandatory or only directory. Thirdly we have to see that, even if it is mandatory, would its non-observance make the notification issued thereunder a void one and even if it is a void one, can the authority, which had issued such a notification, itself take a decision that it is a void one and act in this manner.

13. As can be seen from the notification issued under the proviso to sub-section (1) of S.38 and extracted above it is stated in the first para that the term of office of that Market Committee would expire on 3-1-1983, and in the second para it is stated that the Government had considered it necessary to continue the term for a further period of six months or till the elections are held whichever is earlier, and in the third para it is stated that in exercise of the powers vested in them they had extended the term. Are not the three paras of that notification closely connected with each other ? If one reads the notification, applying one's common sense, what is discernible is that that notification extending the term of the existing Committee had been issued for the reason that there was no likelihood of another legally constituted elected committee coming into being in time to take its place when its term would expire in the near future. In the circumstances, this could have been the only reason given and that, in fact is the reason mentioned therein. I am unable to agree with the learned Govt. Advocate that this notification does not contain any reason at all. It could have been more happily worded making it clear even to a layman why they were issuing that notification. However, the aforesaid reason is clearly spelled out in the notification.

14. Even otherwise I am of the view that this requirement to furnish reasons in the notification as mentioned in the proviso is not mandatory. The legislature has delegated this power of extending the term of office up to one year to the executive. It did not want its delegate to exercise their powers arbitrarily. It wanted the executive to apply its mind and for valid reasons to act thereunder. Therefore, as a matter of caution the law provides for giving reasons in the notification itself. If there are no mala fides in extending the period, and, if otherwise the action extending the term can be justified the notification would not be bad for the mere fact of not containing reasons in it. Action taken under the proviso would not involve any penal consequences. The right vested in any person is not taken away and as can be seen from sub-section (1), resorting to that provision the Government can only extend the term but not shorten it. It would be quite in consonance with the spirit of the provision. If, by inadvertence, reasons are not actually mentioned in the notification but there is other evidence to show that, after careful consideration and deliberation, the term of office had been extended such a notification cannot be dubbed as void.

15. In one of the decisions of the Supreme Court on which reliance has been

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placed by the Government in the impugned notifications, this very question whether a statutory requirement of furnishing reasons in an order or notification issued under such a provision is directory or mandatory has been considered. The following observations in Collector of Monghyr v. Keshav Prasad Goenka (AIR 1962 SC 1694) may be noted :

"The question whether any requirement is mandatory or directory has to be decided not merely on the basis of any specific provision which, for instance, set out the consequences of the omission to observe the requirement, but on the purpose for which the requirement has been enacted, particularly in the context of the other provisions of the Act and the general scheme thereof. It would, inter alia, depend on whether the requirement is insisted on is protection for the safeguarding of the right or liberty of person or property which the action might involve. The implication of the auxiliary verb 'shall' is inconclusive and similarly the mere absence of the imperative is not conclusive either", (Underlining supplied.)

If the requirement stipulated in the proviso is examined in the light of the aforesaid observation, it appears that the requirement is only directory and not mandatory.

16. The learned Government Advocate, proceeding on the basis that the previous notifications were void for not containing reasons therefor, further argues that the action of the Government in appointing administrators was, in the circumstances, justified. His argument is that the Government has rightly ignored those notifications, the very notifications it had earlier issued acting under a statutory provision. There may be crises in which the Government could review its administrative orders. As observed in another decision of the Supreme Court referred to in the impugned notifications - R.R. Verma v. Union of India (AIR 1980 SC 1461) "Government must be free to alter its policy or decisions in administrative matters" and "if they are to carry on their daily administration they cannot be hide-bound by the rules and restrictions of judicial procedure though of course they are bound to obey all statutory requirement and also to observe the principles of natural justice where rights of parties may be affected". In that case while not agreeing with the arguments of the learned counsel that the Government could not have reviewed its own order, the learned Judge Chinnappa Reddy, J., observes that "the cases cited by Sri Garg are cases where the Government was exercising quasi-judicial powers vested. in them by a statute". The learned Judge was of the view that in administrative matters, where undue hardships were likely to occur to persons, the Government can review their own orders. In Girdharilal Amratlai Shodan v. State of Gujarat (AIR 1966 SC 1408), the 3rd decision referred to in the impugned notifications, the Government having found a notification issued under the Land Acquisition Act had for not containing reasons, withdrawn it and issued another one. They had not withdrawn from the acquisition.

17. In the instant case the result of the earlier notification was the term of office of the Market Committee came to be extended statutorily. The result was they would hold office as an elected body till the expiry of the extended term. This was cut short by the impugned notifications. Even though the Government chose to treat the earlier notifications as void, the members of the Committee, on the strength of those notifications, were holding on to their offices and were, in fact, functioning as such. The result of those impugned notifications is that that right of holding on to their offices was taken away. I have referred to above two decisions of the Supreme Court relied upon by the Government in the impugned notifications. The facts involved in those cases are not similar to the facts in the instant case. The ratio enunciated in the aforesaid decisions cannot, as a matter of course, be applied here. It is not easy, under all circumstances, for the Government to treat its own action, taken as a delegate of the legislature, as a nullity. How difficult it is for the Government to treat its own order as invalid or void is highlighted in the following illuminative passage of H. W. R. Wade in his 'Administration Law' (4th Edition) at page 299 :

"Where an act or order is a nullity, according to Lord Denning's opinion quoted above, 'there is no need for an order to quash it'. But unless such an order is obtained, there is no means of establishing its nullity. It enjoys a presumption of validity, and will have to be obeyed unless a Court invalidates it. In this sense every unlawful administrative act, however invalid, is merely voidable. But this is no more than the truism that every matter of law is for the Court. In a well known passage Lord Radcliffe said

'An order, even if not made in good faith, is still an act capable of legal consequences.

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It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.'

This must be equally true even where the 'brand of invalidity' is plain : for there also the order can effectively be resisted in law only by obtaining the decision of the Court. This also is corroborated by Lord Diplock saying that :

'it leads to confusion to use such terms as voidable", "voidable ab initio", "void" or a nullity" as descriptive of the status of ordinate legislation alleged to be ultra vires for patent or for latent defects, before its validity has been pronounced by a Court of competent jurisdiction.'

The words 'patent or latent' show that there is no difference where the order bears a 'brand of invalidity upon its forehead'. Lord Diplock pointed out that the order would be presumed to be valid unless the presumption was rebutted in competent legal proceedings by a party entitled to sue. He added that there might be no one entitled to sue, for example, if a statutory time limit had expired. In that case the order would have to stand.

"The reality of the matter, therefore, is that the Court will invalidate an order only if the right remedy is sough by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in truth, valid. It follows that an order may be void as against one person and valid as against another. A common case where an order, however void, becomes valid is where a statutory time limit expires after which its validity cannot be questioned. The statute does not say that the void order shall be valid; but by cutting off legal remedies it produces that result.

'Void' is therefore meaningless in any absolute sense. Its meaning is relative, depending upon the Court's willingness to grant relief in any particular situation. If this principle of legal relativity is borne in mind, confusion over 'void or voidable' can be avoided. A case could be made for using either term in relation to invalid acts. But so long as the ultra vires doctrine remains the basis of administrative law, the correct epithet must be 'void'."

18. Having carefully considered the submissions of the learned Government Advocate and for the reasons stated above, I am of the view that firstly, the earlier notifications did contain reasons and, therefore, were valid; secondly, the requirement in the proviso to give reasons in the notifications, in the circumstances, is merely directory and not mandatory, and lastly that, even otherwise, the Government, for the reasons stated by it, could not have treated the earlier notifications as void and proceeded in this fashion.

19. The last submission of the learned Government Advocate was that the authority, having allowed the members of the committee to continue in office, had the powers to remove them, or, having issued a notification extending their term, could as well have withdrawn the same. For his former view he places reliance on Section 16 and for the latter on S.21, Karnataka General Clauses Act. Section 16 is not attracted because this is not a case of an appointment. Section 21 cannot also be invoked here for this reason. If the earlier notifications are valid and in the instant case they are for the reasons stated above, the same cannot be withdrawn or rescinded. In the first place these impugned notifications do not purport to rescind the earlier notifications. Assuming that, in fact, they do the same thing, to justify that Section 21, Karnataka General Clauses Act, cannot be relied upon. I have referred to above the consequences that ensue on the issuance of a notification under the proviso to sub-section (1) of S.38. The term of office of persons holding elective offices would thereby get itself extended. That cannot be nullified by simply issuing another notification, withdrawing that notification, relying on S.21, Karnataka General Clauses Act. Section 21 is in terms similar to Sec.21, Central General Clauses Act. That provision has been considered by the Supreme Court in several decisions including in State of Bihar v. D.N. Ganguli (AIR 1958 SC 1018) wherein it is stated (at p. 1021) :

"It is well settled that this section embodies a rule of construction and the question whether or not it applies to the provisions of a particular statute would depend on the subject-matter, context and the effect of the relevant provisions of the said statute.

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In other words; it would be necessary to examine carefully the scheme of the Act, its object and all its relevant and material provisions before deciding whether by the application of the rule of construction enunciated by Sec.21, the appellant's contention is justified that the power to cancel a reference made under S.10 (1) can be said to vest in the appropriate Government by necessary implication. If we come to the conclusion that the context and effect of the relevant provisions is repugnant to the application of the said rule of construction, the appellant would not be entitled to invoke the assistance of the said section."

20. I have carefully considered the submissions made in support of the impugned notifications by the learned Government Advocate. I am unable to agree with him. The impugned notifications are clearly unsustainable in law.

21. Therefore and for the reason's stated above these petitions are allowed; the rules issued are made absolute; and the impugned notifications are hereby quashed. The result is the earlier notification extending the term of office of these Market Committees continue to be in force. No costs.

Petitions allowed.

AIR 1979 KARNATAKA 195 "D. V. Kempaiah v. Chief Marketing Officer"

KARNATAKA HIGH COURT

Coram : 2 K. JAGANNATHA SHETTY AND M. N. VENKATACHALIAH, JJ. ( Division Bench )

D.V. Kempaiah and others, Petitioners v. The Chief Marketing Officer, Karnataka and others, Respondents.

Writ Petns. Nos. 6499, 7190 of 1975 and 14, 35 and 73 of 1976, D/- 22 -1 -1979.

(A) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.8(2) (as amended by Act 43 of 1976) - AGRICULTURAL PRODUCE - FREEDOM OF TRADE - Validity - Not ultra vires Art.19(1)(g) of the Constitution.

Constitution of India, Art.19(1)(g).

Section 8(2) as amended in 1976 imposes a total ban on wholesale purchase or sale of agricultural produce outside the market yard, sub-yard or sub-market yard and inside the market. There cannot be any such sale or purchase even as between two traders. But these restrictions cannot be complained of as unreasonable. There is no fundamental right to carry on any trade in any particular locality. It is perfectly open to the State to prohibit business being done in a particular place or locality. It is equally legitimate to permit a business being done in a particular locality if public interest demands. (Paras 6, 10)

It is now well settled that (i) If the Act intends to protect the producer by eradicating or at any rate reducing the scope of the exploitation in dealings, it cannot be said to create unreasonable restrictions on the citizens' right to do business unless it is clearly established that the provisions are too drastic, unnecessarily harsh and overreach the scope of the object of the Act. (ii) If the control on marketing of agricultural produce has to be effective in the interest of the agricultural producer, transactions between traders and traders have also to be controlled. And (iii) In order to achieve the objects of the Act, transactions on agricultural commodities even as between traders and traders could be prohibited in a specified area like outside the market yard and inside the market. AIR 1956 Bom 21 and (1965) 4 Law Rep 366 (Mys) and AIR 1971 SC 1017 and AIR 1962 SC 1517, Relied on. (Para 11)

(B) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.8(2) (as amended by Act 43 of 1976) - AGRICULTURAL PRODUCE - Scope - Section encompasses transactions between traders and traders also.

S.8(2) after its amendment in 1976, has not the original colour and content. The Act has thrown the protective net wider so as to cover not only the transactions between traders and producers, but also those between traders and traders. Its present object, among others, is to regulate the marketing

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of agricultural produce and not merely to regulate the buying and selling to which a producer is a party. It cannot, therefore, be construed as not intended to cover transactions between traders and traders in the area outside the market yard and inside the market. (Para 12)

(C) Constitution of India, Art.254(1) - AGRICULTURAL PRODUCE - REPUGNANCY BETWEEN STATUTES - Question of repugnancy can arise only in respect of legislation falling in Concurrent List - Karnataka Agricultural Produce Marketing (Regulation) Act (1966) (as amended in 1976) is immune from such attack.

Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), Pre.

AIR. 1957 SC 297 and AIR 1976 SC 1031, Relied on. (Para 14)

(D) Constitution of India, Art.304(b) - AGRICULTURAL PRODUCE - LEGISLATURE - FREEDOM OF TRADE - Karnataka Agricultural Produce Marketing (Regulation) Act being a regulatory measure need not comply with provisions of Art.304(b).

Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), Pre. (Para 15)

Cases Referred : Chronological Paras

(1979) W.P. No. 5525 of 1975, D/- 19-1-1979 (Kant), Sohanlal Jain v. State of Karnataka 10

(1978) W.Ps. Nos. 2839 of 1975 etc., D/- 28-9-1978 : (1979) 1 Kant LJ 43 12

AIR 1976 SC 1031 14

AIR 1975 SC 583 : 1975 Tax LR 1361 15

AIR 1971 SC 1017 10, 11

AIR 1970 Mys 114 12

(1965) 4 Law Rep 366 (Mys) 10, 11

AIR 1962 SC 97 10

AIR 1962 SC 1406 15

AIR 1962 SC 1517 11

AIR 1959 SC 300 5, 11

AIR 1957 SC 297 : 1957 Cri LJ 409 14

AIR 1956 Bom 21 10, 11

H.K. Vasudeva Reddy (in W.Ps. Nos. 6499, 7190 of 1975 and 14 of 1976); S.G. Sundaraswamy (in W.P. No. 35 of 1976) and C.N. Kamath (in W.P. No. 73 of 1976), for Petitioners; R.N. Byra Reddy, Advocate General, S.G. Doddakalegowda, 1st Addl. Govt. Advocate; H.B. Datar for K.S. Desai and B.G. Sridharan, for Respondents.

Judgement

JAGANNATHA SHETTY, J. :- Petitioners in all these writ petitions are either traders or commission agents.

They are also called as market functionaries under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, hereinafter referred to as "the Act". They are presently carrying on their business in agricultural produce in a locality called 'Old and New Tharagupet along with Krishna Rajendra Market' at Bangalore. The area consisting of these localities was once notified as "market yard", but now a new market yard has been established at Yeshwanthpur on Tumkur Road and the Market Committee has issued notices to the petitioners to shift their business to the new market yard. The petitioners have challenged the validity of the notices contending, inter alia, that the objections filed by them against the proposal to shift the market yard were not considered, and there were no adequate facilities for trading in the new market yard.

2. During the pendency of the writ petitions, the Act was amended by Karnataka Act 43 of 1976 widening the scope of the parent Act so as to bring within its fold all activities of buying and selling of notified agricultural produce. The amending Act ("Act 43 of 1976") also prohibited the sale and purchase of notified agricultural produce in any area in the market other than the market yard, sub-yard or the sub-market yard. The petitioners by seeking appropriate amendments to the writ petitions, have also challenged the constitutional validity of Act 43 of 1976.

3. Before examining the salient features of the Act, it may be necessary to have a bio-data of the State of Karnataka and the economic philosophy informing the legislation. The State with an area of about 192,000 km. is located in the south-western part of the Deccan Plateau. It has a coastline of about 300 km. Population is about 29.3 million (provisional figures of 1971 population census) representing some 5.5% of the total population of India. Among the various States of India, Karnataka ranks sixth and eighth in area and population, respectively. About 76% of the population live in rural areas (29,500 villages). The remaining 24% live in the State's 245 towns, about one-half (12%) in the 11 principal centres of over 100,000 people. For administrative purposes, the State

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is divided into 4 divisions, 19 districts, and 175 Talukas (administrative units).

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Some 6.7 million persons are engaged in agriculture, representing 65% of the total working population. The total land area in the State is some 19.0 million ha, and of this some 62% is cultivated (of which about one seventh is fallow); 15% forested; and 23% barren, uncultivated or used for non-agricultural purposes. The State produces a wide diversity of agricultural crops.\*

\* See Mysore Agricultural Wholesale Markets Project made by the International Bank for Reconstruction and Development (International Development Association) .

The Act in question falls within the legislative entries 26 and 28 of List II of the Seventh Schedule to the Constitution. These legislative entries deal with 'Trade and Commerce within the State', and 'Markets and Fairs' respectively. It is stated that the State of Karnataka in its agricultural development plan has stressed development of modern regulated markets for improved marketing of agricultural produce. The improved marketing facilities are found to be particularly important for the 7 lakhs small farmers, who hold less than 2 hectares each, and whose bargaining power is nowhere near the big farmers. To increase competition and improve efficiency in marketing of agricultural produce, a meeting place for buyers and sellers has been found to be necessary. The facilities of handling large quantities of produce under a system that assures maximum competition and a minimum of wastage should be provided to them. With that end in view, the legislature has enacted the Act in question.

4. We may now look at some of the provisions of the Act. The Act provides for delimitation, by notification, of a market area (Section 3). In the market area the notified agricultural produce shall be regulated (Section 4). For every market area there shall be a market. For every market there shall be a market yard (Section 6). No place in the market or the sub-market, except the market yard, sub-yard or the sub-market yard, as the case may be, shall be used for the purchase or sale of notified agricultural produce (Section 8). Only licensed traders, commission agents and other market functionaries are allowed to operate in such markets. Their commission and other charges are fixed. The aim of these regulated markets is the eradication of weighing malpractices, excessive market deductions and collusion among traders. The Act provides for the constitution of Market Committees which is a representative body of agriculturists, traders, commission agents etc. (Sections 10 and 11). These Committees are statutory legal bodies with designated powers. (Section 63). They have to maintain and manage the market yards, provide facilities for marketing of agricultural produce and supervise the traders and licensees. In addition to their regulatory functions, they are granted corporate powers, enabling them to own property, borrow money, collect fees, sue and be sued etc. All moneys received or realised by a Market Committee either by way of fees or penalty, loans or grants shall form part of a fund called "the Market Fund". (Section 90).

5. The historical background for this kind of legislation has been succinctly stated by the Supreme Court in Arunachala Nadar v. State of Madras, AIR 1959 SC 300 paras 6 and 7 as follows :

"6. There is a historical background for this Act. Marketing legislation is not a well-settled feature of all commercial countries. The object of such legislation is to protect the procedures of commercial crops from being exploited by the middlemen and profiteers and to enable them to secure a fair return for their produce.........

7. The Act, therefore, was the result of a long exploratory investigation by experts in the field, conceived and enacted to regulate the buying and selling of commercial crops by providing suitable and regulated market by eliminating middlemen and bringing face to face the producer and the buyer so that they may meet on equal terms, thereby eradicating or at any rate reducing the scope of the exploitation in dealings. Such a statute cannot be said to create unreasonable restrictions on the citizens' right to do business unless it is clearly established that the provisions are too drastic, unnecessarily harsh

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and overreach the scope of the object to achieve which it is enacted."

6. We now turn to Act 43 of 1976. It just contains five Sections, and it would be better to set out the same hereunder :

"1. Short title.- This Act may be called the Karnataka Agricultural Produce Marketing (Regulation) (Second Amendment) Act, 1976.

2. Amendment of long title.- In the long title of the Karnataka Agricultural Produce Marketing (Regulation) Act. 1966 (Karnataka Act No. 27 of 1966) (hereinafter referred to as the principal Act), for the words "buying and selling" the word "Marketing" shall be substituted.

3. Amendment of Preamble.- In the Preamble to the principal Act, for the words "buying and selling", the word "Marketing" shall be substituted.

4. Amendment of Section 2.- In Section 2 of the principal Act, after clause (18), the following clause shall be inserted, namely, -

"18-A. 'Marketing' means buying and selling of agricultural produce and includes grading, processing, storage, transport, packaging, market information and channels of distribution."

5. Amendment of Section 8.- In Section 8 of the principal Act, -

(1) in Sub-Section (1), for item (ii) to the proviso to clause (b) the following item shall be substituted, namely :-

'(ii) to the purchase of such produce if the purchaser is a person who purchases such produce for his domestic consumption;'

(2) in Sub-Section (2), the words "belonging to a producer" shall be omitted.

(3) for the proviso to Sub-Section (2), the following proviso shall be substituted, namely, -

'Provided that nothing in this Sub-Section shall be applicable to the purchase or sale of such agricultural produce by way of retail sale'."

The words "buying and selling" in the preamble and the title to the Act have been substituted by the word "marketing", and "Marketing" has been defined to mean not only "buying and selling of agricultural produce" but also "grading, processing, storage, transport, packaging, market information and channels of distribution." The amendment has thus widened the scope of the Act. There is also an important change in Section 8. Sub-Section (2) of Section 8 before its amendment read as follows :

"8(2). No place in the market or the sub-market, except the market yard, sub-yard or the sub-market yard, as the case may be, shall be used for the purchase or sale of notified agricultural produce belonging to a producer.

Provided that nothing in this Sub-Section shall be applicable to the purchase or sale of such agricultural produce by way of retail sale if the producer of such produce is himself its seller and the purchaser is a person who purchases such produce for hie domestic consumption."

It is clear from the Section that there vas no impediment or prohibition for reading on agricultural produce as between traders and traders outside the market yard or sub-yard and inside the market. But the transactions with the producer or trading on the produce belonging to a producer should be confined exclusively within the market yard, sub-yard or the sub-market yard. The retail sale of agricultural produce with the producer was however not barred in any place. After the amendment, Sub-Section (2) of Section 8 provides as follows :-

"8(2). No place in the market or the sub-market, except the market yard, sub-yard or the sub-market yard, as the case may be, shall be used for the purchase or sale of notified agricultural produce :

Provided that nothing in this Sub-Section shall be applicable to the purchase or sale of such agricultural produce by way of retail sale."

The last words "belonging to a producer" in Sub-Section (2) have been omitted. The result is that there would be a total ban on wholesale purchase or sale of agricultural produce outside the market yard, sub-yard or sub-market yard and inside the market. There cannot be any such sale or purchase even as between two traders. In other words, the Act now creates "a no man's land" or a "buffer zone" where sale or purchase of agricultural produce except by way of retail totally barred.

7. Sub-Section (2) of Section 8 has been challenged by the petitioners

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mainly on two grounds : (i) That it has imposed an unreasonable restriction on their right to trade guaranteed to them under Article 19(1)(g) of the Constitution; and (ii) That since the Act was intended to safeguard the interests of only the producer, the amendment to Section 8 should be so construed as imposing no restrictions on transactions between traders and traders.

8. It will be convenient to consider these two contentions at this stage itself.

9. Article 19(1)(g) of the Constitution confers on all citizens a right to practise any profession, or to carry on any occupation, trade or business subject to the power of the State to impose reasonable restrictions in the interests of the general public. The reasonable restriction connotes that the limitation imposed on a citizen in the enjoyment of that right should not be arbitrary and must have a reasonable relation to the object which the legislation seeks to achieve. It follows, therefore, the reasonableness of a restriction has to be determined in an objective manner and from the standpoint of the interests of the general public and not from the point of view of the persons upon whom the restrictions are imposed or upon abstract considerations.

10. The petitioners' grievance is that the State cannot prevent them from carrying on wholesale trade in notified agricultural commodities in their existing places and they cannot by compulsion be asked to confine their trade only within the new market yard.

While considering this question, we must bear in mind that the liberty of an individual to do as he pleases even in innocent matters is not absolute. As we have observed in a recent case Sohanlal Jain v. State of Karnataka (W.P. No. 5525 of 1975 and connected W.Ps. disposed of on 19-1-1979) (Kant) :

"That liberty frequently must and is very often made to yield to the common good. The striking of the right balance between the individual liberty on the one hand and the common good - as the State conceives it - on the other, is a perennial and continuing exercise beset with recurring difficulty. The restraints on liberty should be judged not only subjectively as applied to a few individuals who come within their operation, but also objectively as securing the liberty of a greater number. This stems from the theory that 'the whole is greater than the sum total of all the parts'. The concept, of public welfare is a broad and inclusive concept, the social, economic, moral and physical well-being of the community, as well as its political well-being coming within its content......"

The petitioners, in our view, cannot legitimately contend that the restriction complained of is unreasonable. There is no fundamental right to carry on any trade in any particular locality. It is perfectly open to the State to prohibit business being done in a particular place or locality. It is equally legitimate to permit a business being done in a particular locality if public interest demands. In Bapubhai v. State of Bombay, AIR 1956 Bom 21 at p. 24 Chief Justice Chagla while considering the scope of a similar restriction in the Bombay Agricultural Produce Markets Act, 1939, held that it was reasonable. This Court in Ramakrishna Hari Hegde v. The Market Committee, Sirsi, (1965) 4 Law Rep 366 at p. 375 was also of the same view. Honniah, J., while considering the validity of a provision in the Bombay Agricultural Produce Markets Act, 1939 prohibiting the sale or purchase of any agricultural produce in some place, observed :

"...... The amended Section 4-A(3) is based on this rule. It would be seen that according to this rule, within the larger market area, which is declared by the Government under Section 4, there should be a market yard in which the business should be transacted and contiguous to the market yard, there should be an area known as market proper where no business should be transacted. This area, where no business should be transacted is set apart in order to protect the producers. If a producer came to the market area with the intention of displaying his goods in the market yard and selling them there, he should not be inveigled into parting with his produce before he reached the market yard, the intention being that the producer should be allowed to sell his produce at competitive rates and he could only get

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competitive rates, provided he sold his goods in the market yard, the middlemen have to put through the transactions, in accordance with the rules and regulations in force. Hence the producer is likely to get a fair deal for his produce." (Underlining is ours).

The learned Judge continued at p. 376, para 10 :

"…... Outside that belt there is no restriction and within the belt the only place where business could be transacted is in the market yard because outside the market yard the whole contiguous area becomes as it were a prohibited zone. The Act does undoubtedly restrict the freedom of a citizen to trade 'as and where he wills'. This was enacted for the very purpose of controlling the business in commercial crops. The restrictions imposed are reasonable restrictions and they do not infringe the rights of a citizen to trade 'as and where he wills'."

The decision of this Court in Ramakrishna Hari Hegde's case was affirmed by the Supreme Court in Ramakrishna Hari Hegde v. The Market Committee, Sirsi, AIR 1971 SC 1017, Jaganmohan Reddy, J. while speaking for the Supreme Court observed at page 1019, para 8 :

"..... The declaration of the Market area subject to Section 5-A has the effect of prohibiting the purchase or sale of agricultural produce in any place in that area except in the area declared as a principal Market Yard or Sub-Market yard or yards, if any. This Court had earlier in Mohammad Hussain Gulam Mohammad v. State of Bombay, (1962) 2 SCR 659 : (AIR 1962 SC 97) held Sections 4, 4-A, 5, 5-A and 5-AA to be constitutional and that none of the said provisions imposed unreasonable restrictions on the right to carry on trade in the agricultural produce regulated under the Act and as such were not violative of Article 19(1)(g) of the Constitution."

11. In Mohammadbhai v. State of Gujarat, AIR 1962 SC 1517, para 20 the Supreme Court again observed :

"Next it is urged that the provisions in the Act also affect transactions between traders and traders, and also affect produce not grown within the market area if it is sold in the market area. That is undoubtedly so. But if control has to be effective in the interest of the agricultural producer such incidental control of produce grown outside the market area and brought into the market yard for sale is necessary as otherwise the provisions of the Act would be evaded by alleging that the particular produce sold in the market yard was not grown in the market area. For the same reasons transactions between traders and traders have to be controlled, if the control in the interest of agricultural producers and the general public has to be effective."

The following principles clearly emerge from the above decisions : (i) If the Act intends to protect the producer by eradicating or at any rate reducing the scope of the exploitation in dealings, it cannot be said to create unreasonable restrictions on the citizens' right to do business unless it is clearly established that the provisions are too drastic, unnecessarily harsh and overreach the scope of the object of the Act, AIR 1959 SC 300 paras 6 and 7, (ii) If the control on marketing of agricultural produce has to be effective in the interest of the agricultural producer, transactions between traders and traders have also to be controlled, AIR 1962 SC 1517 at p. 1527, para 20. And (iii) In order to achieve the objects of the Act, transactions on agricultural commodities even as between traders and traders could be prohibited in a specified area like outside the market yard and inside the market AIR 1956 Bom 21 at p. 24; (1965) 4 Law Rep (Mys) 366 at p. 375 and AIR 1971 SC 1017.

Having regard to these principles, we cannot but reject the contention urged for the petitioners that S.8(2) imposes an unreasonable restriction on the right guaranteed to them under Article 19(1)(g) of the Constitution. The challenge to the validity of Section 8(2), therefore, has to fail.

12. Nor there is any merit in the second contention urged for the petitioners that we should so construe Act 43 of 1976 as imposing no restrictions on transactions between traders and traders. The decision of this Court in K.N. Marularadhya v. The Mysore State, AIR 1970 Mys 114 of course lends support to this contention. Therein it was observed that the Act, as it

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then stood, was intended to protect only the first sale of agricultural produce to which the producer was a party. But this enunciation can no longer hold good. Sections 8(2) and 65 in particular, do not have the original colour and content. The Act has thrown the protective net wider so as to cover not only the transactions between traders and producers, but also those between traders and traders. Its present object, among others, is to regulate the marketing of agricultural produce and not merely to regulate the buying and selling to which a producer is a party. We cannot, therefore, construe that Act 43 of 1976 as it stands, was not intended to cover transactions between traders and traders in the area outside the market yard and inside the market. It is not the contention for the petitioners that the provisions of the Act are beyond the legislative competence. In B. Rajasekhariah v. The Secretary, Tiptur Agricultural Produce Market Committee, Tiptur, W.P. No. 2839/75 and connected W.Ps. disposed of on 28-9-1978 this Court has observed that the Act could be more comprehensive to control every transaction on agricultural commodities.

13. Mr. Sundaraswami, learned counsel for the petitioners next contended that some of the provisions in the Act are too drastic and unrelated to the objects of the Act. He laid particular emphasis on Sections 75, 76, 77 and 84, Section 75 provides for payment of price subject to such deductions, in cash only. Section 76 provides sale of agricultural produce by tender system or by public auction or by open agreement or by sample etc. Section 77 states that every licensed trader who buys notified agricultural produce shall at such time enter into a written agreement with the seller executed in triplicate of which one copy shall be retained by the buyer, one copy shall be retained by the seller and the third copy shall be submitted to the Market Committee. Section 84 provides for arbitration for settlement of disputes. The learned counsel contended that there is absolutely no reason why transactions between traders and traders should be subject to such restrictions. Prima facie, it appears to us, that there is a good deal of substance in the criticism. The learned counsel for the Market Committee was not unmindful of the force of that criticism. He has produced a memo dated 1st December, 1978 undertaking that the above provisions will not be enforced on transactions between traders until the Government takes appropriate action in amending those provisions. Mr. Advocate General was still more gracious. On behalf of the State he has also produced a memo dated 6th December, 1978. It reads thus :

"The Government is willing to remove the restrictions in relation to licensed traders exclusively by making necessary amendments to Sections 75, 76, 77 and 84 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966.

As regards Section 85(3), the feasibility of amendment is being considered by the Government."

These memos are recorded. In view of the undertaking contained therein it is unnecessary to consider the contention urged for the petitioners.

14. Last contention on this part of the case relates to the repugnancy of the legislation. It was urged that Act 43 of 1976 conflicts with the several provisions of Sale of Goods Act, the Contract Act and the Arbitration Act and the former has not been reserved for consideration of the President as required under Article 254(1) of the Constitution. It is too hard to accept this contention also. The question of repugnancy can arise only with reference to legislations falling under the concurrent list. That principle has been well settled by a string of decisions of the Supreme Court commencing from the case in A.S. Krishna v. State of Madras AIR 1957 SC 297 to the Kerala State Electricity Board v. Indian Aluminium Co. AIR 1976 SC 1031.

15. We also do not find any substance in the next contention urged for the petitioners that Act 43 of 1976 is bad for want of Presidential sanction as required under Article 304(b) of the Constitution. We have already held that the restrictions imposed by Act 43 of 1976 are in the nature of regulatory measures and it is well settled that such measures need not comply with the requirement of the provisions of Article 304(b). See Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan

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AIR 1962 SC 1406 and G.K. Krishnan v. State of Tamil Nadu AIR 1975 SC 583.

16. What remains to be considered is the grievance of the petitioners relating to the factual aspects of the matter. The first complaint in this regard was that there was no consideration of the objections filed by the petitioners against the proposal to shift the business to the new market yard. In order to examine this question, we perused the records produced by the Government Advocate. We find therefrom that the Chief Marketing Officer has considered the objections raised by the petitioners and made a considered order rejecting them. It was only after rejecting those contentions, he directed that the impugned notification should be issued. There is, therefore, no substance in this contention.

The grievance next made by the petitioners was in regard to the inadequate facilities provided in the new market yard and denial of a reasonable period to shift their life-long business. It is no doubt true that the time allowed to the petitioners by the impugned notices was just six days; but the petitioners have obtained stay of those notices and they have been still continuing their business in the existing premises. Even if there should be any inconvenience in the immediate shifting the same could be relieved by grant of a reasonable time to shift.

17. Similar is the fate of the complaint of the petitioners regarding the facilities provided in the new market yard. Maybe when the petitioners were asked to shift their business to the new market yard there were no adequate facilities for trading purposes. But the Market Committee has since improved the market yard providing almost every facility to the market functionaries. This is quite evident from the records produced by the Market Committee, and also from the admission made by not less than 119 market functionaries who have been trading in the new market yard since a couple of years. These 119 traders have been impleaded as respondents in these petitions. They are supporting the Market Committee in resisting the writ petitions with a contention that there are adequate facilities and premises in the new market yard. When a substantial number of persons are already trading in the new market yard, the contention of the petitioners that they cannot move to the new market yard for want of adequate facilities can hardly be accepted. However, Mr. Datar, learned counsel for the Market Committee at the fagend of his arguments, made a statement before us that those petitioners who had applied for sites and who have not yet been granted would be given accommodation if they approach the Market Committee with all the evidence. He also submitted that the Market Committee would try as far as possible to provide accommodation for the purpose of trading even for the other petitioners who have not yet applied for sites. This is indeed quite a generous attitude. Mr. Datar has no objection to have these submissions placed on record. We accordingly place them on record.

In view of these submissions, it is for the petitioners to approach the Market Committee for allotment of premises for the purpose of their trading activities.

18. Before parting with the case, we would like to record one other submission made by Sri Sridharan, counsel for the Market Committee. At the request for time prayed by the petitioners for shifting their business to the new market yard, Mr. Sridharan said that the Market Committee has no objection to allow six months time from today for the petitioners to continue their business at their present habitat. This submission is also recorded.

19. In the result, subject to the time thus given these petitions fail and the rules are discharged. In the circumstances, we make no order as to costs.

Petitions dismissed.

AIR 1978 KARNATAKA 210 "Kallaiah Nagaiah v. Basappa Tirakappa"

KARNATAKA HIGH COURT

Coram : 2 D. M. CHANDRASHEKHAR, C.J. AND N. D. VENKATESH, J. ( Division Bench )

Kallaiah Nagaiah Koradhanyamath, Petitioner v. Basappa Tirakappa Buradikatti and others, Respondents.

Writ Petn. No. 6423 of 1977, D/- 22 -6 -1978.\*

(A) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.41(4) - AGRICULTURAL PRODUCE - ELECTION - TRIBUNALS - Rules under Act, R.45(2) - Absence of statutory provision laying down grounds for setting aside election - Power of Tribunal to set aside election on well accepted grounds.

Even in the absence of any express statutory provision in the Act or the Rules laying down the ground on which an election can be set aside, an Election Tribunal can set aside an election on any of the well accepted grounds and one of such grounds is that the disobedience of, or non-compliance with, any statutory provision governing such election, has materially affected the result of such election. 1975 (2) Kant LJ 235 Foll., Observations in AIR 1972 Mys 226 held obiter. (Para 10)

In the present case, since there was equality of votes between the petitioner and respondent No. 1, the vote cast by respondent No. 11 is very likely to have materially affected the result of the election though on account of secrecy of ballot it could not be ascertained whether respondent No. 11 voted for petitioner or respondent No. 1. Hence, the District Judge was right in holding that voting by respondent No. 11 who was not entitled to vote, had materially affected the result of the election and rendered the election invalid. (Para 11)

(B) Constitution of India, Art.226 - WRITS - HIGH COURT - ELECTION - Jurisdiction of High Court is discretionary and to to be exercised in aid of justice - Allowing an illegal election to stand is not a proper exercise of jurisdiction.

It is well settled that the jurisdiction of the High Court under Art 226 of the Constitution is discretionary and has to be exercised only in aid of justice. Even assuming that the District Judge functioning as Election Tribunal could not set aside that election in the absence of express statutory provision laying down the grounds on which such election could be set aside, the High Court need not interfere with the decision of the District Judge setting aside the election when the result of election, as declared by the Returning Officer, was obviously illegal. In such circumstances, interfering with the order of the District Judge would only result in allowing an illegal election to stand and it would not be proper exercise of discretion to interfere with the judgment of the District Judge. (Para 12)

Anno : AIR Comm. Const. of India, (2nd Edn.), Art. 226, N. 18.

Cases Referred : Chronological Paras

1975 (2) Kant LJ 235 1, 8, 10

AIR 1972 Mys 226 : (1972) 1 Mys LJ 121 1, 6

K.A. Swami, for Petitioner; B.G. Sridharan, for Respondent No. 1. V.T. Raya Reddy, for Respondents 3, 9, 10, 12 and 13; Jayakumar Patil, for Respondent No. 15.

\* To quash order passed by Dist J. Dharwaar, D/-25-07-1977.

Judgement

CHANDRASHEKHAR, C.J. :- This petition under Art. 226 of the Constitution has been referred to a Division Bench by Rama Jois, J., as in his opinion there appeared to be conflict between the decision of a Bench of this Court in Hayat Beig v. Munivenkate Gowda (1972 (1) Mys LJ 121): (AIR 1972 Mys 226) and the decision of a single Judge in Channegowda v. State of Karnataka, 1975 (2) Kant LJ P. 235).

2. This petition is directed against the judgment of the District Judge, Dharwar, in an election petition under S. 41 (4) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (hereinafter to be referred to as 'the Act'), and R. 45 (2) of the Rules thereunder (hereinafter referred to as 'the Rules').

3. Petitioner and respondent I were candidates for an election to the office of the Chairman of the Agricultural Produce Market Committee, Ranibennur. The Returning Officer declared that each of them had secured

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seven votes. On drawing lots, the petitioner was declared as having been elected. Respondent 1 challenged that election in an election petition before the learned District Judge, who, by the impugned judgment, set aside the result of the election.

4. Though the learned counsel for the petitioner assailed both the grounds on which the learned District Judge set aside the election of the petitioner, it is sufficient for purposes of this petition to deal with only one of them, namely, that respondent No. 11, the Assistant Secretary of Agricultural Produce Market Committee, was not competent to vote.

5. Section 11 of the Act which provides for the constitution of the market Committee other than the first one, states, inter alia, that one of the members of the Committee shall be an officer subordinate to the Chief Marketing Officer, nominated by the Chief Marketing Officer. For the Agricultural Market Committee, Ranibennur, the Chief Marketing Officer had nominated the District Marketing Officer, Dharwar District, as such member. It is common ground that at the time of the election, that District Marketing Officer had been transferred and respondent No. 11, the Assistant Secretary, Agricultural Produce Market Committee, Hubli, was placed in charge of the current duties of the Office of the District Marketing Officer and voted in that election. The learned District Judge has held that since respondent No. 11 was only placed in such charge, he could not have exercised the statutory power of voting which the District Marketing Officer only could exercise and that his vote had materially affected the result of the election and hence rendered the election invalid. The view taken by the learned District Judge is supported by several decisions of this Court and of the Supreme Court. Sri K. A. Swamy, learned counsel for the petitioner, was not able to show that this view of the learned District Judge was incorrect.

6. However, Sri K. A. Swamy contended that since neither the Act nor the Rules provide on what grounds an election to the office of the Chairman of a Market Committee, can be set aside, the learned District Judge could not have set aside the election in spite of his having been empowered under S. 41 of the Act to decide any dispute relating to the validity of such election. In support of his contention Sri K. A. Swamy strongly relied upon the decision of a Division Bench of this Court in Hayat Beig v. Munivenkate Gowda (AIR 1972 Mys 226) (supra). There, an election of the Chairman of a Village Panchayat had been challenged in an election petition before the Munsiff who is constituted as Election Tribunal under R. 17 of the Karnataka Village Panchayat (Election of Chairman and Vice-Chairman) Rules, 1959. The learned Munsiff set aside that election and his decision was assailed in a writ petition. While quashing his decision, the Division Bench observed thus :

"It appears to us that the Rule making authority has by oversight omitted to frame a Rule stating the grounds on which the election of a returned candidate shall be declared to be void. In the absence of any such Rule, we fail to see how the Munsiff exercising his powers under Sec. 30 (2) read with Rr. 17 and 18 of the Rules can try an Election Petition. The Munsiff under the Act exercises his powers not as a Court but as a Tribunal. He has no inherent powers of a Court. Therefore the Munsiff could not have set aside the election of the petitioner."

7. Sri K. A. Swamy, submitted that sub-sec. (2) of S. 30 of the Karnataka Village Panchayats and Local Boards Act and R. 17 of the Rules thereunder, are in pan materia with S. 41 (4) of the Act and R. 45 (2) of the Rules and that hence, the ratio of that decision would apply with equal force to this case also and that the learned District Judge could not set aside the election petition.

8. As pointed out by Venkataramiah, J. in Channegowda v. State of Karnataka, 1975 (2) Kant LJ 235 (supra) the two grounds which persuaded the Division Bench in Hayat Beig's case to quash the decision of the learned Munsiff were :

(i) that an election of a returned candidate could not be set aside in the absence of proof that on account of non-compliance with any law, the result of the election in so far as it

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concerned the returned candidate, had been materially affected;

(ii) the Munsiff who was functioning as a Tribunal and not as a Court had no inherent powers of a Court and therefore, he could not have set aside the election in the absence of any specific statutory provision which laid down the grounds on which the election could be set aside.

9. When once the Division Bench held in Hayat Beig's case that the result of the election had not been shown to have been materially affected by any non-compliance with any law, there was no need for the Division Beach to go into the question whether the Munsiff, functioning as the Election Tribunal, could set aside an election in the absence of any specific statutory provision laying down the grounds on which an election could be set aside. So, in our opinion, what the Division Bench in Hayat Beig's case has said on this point, is obiter dictum and hence is not binding on us.

10. We are in respectful agreement with the view taken by Venkataramiah, J. in Channe Gowda's case 1975 (2) Kant LJ 235 that even in the absence of any express statutory provision laying down the ground on which an election can be set aside, an Election Tribunal can set aside an election on any of well accepted grounds and one of such grounds is that the disobedience of, or non-compliance with, any statutory provision governing "such election, has materially affected the result of such election.

11. In the present case, since there was equality of votes between the petitioner and respondent No. 1, the vote cast by respondent No. 11 is very likely to have materially affected the result of the election though on account of secrecy of ballot it could not be ascertained whether respondent No. 11 voted for petitioner or respondent No. 1. Hence, the learned District Judge was right in holding that voting by respondent No. 11 who was not entitled to vote, had materially affected the result of the election and rendered the election invalid.

12. Moreover, it is well settled that the jurisdiction of this Court under Art. 226 of the Constitution, is discretionary and has to be exercised only in aid of justice. Even assuming for the sake of argument that the learned District Judge functioning as Election Tribunal could not set aside that election in the absence of express statutory provision laying down the grounds on which such election could be set aside, this court need not interfere with the decision of the District Judge setting aside the election when result of election, as declared by the Returning Officer, was obviously illegal. In such circumstances, interfering with the order of the District Judge would only result in allowing an illegal election to stand and it would not be proper exercise of discretion of this Court to interfere with the judgment of the learned District Judge.

13. In the result, the petition fails and the rule issued in this petition is discharged.

In the circumstances of the case, parties will bear their own costs.

Order on the oral application for grant of certificate of fitness to appeal to the Supreme Court.

After we dictated the above order in open Court, the learned counsel for the petitioner made an oral application praying for grant of a certificate of fitness to appeal to the Supreme Court. In our opinion, no substantial question of law of general importance which needs to be decided in Supreme Court, can be said to arise out of our order.

Hence, we decline to grant the certificate prayed for.

Rule discharged and certificate of fitness refused.

AIR 1977 KARNATAKA 86 "K. S. R. Gowda and Co. v. Addl. Chief Marketing Officer"

KARNATAKA HIGH COURT

Coram : 1 K. JAGANNATHA SHETTY, J. ( Single Bench )

M/s. Kadidal S. Ramappa Gowda and Co., Petitioner v. The Additional Chief Marketing Officer, Bangalore and others, Respondents.

Writ Petn. No.2539 of 1973, D/- 7 -6 -1976.

Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.73 - AGRICULTURAL PRODUCE - LICENSE - Power to suspend licence - Non-payment of sale proceeds by commission agent to principal because of serious dispute of civil nature - Suspension of licence on ground of non-payment is not proper.

The Market Committee, whenever a complaint is brought before it, is charged with a duty to see that the agriculturists get the sale proceeds of their commodities without delay. It may settle the differences between the parties and if there is any unimpeachable evidence on the delaying tactics of the Commission Agent, it may take appropriate action under S.73. But, if there is a serious dispute involving difficult questions of civil liabilities between Commission Agent and the principal on the question of payment, the Market Committee cannot constitute itself into a Civil Court and decide it and should not make it a ground to suspend or cancel the licence. In such case, proper remedy is to leave the parties to seek their rights by other means known to law. (Para 8)

Mohandas N. Hegde, for Petitioner; K. Shivashankar Bhat, for Respondents.

Judgement

ORDER :- The petitioner is a firm of Merchants and Commission Agents trading within the jurisdiction of the Agricultural Produce Market Committee, Shimoga. The Market Committee, by its order dated 13-8-1973, suspended the petitioner's licence, for a period of one month, under Section 73 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, (shortly called 'the Act'). The petitioner's appeal against the said order was dismissed by the Chief Marketing Officer, Bangalore. Hence, this writ petition under Art. 227 of the Constitution.

2. The facts leading up to the order of suspending the licence, as revealed from the records, are these : Respondent 3, Subbiah Gowda is a younger brother of Laxman Gowda. They are agriculturists, having regular transactions with the petitioner on agricultural commodities. In January, 1973, the petitioner paid Rs. 7,401/to Laxman Gowda as advance towards supply of areca. In the same month, the petitioner received 8 bags of areca which was credited to the account of Subbiah Gowda. The petitioner sold the said areca for Rs. 1,684.24 P., which was also credited to the account of Subbiah Gowda. The amount, however, was not paid to Subbiah Gowda when demanded. The petitioner contended that they were instructed by Laxman Gowda not to make payment to Subbiah Gowda, since there was a dispute between the brothers as to the division of their family properties. The petitioner also contended that they had opened account in the name of Subbiah Gowda at the instructions from Laxman Gowda.

3. Subbiah Gowda, complaining nonpayment of the sale proceeds of areca, approached the Market Committee for an investigation and relief. The Secretary of the Market Committee called upon the petitioner to make payment to Subbiah Gowda. The petitioner, in their reply, explained the circumstances under which they have withheld the payment; but finally offered to pass on the said amount to the Secretary of the Market Committee to make the payment to Subbiah Gowda with the risks attendant thereto. The Secretary, without accepting the offer, brought the matter before the Market Committee and the Committee, by its Resolution dated 13-8-1973, suspended the trading licence of the petitioner for one month.

4. The above action was taken under Section 73 of the Act. The section, so far as it is relevant, provides :

"Power to cancel of suspend licences.(1) Subject to the provisions of sub-section (4), a market committee may, for reasons to be recorded in writing, suspend or cancel a licence-

(a) xx xx xx xx

(b) if the holder thereof or any servant or any one acting on his behalf with his express or implied permission, commit a breach of any of the terms or conditions of the licence."

5. The licence was issued in Form No. 36 under Rule 76 (4) of the Karnataka Agricultural Produce Marketing (Regulation) Rules, 1968. It was issued subject to the conditions laid down in the Act, Rules, Bye-laws and such other conditions as may be laid down by the Committee.

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6. The complaint against the petitioners was that they had contravened the provisions of Section 78 (2) (b) of the Act. The said sub-section provides:

"(2) Every Commission agent shall be liable-

(a) xx xx xx xx

(b) to pay the principal, as soon as the goods are sold, the price thereof, irrespective of whether he has or has not received the price from the buyer of such goods."

7. From the above provisions, it is seen that it is obligatory for the Commission Agent to pay the principal, the sale proceeds, as soon as the goods are sold, irrespective of whether the Commission Agent has received the sale amount or not. The breach of this condition may be a good ground for suspending the licence under Section 73 (1) (b) of the Act.

8. It seems to me that Section 73 of the Act was intended to "protect' the interests of the growers or agriculturists. The principle behind the Section appears to be that they should get their dues without delay, and should not be unnecessarily driven to litigations to recover the sale proceeds of their agricultural commodities. The Market Committee is charged with a duty to look into these matters whenever a complaint is brought before it. But, while so examining the complaint, it cannot constitute itself into a Civil Court to decide difficult questions of civil liabilities. The Market Committee may examine any dispute, advise the parties to settle their differences and if there is unimpeachable evidence on the delaying tactics of the Commission Agent, it may take appropriate action under Section 73. But if there is a serious dispute between the Commission Agent and the principal, or other claimant, on the question of payment, the Market Committee should not make it a ground to suspend or cancel the trading licence. In such cases, it is better that the panics are left to work out their rights by other means known to law.

9. In the instant case, the fact remains that the petitioner did not pay the sale price of areca when demanded by Subbiah Gowda. But, the petitioner gave reasons why they were compelled to delay the payment. The Market Committee appears to have not considered and rejected that explanation as frivolous or vexatious. It has not observed that the contention raised by the petitioner was ex facie untenable. At any rate, its order is silent over the matter and so also the order of the appellate authority. In the absence of such a finding, the Committee, in my view, was in error in suspending the licence of the petitioner

10. In the result the role is made absolute. A writ of certiorari shall go to quash the impugned orders. The matter stands remitted to the Market Committee for reconsideration of the entire matter, in the light of this order, with liberty to the parties to produce all the materials.

In the circumstances of the cure, I make no order as to costs.

Petition allowed.

AIR 1976 KARNATAKA 141 "V. A. Nadkarni v. State"

KARNATAKA HIGH COURT

Coram : 1 E. S. VENKATARAMIAH, J. ( Single Bench )

V. A. Nadkarni and another, Petitioners v. The State of Karnataka and another, Respondents.

Writ Petn. No. 3028 of 1975, D/- 10 -7 -1975.

(A) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.145 - AGRICULTURAL PRODUCE - WRITS - STATE - Constitution of Market Area - Discretion of State Government - Interference in writ jurisdiction.

Constitution of India, Art.226.

It is not for the High Court to decide whether the market area would be an economically viable market area or not. The legislature has entrusted the duty of establishing a market area to the State Government which is a high authority. The State Government is ordinarily expected to discharge its duties in accordance with law and in the interest of public. The Court cannot also lose sight of the fact that sometimes it may be necessary to establish market areas in some places to encourage the economic growth in those places, even though, the market area may not be self-supporting one at the commencement. Similarly, whether the action is wise step or not is again not for adjudication in a petition under Article 226 of the Constitution. (Para 5)

(B) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.112(2) - AGRICULTURAL PRODUCE - Consultation with State Agricultural Marketing Board - Constitution of market area - Chief Marketing Officer seeking opinion of Board and not Government - Consultation held effective as there was substantial compliance with requirement of law. (Para 9)

(C) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.112(2) - AGRICULTURAL PRODUCE - Constitution of Market area - Opinion of Board - Opinion recorded before representation and objections to draft notification were received - Not invalid.

The Act does not state that the Board should be supplied with the representations and objections received to the draft notification. The State Government has to take its decision on the basis of the objections and representations and the opinion expressed by the Board. It does not state that the objections and representations should be sent to the Board before it tenders its advice. Therefore, it cannot be said that the opinion of the Board was invalid because it was recorded by the Board even before the representations and objections were received by the State Government to the draft Notification. (Para 10)

Cases Referred : Chronological Paras

AIR 1974 SC 1232 : (1974) 3 SCR 624 12

AIR 1970 SC 370 : (1970) 2 SCR 666 12

AIR 1957 SC 912 : 1958 SCR 533 11, 12

T. S. Ramachandra, for Petitioners; M. Ramakrishna, Govt. Pleader, for Respondents.

Judgement

ORDER:- This Writ Petition is filed by two petitioners. The first petitioner was formerly the President of the

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Taluk Development Board, Bhatkal. The Second petitioner was the Chairman of the Kumta Agricultural Produce Market Committee. In this writ petition, they have questioned the validity of the notification dated 18-6-1975 issued by the State Government under Section 145 (1) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (hereinafter referred to as the Act), dividing Kumta Market Area into two Market Areas and of the two notifications dated 18-8-1975 issued under Section 145 (2) (a) of the Act constituting market committees for the two new Market Areas.

2. There was a Market Area established under the Bombay Agricultural Produce Markets Act, 1939, comprising of Kumta, Ankola and Honnavar Taluks and Bhatkal Petha of the District of North Kanara. The 2nd petitioner was the Chairman of the said Market Committee. Being desirous of dividing the said market area into two separate Market Areas, the Government initiated action under the provisions of the Act by publishing a draft notification stating that two Market Areas namely Kumta Market area consisting of Kumta and Ankola Taluks and Honnavar Market Area constituting of Honnavar and Bhatkal Taluks would be established in the place of the Kumta Market Area which had jurisdiction over all the four taluks. It invited representations and objections with regard to the above proposal. Some persons including the petitioners, filed objections to the proposal of the State Government. After taking into consideration the representations and objections and the opinion of the State Agricultural Marketing Board as required under Section 112 of the Act, the State Government decided to establish two market areas as stated above in the place of the former Kumta Market Area. The first notification which is questioned in this writ petition is the notification under which two market areas are established. The second and third notifications which are impugned in this case are those under which the State Government nominated members to the Market Committees of the two new Market areas.

3. Sri T.S. Ramachandra, learned Council for the petitioners, urged three contentions in support of the writ petition:

(1) the action of the State Government in issuing three notifications is liable to be set at naught on the ground of mala fides;

(2) as the State Government has violated Section 112 of the Act, the notifications are liable to be declared as void; and

(3) the appointment of Sri M.A. Wahab as Chairman of the Kumta Market Committee is illegal.

4. The third contention raised by Sri T.S. Ramachandra, can be conveniently disposed of first. Sri M.A. Wahab has not been impleaded as a party to this petition. Hence the question whether he is qualified to be a Chairman or not, cannot be gone into in his absence. The third contention is therefore rejected.

5. I shall now advert to the first contention urged by Sri T.S. Ramachandra, namely, the action of the State Government suffers from mala fides. In support of the above contention, the learned Counsel urged three grounds:

(i) the market area consisting of Bhatkal and Honnavar Taluks would not be an economically viable one;

(ii) the action of the State Government in splitting one market area into two market areas was an unwise step as there was no need to do so; and

(iii) as the 2nd petitioner who is a member of Congress Organisation party, has to vacate his office as Chairman of the Kumta Market Committee which had originally jurisdiction over the four talukas, the action taken by the State Government consisting of Ministers belonging to Congress (R) party, has to be declared as void.

I do not think there is any substance in any of these three grounds. It is not for this Court to decide whether the market area would be an economically viable market area or not. The legislature has entrusted the duty of establishing a market area to the State Government which its a high authority. The State Government is ordinarily expected to discharge its duties in accordance with law and in the interest of public. The Court cannot also lose sight of the fact that sometimes it may be necessary to establish market areas in some places to encourage the economic growth in those places, even though the market area may not be a self-supporting one at the commencement. Similarly, whether the action is wise step or not is again not for adjudication in a petition under Article 226 of the Constitution.

6. It may be that as a consequence of setting up of two Market Committees in the place of one, a Chairman who belonged

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to an opposition group lost his post. That by itself is not sufficient to hold that the action of the State Government is the result of mala fides on its part. A person who wishes to attack the action of any authority on the ground of mala fides, must establish it by alleging all necessary particulars and by adducing proof in support of those allegations. The Court should take into consideration all the surrounding circumstances in order to decide the question whether the action of an administrative authority is mala fide or not. I am of the view that the grounds urged in support of the first contention are not adequate to draw an inference that the action of the Government is mala fide. They do not even require to be controverted.

7. The next contention is that there has been infringement of Section 112 (2) of the Act. Section 112 (2) requires that any action taken under Sections 4, 5, 6 and 127 of the Act should be taken in consultation with the State Agricultural Marketing Board. When the above petition came up for preliminary hearing on the last day, the learned Government Pleader who was present in Court, was asked by the Court to produce materials relating to the consultation with the Board. Accordingly he has produced the file of the State Government. It is seen therefrom that the State Agricultural Marketing Board has passed a resolution on 31-5-1974 stating that the Board has agreed for the establishment of an independent Market Committee at Honnavar after bifurcating the market area of the Agricultural Produce Market Committee, Kumta, into two market areas. In the said file, there is also a letter of the Chief Marketing Officer, dated 26th June, 1974, stating that the Board had passed he resolution on 31-5-1974 and a copy of the resolution is enclosed with it. On looking into the letter of the Chief Marketing Officer and the copy of the resolution of the Board, Sri T.S. Ramachandra, learned counsel, contended that although there was consultation with the Board, there was no effective consultation. He argued that all the material necessary for giving its advice had not been furnished to the Board. There is no basis for this allegation. The Board consists of persons who are quite knowledgeable and who know the consequences of establishing a market area in a given place. It cannot be said that there was no effective consultation.

8. The next submission made by him in this regard was that the Government had not consulted the Board but the Chief Marketing Officer had consulted the Board. I do not think that the opinion tendered by the Board can be ignored merely on the ground that the person who had sought the opinion, was not the Government but the Chief Marketing Officer. The Chief Marketing Officer is a functionary under the Act who is intimately connected with the administration of market areas and sub-section (2) of Section 112 of the Act does not say that the State Government alone should consult the Board with regard to the matters referred to therein.

9. I do not think there is any infringement of Section 112 (2) in this case. Even granting for purposes of argument that the law required the State Government to consult the Board, but the Board had given its advice pursuant to the letter of the Chief Marketing Officer, still it cannot be said that there is no effective consultation, because, there has been substantial compliance with the requirement of law. What is material in the circumstances of this case is whether the opinion of the Board was available to the State Government before taking a decision under Section 3 and not whether the consulting authority was different from the one who should have consulted the Board.

10. The other limb of the argument of Sri T.S. Ramachandra in support of his second contention is that the opinion of the Board had been recorded by it even before the representations and objections were received by the State Government to the draft notification and that therefore the opinion of the Board was no opinion at all. The Act does not state that the Board should be supplied with the representations and objections received to the draft Notification. The State Government has to take its decision on the basis of the objections and representations and the opinion expressed by the Board. It does not state that the objections and representations should be sent to the Board before it tenders its advice. Hence I do not find any substance in this part of the case of the petitioners.

11. There is one other ground on which the second contention of the learned Counsel has to be rejected. It cannot be said that in all cases where one authority should consult another authority before taking any action, any action taken

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would be void on the ground of want of consultation particularly when the advice tendered by the consulted authority is not binding on the consulting authority. This view is in accord with the decision of Supreme Court in State of U. P. v. Manbodhan Lal Srivastava, (AIR 1957 SC 912) in which the Supreme Court while interpreting Art, 320 (3) of the Constitution, held that non-consultation with the Public Service Commission whose opinion was not binding on the Government would not vitiate the decision taken by the Government in a disciplinary proceeding although the Constitution required the State Government to consult the Public Service Commission on such matters. In the instant case also the advice tendered by the State Agricultural Marketing Board is not binding on the State Government.

12. Sri T.S. Ramachandra, learned Counsel for the petitioners, however, drew my attention to the decision of Supreme Court in Chandra Mouleshwar Prasad v. The Patna High Court, (AIR 1970 SC 370) in which the Supreme Court held that the appointment of the District Judge by the Government without consultation of the High Court was void. The decision of the Supreme Court in that case is distinguishable from the facts of the present case. In Chandramouleshwar Prasad's case, the Supreme Court was interpreting Article 233 of the Constitution providing for the appointment of District Judges which formed an essential part of the Scheme of administration of justice in the States. The importance of consultation with the High Court in that context has to be determined with special reference to the position assigned to the High Court by the Constitution so far as matters pertaining to subordinate Judiciary are concerned. In that decision, there is no reference to the decision of the Supreme Court in Srivastava's case, AIR 1957 SC 912. The principle enunciated by the Supreme Court in Chandramouleshwar Prasad's case cannot be extended to a provision in a Statute dealing with the establishment of Market Committees. Sri Ramachandra also drew my attention to the decision of Supreme Court in Naraindas Indurkhya v. The State of Madhya Pradesh, (AIR 1974 SC 1232) and contended that non-consultation with the Board would vitiate the action of the State Government. He cannot receive any support from the above two decisions, because the case on hand is not one where there is no consultation at all, As already mentioned, the Board had conveyed its opinion to the State Government on the desirability of establishing two Market Areas in the place of one Market Area. There is thus, no substance in any of the contentions urged in support of the petition.

13. Hence the petition is dismissed at the stage of preliminary hearing.

Petition dismissed.

AIR 1976 KARNATAKA 233 "Agrl. Produce Market Committee v. Shivaji Rao"

KARNATAKA HIGH COURT

Coram : 2 G. K. GOVINDA BHAT C. J. AND M. N. VENKATACHALIAH J. ( Division Bench )

The Tahsildar and Returning Officer Agricultural Produce Market Committee, Bhalki, Appellant v. Shivaji Rao and others, Respondents.

Writ Appeal No. 6 of 1976, D/- 6 -1 -1976.

(A) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.27 - General Clauses Act (10 of 1897), S.21 - AGRICULTURAL PRODUCE - ELECTION - GENERAL CLAUSES - Names of elected members of Market Committee notified under S.27 - Tahsildar issuing notification fixing calendar of events for election of Chairman and Vice-Chairman - Nominations filed and accepted - Tahsildar held could not cancel notification.

Where after the names of the elected members of the Market Committee were notified by the Deputy Commissioner under Section 27, the Tahsildar who was the Returning Officer issued a notification fixing the calendar of events for election of Chairman and Vice-Chairman but after the nominations were filed and accepted the Tahsildar cancelled the notification on the ground that the Market Committee had not been duly constituted, it was held that the Tahsildar had no power under the Act to cancel the notification and Section 21 General Clauses Act could not be invoked for cancelling the notification. (Paras 2, 3, 4)

K.S. Puttaswamy Ist Addl. Govt. Advocate, for Appellant.

Judgement

G. K. GOVINDA BHAT, C. J.:- This appeal by the Tahsildar and Returning Officer, Agricultural Produce Market Committee, Bhalki, Bidar District, who is respondent No. 1 in Writ Petition No. 5138 of 1975, is directed against the order D/-11-12-1975 made by Venkataramiah, J., allowing the writ petition of respondents 1 and 2 herein challenging the notification of the appellant dated 24-9-1975.

2. Respondents 1 and 2, among others were elected as Members of the Regulated Market Committee, Bhalki, constituted under the Karnataka Agricultural Produce Market (Regulation) Act, 1966 (hereinafter called the Act). The Deputy Commissioner, Bidar published a notification in the Official Gazette under Section 27 of the Act notifying the names of all the elected Members of the Market Committee on 7-8-1975. Thereafter, the appellant herein published a calendar of events on 5-9-1975 for election of the Chairman and the Vice-Chairman of the Market Committee, and the election was fixed for 25-9-1975. Pursuant to the said calendar of events fixed, respondent No. 1 filed his nomination for the office of Chairman and respondent No. 2 filed his nomination for the office of Vice-Chairman. But on 24-9-1975, one day before the date on which the election was due to take place, the appellant-Tahsildar issued a notification cancelling the calendar of events for the purpose of holding elections to the offices of Chairman and Vice-Chairman

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of the Market Committee on the ground that the Market Committee had not been duly constituted. The said notification was challenged before the learned Single judge who allowed the writ petition on the ground that the Market Committee had been duly constituted and, therefore, the Tahsildar was in error in the view he has taken that there was no duly constituted Market Committee. Aggrieved by the said order, the Tahsildar has preferred the above appeal.

3. We asked the learned High Court Government Advocate as to whether the Act has conferred any power on the Tahsildar to cancel the notification fixing the calendar of events for election of Chairman and Vice-Chairman after the process of election is once started. He fairly conceded that there is no such provision, express or implied. His submission was that under Section 21 of the General Clauses Act, the Tahsildar who has got the power to issue a notification has necessarily the power to denotify. He was unable to support that contention with any authority in regard to election matters.

4. The general principle of law is that once the process of election is started, the same cannot be interrupted except by an order of Court. The result of the action of the appellant-Tahsildar is to interrupt the process of election after the nominations had been filed and accepted. If the principle of Section 21 of the General Clauses Act can be availed of by Returning Officers, then it is likely to be seriously abused wherever the persons in authority find that their candidates are not likely to win or their nominations are not valid. As at present advised we are of the opinion that unless there is an express power conferred by the Statute, the Tahsildar has no power to cancel the notification once he has issued a calendar of events and pursuant to the same, nominations have been filed and accepted.

5. The learned Single judge, in our opinion, should have quashed the order of the Tahsildar on the ground that the order is ultra vires. Therefore, we reject this appeal.

Appeal rejected.

AIR 1975 KARNATAKA 220 "Secretary, A. P. Market Committee v. K. A. Shanbhogue and Co."

KARNATAKA HIGH COURT

Coram : 2 D. M. CHANDRASHEKHAR AND E. S. VENKATARAMIAH, JJ. ( Division Bench )

The Secretary, Agricultural Produce Market Committee, Mangalore and another, Appellants v. M/s. K. Appayya Shanbhogue and Co, and others, Respondents.

Writ Appeals Nos. 153 to 156 of 1975, D/- 15 -4 -1975.\*

(A) Karnataka Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.6(2)(a) and S.6(2)(b) - AGRICULTURAL PRODUCE - Addition of new items of agricultural produce by S.5 notification - Fresh notification declaring market and market yard is not necessary.

(1975) 2 Kant LJ 110, Reversed.

There is nothing in Section 6 (2) (a) which expressly provides that when any items of agricultural produce hitherto not regulated, is by a notification under Section 5, added to the existing items of notified agricultural produce, the earlier notification issued by the Chief Marketing Officer declaring any specified area in the market area to be a market, will not apply to such new items of agricultural produce and that the Chief Marketing Officer should issue a fresh notification under Section 6 (2) (a) declaring the market in respect of such new items. Likewise, there is nothing in Section 6 (2) (b) which expressly provides that when such new items of agricultural produce are so added to the existing ones, the earlier notification issued by the Chief Marketing Officer declaring any specified place in the market to be the market yard, will not apply to such new items and that the Chief Marketing Officer should issue a fresh notification under Section 6 (2) (b) declaring the market yard in respect of such new items. As the expression 'notified agricultural produce' occurring in Section 6 (2) (b), has been defined in Section 2 (28) as to mean not only agricultural produce which the State Government has declared as such by a notification under Section 4 but also agricultural produce so declared by a notification under Section 5, there is no reason why a market once declared under Section 6 (2) (a) and the market yard once declared under Section 6 (2) (b) should not be applicable to new items of agricultural produce added from time to time to the existing items of notified agricultural produce, by means of notifications issued under Section 5. Hence, it is permissible for the Market Committee to regulate the marketing of such new items also in the existing market yard and to demand market fee from buyers of such new items in the existing market yard and to require payment of licence fee by traders who want to operate in the existing market in relation to such new items. (1975) 2 Kant LJ 110, Reversed; (1972) 1 Mys LJ 35, Distinguished and Doubted. (Para 20)

The further contention that the words 'specified in the notification' occurring after the words 'notified agricultural produce' in clause (b) of Section 6 (2), should be understood as having reference to the notification issued under Section 4 and hence whenever there is an addition to the items of agricultural produce notified under Section 4, there should be a fresh notification by the Chief Marketing Officer declaring the market yard in respect of such new items of agricultural produce, is not sound. Though the language of clause (b) of Section 6 (2) is not happy, the words "specified in the notification" in the

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clause clearly refer to the notification under Section 6 (2) (a) and not to the notification under Section 4. (Paras 25, 26)

Cases Referred : Chronological Paras

(1972) 1 Mys LJ 35 21, 23

B. B. Mandappa, H. C. G. P., for Appellants In all writ Appeals, K. Srinivisan, for Respondents In all Writ Appeals.

\* From orders of Jagannatha Shetty, J, reported n (1975) 2 Kant LJ 110,

Judgement

CHANDRASHEKHAR, J. :- These four appeals are from the common order of Jagannatha Shetty, J., in Writ Petitions Nos. 748, 1078, 1168 and 1998 of 1974. The respondents therein, namely, the Secretary, Agricultural Produce Marketing Committee, Mangalore, and the Chief Marketing Officer, Karnataka State, are the appellants and the writ petitioners (hereinfter referred to as the petitioners) are the respondents in these appeals.

2. The petitioners are dealers in agricultural produce. In the writ petitions they had prayed for issue of writs in the nature of Mandamus directing the Agricultural Produce Marketing Committee, Mangalore (hereinafter referred to as the Market Committee) to refrain from demanding licence fee and market fee from them in respect of the agricultural produce specified in the Notification of the Government dated 8-6-1973. The learned single Judge allowed writ petitions and issued writs directing the Market Committee to forbear from demanding licence fee and market fee from petitioners in respect of the agricultural produce specified in the aforesaid Notification (dated 8-6-1973) until a fresh notification was issued under Section 6 (2) (b) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, (hereinafter referred to as the Act).

3. In the district of South Kanara which was in Madras State before re-organisation of States, regulation of marketing of agricultural produce was governed by the Madras Commercial Crops Marketing Act, 1943 (hereinafter referred to as the Madras Act). Even after reorganisation of States, that Act continued to be in force in that District by virtue of Section 119 of the States Reorganisation Act, 1956. A uniform legislation regulating marketing of agricultural produce in the new State of Mysore (Karnataka) was brought about by the Act which came into force on 1-5-1968. Section 154 of the Act repealed the Madras Act and other corresponding enactments in force in different areas of the State, regulating marketing of agricultural produce. But, the proviso to that section has saved the rules and notifications issued under the repealed enactments until superseded by rules and notifications made or issued under the Act.

4. Section 4 of the Madras Act provided that the Government might, by notification, declare areas specified therein to be the 'notified area' for the purposes of that Act in respect of commercial crops specified in such notification.

5. By its notification dated 1-11-1949, the Government of Madras declared that the entire district of South Kanara shall be the notified area for the purposes of that Act in respect of cocoanut and its by-products and arecanuts. Under Section 154 of the Act, the aforesaid notification issued by the Government of Madras, is deemed to have been issued under the corresponding provisions, namely Section 4 of the Act.

6. Sub-section (19) of Section 2 of the Act defines 'market area' as any area declared to be a market area under Section 4.

7. Sub-section (18) of S. 2 of the Act defines 'market' as any notified area declared or deemed to be declared to be a market under sub-section (2) of S. 6.

8. Sub-section (23) of S. 2 of the Act defines 'market yard' as a specified place declared or deemed to be declared to be a market yard under sub-section (2) of S. 6.

9. Section 3 of the Act provides that the State Government may issue a notification declaring its intention of regulating marketing of specified agricultural produce in a specified area and that the Government shall consider any objections or suggestions in respect of that proposal, which may be received within the period specified in such notification.

10. Section 4 of the Act provides that after the expiry of the period specified in the notification issued under Section 3 and after considering such objections and suggestions as may be received in time, the State Government may, by another notification, declare the area specified in the notification issued under Section 3 or any portion thereof to be a market area and that the marketing of all or any of the agricultural produce specified in the notification issued under Section 3, shall be regulated under the Act in such market area.

11. Section 5 of the Act provides that the State Government may, after following procedure specified in Sections 3 and 4, at any time by notification, exclude from any market area or include therein an additional area, or may declare that the regulation of the marketing of any agricultural produce in any market area shall cease, or that the marketing of any agricultural produce (hitherto not regulated) shall be regulated in such market area.

12. Sub-section (1) (a) of S. 6 of the Act provides, inter alia, that for every market area there shall be a market and that for every market there shall be market yard.

13. Clause (a) of sub-section (2) of Section 6 of the Act provides that as soon as possible after the issue of a notification under Section 4, the Chief Marketing Officer shall, by a notification, declare any specified area in the market area to be a market.

14. Clause (b) of sub-section (2) of S. 6 reads:

"The Chief Marketing Officer shall by a notification under clause (a) also declare a

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specified place in the market to be a market yard for the regulated marketing of the notified agricultural produce specified in the notification. He may also by the same notification or notifications declare (any other specified place or places) as the case may be, in the market to be a market sub-yard or sub-yards for the regulated marketing of the notified agricultural produce specified in the notification."

15. The Chief Marketing Officer, by his notification dated 17-12-1968, issued in exercise of powers conferred by sub-section (2) of S. 2 of the Act, declared-

the area within the Municipal limits of Mangalore City in the market area of the Agricultural Produce Market Committee, Mangalore, shall be the market for the said market area; and

(i) the locality within the boundaries specified in that notification shall be the market yard for the regulated marketing of the notified agricultural produce in respect of the said area.

16. In exercise of powers conferred by Section 5 of the Act, the State Government, by its notification dated 8-6-1973, declared that with effect from 1-7-1973 the marketing of paddy, rice, cashewnut, ginger, pepper, jaggery, chillis, bananas, sweet potatoes, mangoes and livestock, shall be regulated in addition to the agricultural produce already regulated in the market area of the district of South Kanara.

17. In the writ petitions, the petitioners contended that after the issue of the aforesaid notification dated 8-6-1973 by the State Government, the Chief Marketing Officer had not issued any notification declaring any specified area as market and any specified place as market yard in respect of the new items of agricultural produce specified in the aforesaid notification and that in the absence of such fresh declaration of the market and the market yard by the Chief Marketing Officer, no licence fee or market fee could be demanded from the petitioners in respect of the new items of agricultural produce specified in the aforesaid notification dated 8-6-1973. In other words, the contention of the petitioners was that after Government issues the notification dated 8-6-1973 under Section 5 of the Act adding new items of agricultural commodities for regulation of marketing in the market area, the earlier notification issued by the Chief Markting Officer declaring the market and the market yard shall not apply to those new items of agricultural produce specified by the Government in its notification dated 8-6-1973 and that in respect of those new items the Chief Marketing Officer should issue a fresh notification declaring the market and the market yard.

18. The above contention of the petitioners found favour with the learned single Judge who held that there is no presumption that all items of agricultural produce notified from time to time would be marketed in the same market yard, that there may be different market yards for different items of agricultural produce and that therefore, even if any additional notified item of agricultural produce is intended to be marketed in the already existing market yard, a fresh notification as required under Section 6 (2) (b) of the Act, is absolutely necessary.

19. The correctness of the above view of the learned single Judge, was contested by the learned Government Pleader who appeared for the appellants, while Mr. K. Srinivasan, learned Counsel for the respondents, argued in support of the view taken by the learned single Judge.

20. There is nothing in clause (a) of Section 6 (2) which expressly provides that when any items of agricultural produce hitherto not regulated, is by a notification under Section 5, added to the existing items of notified agricultural produce, the earlier notification issued by the Chief Marketing Officer declaring any specified area in the market area to be a market, will not apply to such new items of agricultural produce and that the Chief Marketing Officer should issue a fresh notification under Section 6 (2) (a) declaring the market in respect of such new items of agricultural produce. Likewise, there is nothing in Section 6 (2) (b) of the Act which expressly provides that when such new items of agricultural produce are so added to the existing ones, the earlier notification issued by the Chief Marketing Officer declaring any specified place in the market to be the market yard, will not apply to such new items of agricultural produce and that the Chief Marketing Officer should issue a fresh notification under Section 6 (2) (b) declaring the market yard in respect of such new items of agricultural produce. As the expression 'notified agricultural produce' occurring in clause (b) of Section 6 (2), has been defined in Section 2 (28) of the Act as to mean not only agricultural produce which the State Government has declared as such by a notification under Section 4 but also agricultural produce so declared by a notification under Section 5, there is no reason why a market once declared under Section 6 (2) (a) and the market yard once declared under Section 6 (2) (b) should not be applicable to new items of agricultural produce added from time to time to the existing items of notified agricultural produce, by means of notifications issued under Section 5 of the Act. Hence, it is permissible for the Market Committee to regulate the marketing of such new items of agricultural produce also in the existing market yard and to damand market fee from buyers of such new items of agricultural produce in the existing market yard and to require payment of licence fee by traders, commission agents and brokers who want to operate in the existing market in relation to such new items of agricultural produce.

21. However, Mr. Srinivasan strongly relied on certain observations of a Division

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Bench of this Court in Venkateswara Traders v. The Administrator, Agricultural Produce Market Committee, Chickballapur, (1972 (1) Mys LJ 35). There, the question that arose for decision was whether it is necessary for the Chief Marketing Officer to issue a fresh notification specifying any area in the market area to be a market and any place in the market to be a market yard, whenever there is an alteration of a market area made under Section 5 of the Act. Dealing with that question, their Lordships observed that (at page 37): "When the alteration of a market area made under Section 5 is deemed to be a declaration made under Section 4 of the Act, it follows that it is obligatory on the Chief Marketing Officer to specify any area in the market area to be a market and further to specify any place in the market to be a market yard. The market and market yard notified for the original market area and before the alteration declared under Section 5, cannot be regarded as the market or the market yard for the new market area declared under Section 5."

22. On the basis of the above observations, Mr. Srinivasan argued that since alteration of the market area and addition or deletion of items of agricultural produce have both to be made by a notification under Section 5 of the Act, the reasoning of the Division Bench in Venkateshwara Traders' case, while dealing with alteration of the market area, is equally applicable to addition of new items of agricultural produce for regulation of marketing, made under Section 5 of the Act.

23. With great respect to their Lordships who decided Venkateshwara Traders' case, we doubt the correctness of the view expressed by them that an alteration of the market area brought about by issuing a notification under Section 5 of the Act, would necessitate the issue of a fresh notification by the Chief Marketing Officer under Section 6 (2) of the Act specifying the market and the market yard. In the present cases as we are dealing with the effect of addition of new items of agricultural produce, we do not consider it necessary to refer to a Full Bench the question whether the decision in Venkateshwara Traders' case lays down the law correctly.

24. Moreover, the definition of the expression 'notified agricultural produce' is wide enough to include not only items of agricultural produce which were originally notified under Section 4 of the Act (or the corresponding provision in any of the repealed enactments), but also items of agricultural produce which may be subsequently added by a notification or notifications under Section 5 of the Act. Hence, there appears to be some difference between the effect of an alteration of the market area by issue of a notification under Section 5 of the Act and the effect of addition of new items of agricultural produce (the marketing of which is to be regulated in the market area) by issue of a notification or notifications under Section 5 of the Act. On this ground the decision in Venkateshwara Traders' case is also distinguishable.

25. Mr. Srinivasan next contended that the words 'specified in the notification' occurring after the words 'notified agricultural produce' in clause (b) of Section 6 (2) of the Act, should be understood as having reference to the notification issued under Section 4 of the Act and that hence whenever there is an addition to the items of agricultural produce notified under Section 4 of the Act, there should be a fresh notification by the Chief Marketing Officer declaring the market yard in respect of such new items of agricultural produce.

26. We are unable to accept the contention of Mr. Srinivasan that the words "specified in the notification" occurring in clause (b) of Section 6 (2) of the Act, have reference to a notification under Section 4 of the Act. Though the language of Cl. (b) of Section 6 (2) is not happy, the words "specified in the notification" in the clause, have, in our opinion, reference to the notification under Section 6 (2) (a) and not to the notification under Section 4 of the Act.

27. Lastly, it was contended by Mr. Srinivasan that in the market and the market yard specified by the Chief Marketing Officer by his notification dated 16-12-1968 regulation of marketing can be done in regard to only those items of agricultural produce which had been notified under Section 4 of the Act prior to 16-12-1968 and not those items of agricultural produce which were subsequently added by the Government by its notification dated 8-6-1973 issued under Section 5 of the Act.

28. As stated earlier, the expression 'notified agricultural produce' has been defined in Section 2 (28) of the Act as any agricultural produce which the State Government has, by notification issued under Sections 4 and 5, declared as an agricultural produce, the marketing of which shall be regulated in the market area. The area declared as market and the place declared as market-yard under Section 6 (2) of the Act, can be market and the market yard for regulated marketing of any new items of agricultural produce declared as such, whether the notification under Section 5 of the Act so declaring those items, has been issued prior to, or subsequent to, the declaration of the market and the market yard under Section 6 (2) of the Act. There is nothing in Section 6 (2) (b) which restricts the scope of regulated marketing in the market yard, to only those items of agricultural produce which had been declared as such under Section 5 prior to the declaration of a specified place as the market yard.

29. We are unable to agree with the view of the learned single Judge that after the issue of the notification dated 8-6-1973 under Section 5 of the Act adding new items of agricultural produce as notified agricultural produce, there should be a fresh

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notification under Section 6 (2) of the Act declaring the market and the market yard in respect of those new items of agricultural produce for the purpose of regulation of marketing of those new items.

30. In the result, we allow these appeals, reverse the common order of the learned single Judge, dated 22-1-1975, in Writ Petitions Nos. 748, 1078, 1168 and 1998 of 1974 and dismiss those writ petitions.

31. Mr. Srinivasan requested that the respondents (writ petitioners) be granted 3 months' time to pay the arrears of market fee and license fee up-to-date. We grant to the respondents (writ petitioners) three months' time from to-day to pay such arrears of market fee and license fee.

32. In the circumstances of the cases, parties shall bear their own costs both in these appeals and in the writ petitions.

33. Let copies of this Judgment be sent forthwith to appellant-1 (the Secretary, Agricultural Produce Market Committee, Managalore) and to the learned Government Advocate.

Appeals allowed.

AIR 2007 MADHYA PRADESH 283 "Safe Guard, M/s. v. M. P. State Agricultural Marketing Board"

MADHYA PRADESH HIGH COURT

(GWALIOR BENCH)

Coram : 2 ABHAY GOHIL AND SANJAY YADAV, JJ. ( Division Bench )

M/s. Safe Guard v. M. P. State Agricultural Marketing Board and Ors.

Writ Appeal No. 259 of 2006, D/- 17 -7 -2007.

M.P. Krishi Upaj Mandi Adhiniyam (24 of 1972), S.25, S.36 - AGRICULTURAL PRODUCE - CONTRACT - Mode of making contract by Mandi Committee - Mandi Committee is statutory independent legal authority, whcih can enter into contract - Mandi Board can also provide guidelines how to use these powers independently.

The Mandi Committee is statutory independent legal authority, which can enter into the contract, but so far as the supervision and controlling powers of the Board are concerned under S. 46 they are in aid to the powers of the Market Committee and the power of each others are complementry and supplementary, can be used for the benefit of the Market Committee for managing its affairs efficiently. It would mean that Mandi Committee is having powers to enter into contract and the Mandi Board can also provide guidelines how to use these powers. If any market committee is not in a position to take any independent decision for the security of the market premises, certainly the Board can provide assistance and also issue directions and also can provide security but there is also no dispute that if any Mandi Committee wants to engage any independent security agency independently, Mandi Committee can do it independently subject to the provisions of the Adhiniyam of 1972. (Para 9)

Certainly, the Mandi Committee can independently engage any agency for the purposes of security but if they are not in a position to do that the Board can also provide assistance to them and can fix the agency and direct them to consider the performance and to execute contract. Where some of the Mandi Committees have already executed agreement 31-12-2008 in favour of the appellant agency, therefore, at this stage, it would not be proper to interfere and to shut the right of Mandi Committees in the matter to enter into contract and to put any clock thereon. (Para 9)

M. P. S. Raghuvanshi, for Appellant; S. P. Jain, for Respondents.

Judgement

GOHIL, J. :- Appellants have filed this Writ Appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 against the order dated 23-8-2006 passed in W.P. No. 1972/2006.

2. Brief facts of the case are that the appellant filed writ petition under Article 226/227 of the Constitution of India. It is contended in the petition that in the year 1995 there was an agreement between petitioner and the respondent No. 1 Mandi Board for providing Security Guards to the Krishi Upaj Mandi Committee situated in the State of M. P. and the same was extended from time to time and remained in force till

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September 2001. In the year 2002, the respondent Board issued directions vide letter dated 20-11-2002 to all the Secretaries of Mandhi Committee of the State that in case the Mandi Committees want to employ the Security Guards, they may employ the Security Guards from the petitioner agency. It was further mentioned in the letter that for that agreement has already been entered into between them on the basis of tender submitted and accepted by the Board and the proforma of the agreement was also forwarded to all the Mandi Committees along with the said letter. As per format of agreement, initially the agreement would be for a period of two years, which can extended by mutual consent upto three years on the rate accepted by the Board. Thereafter after the expiry of the period of three years some of the Mandi Committees, whose names have been mentioned in the Appeal, have further entered into agreement with the appellant agency, for the period upto 31-12-2008. In the meantime some complaint was made about the monopoly of the petitioner Company from 1995 and thereafter the Board directed to issue fresh NIT and accordingly fresh NIT was issued on 24-12-2005 for a fresh agreement for providing security to all Mandi Committees situated in the State of M. P. First notification was issued on 24-12-2005 vide Annexure P/6. Second amended NIT was again issued for inviting applications between 15-2-2006 to 1-3-2006 vide Annexure P/7. Then amended NIT was again issued as per Annexure P/8 for inviting tenders, which were to be submitted between 2-3-2006 to 31-3-2006 and on 31-3-2006 another amended NIT was issued vide Annexure P/9 and fresh tenders were invited between 1-4-2006 to 17-4-2006.

3. Petitioner challenged the aforesaid Notice Inviting Tenders from Annexure P/6 to P/9 on the ground that since the petitioner has already entered into an agreement and the period of contract has been extended by some of the Mandi Committee upto 31-12-2008, on same terms and conditions. Therefore, Mandi Board cannot invite fresh tenders for all the Mandis and cannot frustrate the agreement already executed by Mandi as the Mandi Committee is a statutory body created under the provisions of Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 (hereinafter referred to as 'Adhiniyam of 1972'). Uncer Section 7 of the Adhiniyam of 1972, it is a body corporated and competent to contract and to work to acheive the purpose of this Act.

4. The learned single Judge dismissed the Writ Petition saying that in contractual matter the scope of interference is very limited and after the period of contract, the fresh NIT can be invited and dismissed the writ petition with cost, against which this writ appeal has been filed.

5. Shri M. P. S. Raghuvanshi, Advocate appearing for the appellant submitted that Mandi Committee being the independent statutory body at par with the local authority having power to enter into contract and Mandi Committee within its own power can extend the period of agreement. It was further submitted that around ten Mandi Committees have already extended the period of agreement upto 31-12-2008 and by issuing the fresh NIT the rights of the Mandi Committee to enter into the agreement cannot be curtailed and they are required to be protected and while exercising power of judicial review the Court can only consider the question of mala fides, arbitrariness and favouratism extended to any party and in this case no such allegations have been made against this party except that appellant is providing services for long time, which shows that appellant is providing services satisfactorily without complaint and also having experience.

6. In reply Shri Jain submitted that Mandi Committees are working under the control of Board and not having independent power to act thereon. Under Section 25(A) of the Adhiniyam 1983, the Managing Director is having the power to sanction the budget of Mandi Committee. Section 46 provides about duties and functions of the Board, according to which the Board is having powers of supervision and control over the agriculture Market Committee. Under Section 54, the Managing Director may direct for inspection of markets and inquiry into affairs of market committee and under Section 55, the Managing Director may remove any member, Chairman and Vice-Chairman of market committee. Under Section 56 power of super-session of Market Committee has been provided. Therefore he further submitted that Market Committee or the Managing Director may issue necessary

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directions to the Mandi Committee about managing the affairs of the market committee. Initially and under the aforesaid powers the Board has taken decision to invite tenders for all the Committees and the Board has not given any direction to the Mandi Committees to renew the contract or further extended the period of contract.

7. Admittedly, the Mandi Committee is a legal independent statutory corporate body under the provisions of Section 7 of Adhiniyam of 1972, which reads as under:-

7. Establishment of Market Committee and its incorporation.- (1) For every market area, there shall be a Market Committee having jurisdiction over the entire market area.

(2) Every Market Committee shall be a body corporate by the name specified in the notification under Section 4. It shall have perpetual succession and a common seal and may sue and be sued in its corporate name and shall subject to such restrictions as are imposed by or under this Act, be competent to contract and to acquire, hold, lease, sell or otherwise transfer any property and to do all other things necessary for the purposes of this Act :

Provided that no immovable property shall be acquired without the prior permission of the Managing Director in writing :

Provided further that no immovable property shall be transferred by way of sale, lease or otherwise in a manner other than the matter prescribed in the rules made by the State Government for the purpose.

(3) Notwithstanding anything contained in any enactment for the time being in force, every Market Committee shall, for all purposes, be deemed to by a local authority."

Section 25 prescribes the mode of making contract by Mandi Committee.

8. We have perused one letter dated 26-11-2002 filed as Annexure R/1 by respondents, in which it was directed that Mandi Committee may employ security agency, name of security agency was recommended and the format was also forwarded but as submitted by the learned counsel for the respondent the Board has not imposed any condition that the agreement should be made only with the particular agency. From this letter it is clear that it was obligatory on the part of Mandi Committee to enter into the agreement or not to enter into the agreement with that agency. But it was submitted by Shri Jain that under the garb of the aforesaid order the Mandi Committees have entered into the agreement on which the Board has objection. Mandi Committees have misread the extension clause. But as we have perused in the return it has been mentioned in para 4 that respondent No. 4 would itself determine the Security Agency after inviting the agency, and this reply is contrary to the letter dated 20-11-2002 as by the aforesaid letter Annexure R/1 it was made obligatory and as per reply the same is mandatory.

9. There is no doubt that the Mandi Committee is statutory independent legal authority, which can enter into the contract, but so far as the supervision and controlling powers of the Board are concerned under Section 46 they are in aid to the powers of the Market Committee and the power of each others are complementary and supplementary, can be used for the benefit of the Market Committee for managing its affairs efficiently. It would mean that Mandi Committee is having powers to enter into contract and the Board can also provide guidelines how to use these powers. If any market committee is not in a position to take any independent decision for the security of the market premises, certainly the Board can provide assistance and also issue directions and also can provide security but there is also no dispute that if any Mandi Committee wants to engage any independent agency independently, Mandi Committee can do it independently subject to the provisions of the Adhiniyam of 1972. In this case since the appellant has already entered into the contract upto 31-12-2008 with some of the Mandi Committee of the State, therefore, it will not be proper at this stage to enter into that controversy whether the directions are mandatory or obligatory as it is also not the case of the respondent Board. Certainly, the Mandi Committee can independently engage any agency for the purposes of security but if they are not in a position to do that the Board can also provide assistance to them and fix the agency and direct them to consider the performance and to execute contract. As in this case some of the Mandi Committees have already executed

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agreement upto 31-12-2008 in favour of the appellant agency, therefore, at this stage, it would not be proper to interfere and to shut the right of Mandi Committees in the matter to enter into contract and to put any clock thereon. Thus, to that extent we observe and dispose of this appeal. In view of the aforesaid observation, question of cost is inconsequential.

10. With the aforesaid observations, this appeal is disposed of.

Order accordingly.

AIR 2002 MADHYA PRADESH 266 "Galla Mandi Mahila Shramik Sangh, Satna v. State of M. P."

MADHYA PRADESH HIGH COURT

Coram : 2 DIPAK MISRA AND S. SAMVATSAR, JJ. ( Division Bench )

Galla Mandi Mahila Shramik Sangh, Satna, Petitioner v. State of M.P. and others, Respondents.

W.P. No. 4412 of 2000, D/- 5 -4 -2002.

M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.80 - M.P. Krishi Upaj Mandi Samiti Bye-laws, Cl.2(ja) - AGRICULTURAL PRODUCE - WORDS AND PHRASES - EQUALITY - Definition of "Hammal" - Amendment of bye-law - Validity - In unamended definition women workers were exclusively included - Whereas in amended definition there is no reference to female workers - However, the amended definition also includes helpers who participate in measurements and weighing of agricultural produces - Women workers may get licence for said

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activities - Word "sahayata" used in definition means women workers can assist male workers in doing these works - Amendment held, does not suffer from vice of discrimination on ground of sex - Not violative of right to life.

Constitution of India, Art.14, Art.15, Art.21.

The unamended definition of "Hammal" categorically included "Stree Hammal" who could do the cleaning, sweeping and collection and also help the male Hammal. The amended definition means a Hammal is a person who does loading and unloading of agricultural produce with his own labour from the trucks and other vehicles and also may fill up and empty the agricultural products from the bags. It also includes the helpers who participate in measurements and weighing of the agricultural produces. Thus in the unamended definition women workers were exclusively included whereas in the amended definition there is no reference to female workers. It was alleged that cleaning, sweeping and collecting are not necessary. As the work is not necessary it cannot be said that the members of the petitioner- society union of women labourers can claim the said work to be done by them as a matter of right. Such an assertion is unacceptable. The claim of the petitioner-society that Art. 21 of the Constitution is affected would not be tenable. (Para 17)

The amended definition of 'Hammal' also includes a person who is also involved in the work of weighing and measurement. It also includes filling up the agricultural produces in bags and other containers. The definition cannot be read as a single cumulative compartment. On the contrary it is to be put into different compartments and because of such compartmentalisation it becomes purposive and avoids the vice of discrimination. To elucidate, the members of the petitioner-society can apply for licence to do any kind of work which find place in the definition and in that event they would be granted licence. They may get the licence to fill up bags and other containers with agricultural produces or they may apply for licence for assisting in weighing and measurement of agricultural produces. The word 'sahayata' which means assistance. It means the women workers can assist the male workers in doing these works. If read in this manner discrimination is ostracised and the women are able to participate and assist the male workers. In view of the interpretation of the definition in this manner saves it from the assail of Arts. 14 and 15. (Para 18)

Cases Referred : Chronological Paras

Gayatri Devi Pansari v. State of Orissa, AIR 2000 SC 1531 : (2000) 4 SCC 221 : 2000 AIR SCW 1273 13

Githa Hariharan v. Reserve Bank of India, AIR 1999 SC 1149 : (1999) 1 JT (SC) 524 : 1999 AIR SCW 811 14

Vishakha v. State of Rajasthan, AIR 1997 SC 3011 : (1997) 6 SCC 241 : 1997 Lab IC 2890 : 1997 AIR SCW 3043 15

Omana Oomen v. FACT Ltd., AIR 1991 Ker 129 9

Lena Khan v. Union of India, AIR 1987 SC 1515 : 1987 Lab IC 1035 12

Pratibha Rani v. Suraj Kumar, AIR 1985 SC 628 : 1985 Cri LJ 817 14

T. Sareetha v. Venkata Subbaiah, AIR 1983 A.P. 356 14

Air India v. Nergesh Meerza, AIR 1981 SC 1829 : 1981 Lab IC 1313 11

Muthamma v. Union of India, AIR 1979 SC 1868 : 1979 Lab IC 1307 10

Raghvan Singh v. State of Punjab, AIR 1972 PunjHar 117 9

Shahdad v. Mohd. Abdullah, AIR 1967 J and K 120 9

Bombay Labour Union v. International Franchises P. Ltd., AIR 1966 SC 942 10

Dattatraya Motiram More v. State of Bombay, AIR 1953 Bom 311 9

Giridhar Gopal v. State of M. B., AIR 1953 Madh Bha 147 : 1953 MBLJ 529 : 1953 Cri LJ 964 9

R. K. Gupta, for Petitioner; Sanjay Yadav (for Nos. 1 to 3) and H. K. Upadhyaya (for No. 4), for Respondents.

Judgement

ORDER :- Invoking the extraordinary jurisdiction of this Court under Arts. 226 and 227 of the Constitution of India, the petitioner, Galla Mandi Mahila Shramik

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Sangh, Satna (hereinafter referred to as 'the society') has prayed for seeking a declaration of the terms of 'Hammal' brought into existence by way of amendment in clause 2(ja) of the Bye-laws of the Krishi Upaj Mandi Samiti as ultra vires of the Articles 14, 15 and 21 of the Constitution as well as M.P. Krishi Upaj Mandi Adhiniyam, 1972 (hereinafter referred to as 'the Act') and further to quash the resolution of the Krishi Upaj Mandi dated 29-4-2000, Annexure P-12, as illegal, discriminatory and arbitrary and to pass such order/orders as may be warranted in the facts and circumstances of the case.

2. Essential facts which need to be stated for disposal of this writ petition are that the petitioner is a registered society under the provisions of Trade Unions Act, 1926 having its registered office in the District of Satna. It is affiliated to Indian National Trade Union Congress. The aims and objects of the society are to make endeavour for well being of the women labourers and workers to organise and unite them, uplift their financial and social conditions and to facilitate their progress in various ways and to prevent their exploitation. It is pleaded in the petition that the State Government in pursuance of the provisions of the Act established various Krishi Upaj Mandis in the State of Madhya Pradesh and the Krishi Upaj Mandi, Satna is one of them. The said Mandi has its own bye-laws. Initially bye-law No. 2(8) had defined 'Hammal' which included the women workers who worked in the Mandi and were engaged in the work of cleaning collecting, weighing, loading and unloading of grains and also the work of extending assistance to male 'Hammal' in their work. As the women hammal had been working in the Mandi for last many years they were being issued the licence for the said purpose by the Mandi.

3. According to the writ petitioner, the respondents amended the definition of the term 'Hammal' in a most unreasonable and irrational manner by which women workers who had been working for a considerable length of time have been ousted from the working sphere of the mandi. It is putforth that amendment is illegal, arbitrary and discriminatory and violative of Arts. 14, 15 and 21 of the Constitution of India. It is averred in the petition that the amendment has seriously affected the women workers as they are not being permitted to work in the Mandi. It is setforth that a complaint was made by the General Secretary of the petitioner-society to the Conciliation Officer under the provisions of the Industrial Disputes Act, 1947 for intervention. Various aspects have been highlighted what ensued and how the authorities tried to intervene and how despite their sanguine intervention the Mandi in its general meeting dated 29-4-2000 resolved, adopted and enforced the amended bye-law of the society. It has also been urged in the petition that the matter was taken up by the Assistant Labour Commissioner who had tried to intervene but nothing positive ensued. In this backdrop it is contended that the amended provision is unreasonable, irrational and unwarranted and it infringes the basic essence of Art. 15 of the Constitution inasmuch as discrimination has been created on the ground of sex. It is also highlighted that by amendment the women workers are deprived to work in the Mandi as a result of which their livelihood is affected and hence, the amendment is hit by Art. 21 of the Constitution of India. It is also putforth that under the provisions of the Act no bye-law should be made which is inconsistent with the Act but the amendment runs counter to the various provisions of the Act and, therefore, the said amendment deserves to be declared as ultra vires. The further case of the petitioner is that the Mandi by carrying out the amendment has created an unlawful embargo as far as women workers are concerned and such impediment violates the equality clause enshrined under Art. 14 of the Constitution.

4. A return has been filed by the respondent No. 4, the Krishi Upaj Mandi, Satna contending, inter alia that from 1992-93 the procedure for marketing of grain produced at the Mandi premises has been changed and the practice of cleaning the grain was discontinued and there was no need of female workers for cleaning the grain. It is putforth that the amendment reflects the present work available to the 'Hammal' and definition does not prohibit the grant of

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licence to the members of the petitioner-union. If the members of the petitioner-union are desirous to work as 'Hammal' in loading, unloading of grains and grain bags and other physical work as shifting of bags from one place to another within the Mandi premises and if they are found physically able to perform these works they can apply for grant of licence and, therefore, no discrimination is created. It is putforth that the amendment has been brought forth in furtherance of object on which Mandi Samiti has been constituted and purpose of the amendment is to drop those functions which are unnecessary and detrimental to the work of the Mandi.

5. It is pleaded that no fundamental right is affected inasmuch as certain types of works have been stopped by the Mandi Samiti and, therefore, it is decided not to engage 'Hammal' for that kind of work. According to the said respondent, after the amendment, the works relating to cleaning, collection and sweeping of grain have been stopped and it is only incidental and these functions were performed by the female workers. Certain difficulties have been pointed out why these kind of works have been stopped.

6. We have heard Mr. R. K. Gupta, learned counsel for the petitioner, Mr. Sanjay Yadav, learned Government Advocate for the respondents 1 to 3 and Mr. H. K. Upadhaya, learned counsel for the respondent No. 4.

7. It is submitted by Mr. Gupta that by change of definition of term 'Hammal' in bye-laws the female workers have been excluded and this itself creates a discrimination which law does not countenance. The learned counsel has canvassed that the petitioner- society has been formed to cater to the need of the lower strata of the women who are engaged in the kind of work by which they are able to earn their livelihood but by the amended provision their rights have been mulcted and by such abnegation their right to life has been eroded. It is further canvassed by the learned counsel for the petitioner that the amended provision offends the conscientious embrace of Article 14 of the Constitution inasmuch as it is founded on the backdrop of unreasonableness, arbitrariness and irrationality. The learned counsel has also pointed out that there has been inconsistency between the Act and bye-laws and, therefore, the amendment is unsustainable.

7-A. Mr. Upadhyay, learned counsel for the respondent No. 4, in defence of the amendment has submitted that the amendment does not create any kind of inequality inasmuch both men and women are entitled to obtain the licence for the work in question. It is urged by him that by change of nature of work none of the fundamental rights is affected but the petitioner-society has made a colossal issue which really does not arise. It is putforth by Mr. Upadhyay that the members of the society cannot claim as a matter of right to do any particular types of work in the Mandi as such a right may be possibly to portray a feeling but the same does not have the sanction of law.

8. To appreciate the opposing contentions which have been rivalised with great ebullience and evidity we think it apposite to refer to Article 15 of the Constitution. It reads as under :

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to -

(a) access to shops, public restaurants, hotels and place of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of Art. 29 shall prevent the State from making any special provision of the advancement

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of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

9. On a perusal of the aforesaid constitutional provision it is quite clear that it forbids any discrimination on the grounds of religion, caste, race, sex and place of birth. The aforesaid Article also makes provision empowering the State to make special provision for the women and children. The State has the authority to make legislation to discriminate in favour of the women against the men but not vice versa. This view has been taken in the case of Dattatraya Motiram More v. State of Bombay, AIR 1953 Bombay 311. Similar view has been reiterated in the case of Shahdad v. Mohd. Abdullah, AIR 1967 J and K 120. In this context we may also refer to the decision rendered in the case of Giridhar Gopal v. State of M. B., 1953 MBLJ 529 : (AIR 1953 Madh Bha 147) where the Court upheld the constitutional validity of the Section 354 of the Indian Penal Code wherein backward social position of the women was taken into consideration. At this juncture we may also refer to the decision rendered in the case of Raghvan Singh v. State of Punjab, AIR 1972 Punj and Har 117, wherein the order passed by the Government that women were ineligible for appointment in men's jail was held not discriminatory only on the ground of sex as the hazardous position of the women wardens or other Jail Officer could not be marginalised. In the case of Omana Oomen v. FACT Limited, AIR 1991 Kerala 129, female candidates therein were not afforded opportunity to write in the internal examination on the basis of certain restriction in working hours of women by S.66 of Factories Act as restriction was founded on the backdrop of sex. The Court declared the action has violative of Arts. 14 and 15 of the Constitution.

10. In the case of Bombay Labour Union v. International Franchises, P. Ltd., AIR 1966 SC 942, the Apex Court axed down the restriction imposed on the employment of the married woman. In the case of C.B. Muthamma v. Union of India, AIR 1979 SC 1868, the Apex Court held as under :

"The provisions in Service Rules requiring a female employee to obtain the permission of the Government in writing before her marriage is solemnised and denying right to be appointed on ground that the candidate is a married woman are discriminatory against woman. The equality of opportunity in matters relating to employment does not, however, mean that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of social sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern."

(Quoted from the placitum)

11. In the case of Air India v. Nergesh Meerza, AIR 1981 SC 1829, their Lordships expressed the view that there is no arbitrariness in the provision of regulation 46 which insists that the Air Hostess should not marry within four years of service failing which their services would have to be terminated but their Lordships struck down the provision which stipulated the condition that services shall be terminated on her first pregnancy as unconstitutional.

12. In the case of Lena Khan v. Union of India, AIR 1987 SC 1515, the regulation which required the air hostess employed to retire at the age of 35 years with extension upto the age of 45 years but allowed air hostesses employed outside India to continue employment beyond the age of 45 years, their Lordships deprecated such discrimination.

13. In the case of Maya Devi v. State of Maharashtra, (1986) 1 SCR 743 (sic) the requirement that a married woman should obtain her husband's consent before applying for public employment was held invalid as unconstitutional. Their Lordships observed that such a requirement is an anachronistic obstacle to women's equality. In this context we may profitably refer to the decision rendered in the case Gayatri Devi Pansari v. State of Orissa, (2000) 4 SCC 221: (AIR 2000 SC 1531) wherein the Apex Court set aside the decision of the High Court which had come to hold that a lady candidate was given preference. The Apex Court ultimately came to hold as under :

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"........Otherwise, by the mere fact of any lapse or omission on the part of the ministerial officers to identify a shop, the legitimate claims of a lady applicant could not be allowed to suffer defeating the very purpose and object of reservation itself. The view taken by the High Court has the consequence of overriding and defeating the laudable object and aim of the State Government in formulating and providing welfare measures for the rehabilitation of women by making them self-reliant by extending to them employment opportunities. Consequently, we are of the view that the High Court below ought not to have interfered with the selection of the appellant for running the 24 hours' medical store in question."

14. In the case of Pratibha Rani v. Suraj Kumar, AIR 1985 SC 628, their Lordships of the Apex Court came to hold that it cannot be said that upon entering into matrimony the Stridhan property of the married woman has to be placed in the custody of her husband. The High Court of Andhra Pradesh in the case of T. Sareetha v. Venkatasubhaiah, AIR 1983 Andh Pra 356, opined that no positive act of sex can be done upon unwilling person and nothing can degrade the human dignity. In a recent decision rendered in the case of Githa Hariharan v. Reserve Bank of India, (1999) 1 JT (SC) 524 : (AIR 1999 SC 1149) the Apex Court while interpreting the word "after" used in S. 6 of Hindu Minority and Guardianship Act, 1956 held that the mother could be the guardian in absence of the father.

15. We may also notice that the Apex Court had taken note of harassment of the women on the work place and has laid down the guidelines in the case of Vishakha v. State of Rajasthan, (1997) 6 SCC 241 : (AIR 1997 SC 3011) the Apex Court observed that :

"Each incident of sexual harassment of woman at workplace results in violation of fundamental rights of "Gender Equality" and the "Right to Life and Liberty."

16. We have referred to the aforesaid decisions only to show that preferential treatment has to be given to women and injustice on the ground of gender cannot be tolerated and there cannot be discrimination against the woman on the ground of sex.

17. The core question that arises for consideration is whether there has been any discrimination on the ground of sex. The unamended definition of term 'Hammal' meant a Hammal as such a worker who was involved in loading and unloading of the agricultural produce and also included the persons who could help in these activity. The said definition categorically included 'Stree Hammal' who could do the cleaning, sweeping and collection and also help the male Hammal. The amended definition means a Hammal is a person who does loading and unloading of agricultural produce with his own labour from the trucks and other vehicles and also may fill up and empty the agricultural products from the bags. It also includes the helpers who participate in measurements and weighing of the agricultural produces. Thus on a deeper scrutiny of the definitions it is apparent that in the first one the women workers were exclusively included whereas in the amended definition there is no reference to female workers. It is submitted by Mr. Upadhyay that cleaning, sweeping and collecting are not necessary. As the work is not necessary it cannot be said that the members of the petitioner-society can claim the said work to be done by them as a matter of right. In our considered opinion such an assertion is unacceptable. The claim of the petitioner-society that the Art. 21 of the Constitution is affected does not deserve acceptance. Accordingly we repel the same.

18. We have indicated earlier Mr. Gupta has contended that a female worker has not been granted licence. To this Mr. Upadhyay has submitted that if a female worker wants to do such work, there is no impediment to grant licence. On a perusal of the amended definition there are various types of workers. It is submitted by Mr. Gupta that the definition put onerous conditions and a female worker may not be in a position to do the said work and thereby it creates an invidious discrimination. The aforesaid submission of Mr. Gupta need not be dialated inasmuch as on the reading of the definition we find a 'Hammal' also includes a

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person who is also involved in the work of weighing and measurement. It also includes filling up the agricultural produces in bags and other containers. In our considered opinion the definition cannot be read as a single cumulative compartment. On the contrary it is to be put into different compartments and because of such compartmenta-lisation it becomes purposive and avoids the vice of discrimination. To elucidate, the members of the petitioner-society can apply for licence to do any kind of work which find place in the definition and in that event they would be granted licence. They may get the licence to fill up bags and other containers with agricultural produces or they may apply for licence for assisting in weighing and measurement of agricultural produces. We may hasten to add that we give emphasis on the word 'sahayata' which means assistance. It means the women workers can assist the male workers in doing these works. If read in this manner discrimination is ostracised and the women are able to participate and assist the male workers. In our view the interpretation of the definition in this manner saves it from the assail of Arts. 14 and 15 of the Constitution and accordingly we do so.

19. Consequently, the writ petition is disposed of without any order as to costs.

Order accordingly.

AIR 2000 MADHYA PRADESH 15 "D. G. Prasad Pathak, M/s. v. Krishi Upaj Mandi Samiti, Jabalpur"

MADHYA PRADESH HIGH COURT

Coram : 1 C. K. PRASAD, J. ( Single Bench )

M/s. Damroolal Gagannath Prasad Pathak, and others etc., Petitioners v. Krishi Upaj Mandi Samiti, Jabalpur and another, Respondents.

M.P.Nos. 1066 and 3186 of 1987, D/- 10 -3 -1999.

(A) M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.2(1)(a), S.2(m), S.19 - AGRICULTURAL PRODUCE - Market fee - Levy of - Maida is produced by powdering wheat - Is an agricultural produce - Can be subjected to payment of market fee.

"Maida" is produced by powdering wheat and in view of definition of the agricultural produce during the relevant time which included the expression "whether processed or not", it could be said that "Maida" is an agricultural produce. Further the plea that the Legislature having omitted item "Maida" while enacting the present Act, which item formed part of the Schedule in the M. P. Agricultural Market Act, 1960, clearly shows its intention not to levy market fee on Maida would not be maintainable. In the M. P. Agricultural Produce Act, 1960, "Maida" found place at Serial No. 1 of Part II of the Schedule. Aforesaid Act has been repealed by the present Act. A plain reading of the aforesaid provision clearly shows that the words "whether processed or not" as appearing in the definition of "agricultural produce" in the present Act did not find place in

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the repealed Act. Because of the absence of these words, in the repealed Act, it was incumbent upon the Legislature to include Maida specifically in the Schedule; whereas in view of definition of the agricultural produce in the present Act, which includes agricultural produce whether processed or not, it was unnecessary to include Maida in the Schedule. It is well known rule of interpretation that Legislature is aware of the words which it has used in the repealed Act and in case the words which it has used in the repealed Act and in case the words occurring in the earlier Act do not find place in the latter Act, prima facie it shows a different intention. Agricultural produce was differently defined in the repealed Act then the present Act and hence, omission of Maida in the Schedule does not lead to the conclusion that Legislature intended not to subject Maida to market fee. Intention of the Legislature to include Maida for payment of market fee is writ large from the use of the expression "whether processed or not" while defining agricultural produce. (Paras 9, 10, 11, 13)

(B) M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.19 - AGRICULTURAL PRODUCE - Market fee - Exemption from - Powers of Govt. - Certain items which are subject to payment of market fee - State Govt. has power to exempt same from payment of market fee. (Para 14)

Cases Referred : Chronological Paras

Rajasthan Roller Flour Mills Association v. State of Rajasthan, AIR 1994 SC 64 : 1994 Supp (1) SCC 413 : 1993 AIR SCW 3118 4, 9

M/s. Manakchand Nathuram Agrawal v. Krishi Upaj Mandi Samiti, Itarsi, AIR 1983 MP 126 6, 12

Abhay Sapre, for Petitioners; Arpan Pawar, V. K. Shukla, Govt. Advocate, C. L. Kotecha, for Respondents.

Judgement

ORDER :- In both the Writ Petitions filed under Article 226 of the Constitution of India, petitioners pray for restraining the respondents from realising market fee on "MAIDA", contending that it is not a notified agricultural produce within the meaning of Section 2(m) of the M. P. Krishi Upaj Mandi Adhiniyam, 1972, hereinafter referred to as "Act", and hence, cannot be subjected to payment of market fee under Section 19 of the aforesaid Act.

2. Facts lie in a narrow compass. Petitioners are either manufacturers of bread or manufacturers of biscuits using 'Maida' or dealers in grain including "Maida". It is their allegation that the Krishi Upaj Mandi i.e., respondent No. 1 in both the cases insists for payment of market fee on "Maida". it is their contention that Maida not being a notified agricultural produce, cannot be subjected to market fee.

3. Sri Abhay Sapre appears on behalf of the petitioners, whereas, respondent No. 1 is represented by Sri C. L. Kotecha and Sri Arpan Pawar, State of Madhya Pradesh is represented by Sri V. K. Shukla.

4. Sri Sapre, appearing on behalf of the petitioners contends that in part II of the Schedule of the Act under the heading "Cereals", "Wheat" has been mentioned at item No. 2 and Maida although derived from wheat, is different than it and hence not covered under the item wheat so as to subject "Maida" for payment of market fee. He submits that the matter stands squarely covered by the decision of the Supreme Court in the case of Rajasthan Roller Flour Mills Association v. State of Rajasthan, 1994 Supp (1) SCC 413 : (AIR 1994 SC 64), and my attention has been drawn to following paragraph of the said Judgment :-

"40. For the above reasons, we hold that flour, maida and suji derived from wheat are not 'wheat' within the meaning of Section 14(i)(iii) of the Central Sales Tax Act. Flour, maida and suji are different and distinct goods from wheat. In other words, flour, maida and suji are not declared goods."

Mr. Sapre emphasises that in the schedule attached to the M. P. Agricultural Produce Market Act, 1960, "Maida" was specifically mentioned in the schedule and the same having been omitted in the present Act, clearly goes to show the intention of the Legislature not to subject 'Maida' to market fee.

5. Sri Sapre further submits that even if it is held that Maida is agricultural produce, it is required to be notified as notified agricultural produce so as to subject the same for market fee. According to him, in the absence thereof, no market fee can be levied. Further contention of Mr.. Sapre is that the use of expression, "whether processed or not" while defining agricultural produce under Section 2(1)(a) of the Act, may entitle the respondents to notify "Maida" as agricultrual produce but the same having

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not been done, no market fee is leviable on Maida.

6. Sri V. K. Shukla, appearing on behalf of the State of Madhya Pradesh contends that during the relevant time, agricultural produce included all produce whether processed or not of Agricultural, Horticulture etc. specified in the schedule and "Maida" being produced after processing the wheat, same is subject to payment of market fee under Section 19 of the Act. Mr. Shukla emphasises that Maida has to be specifically included in the schedule of the M. P. Agricultural Produce Market Act, 1960 as in the said Act, while defining Agricultural produce, the expression "processed or not" did not find place in the Act and hence there was necessity to incorporate "Maida" specifically as one of the items; on which market fee was leviable. As regards the stand of the petitioners that in the absence of any notification declaring "Maida" as notified agricultural produce, no market fee can be levied, Mr. Shukla submits that said question has been squarely answered by Division Bench of this Court in the case of M/s. Manakchand Nathuram Agrawal v. Krishi Upaj Mandi Samiti, Itarsi, AIR 1983 Madh Pra 126. His further submission is that in the present case, schedule mentioning the agricultural produce and notified agricultural produce forms part of the Act and no item can be added in the same without amendment in the Act. According to him, the contention of the petitioner that the expression "whether processed or not" under Section 2(1)(a) of the Act, while defining Agricultural produce is to confer power for including such items in the schedule, is misconceived.

7. Mr. Arpan Pawar, appearing on behalf of respondent No. 1 contends that Section 69 of the Act confers power to the State Govt. to grant exemption from payment of market fee on any item and no exemption having been granted by the State Govt., petitioners are liable to pay market fee on "Maid".

8. Sec. 2(1)(a) of the Act during the relevant time read as follows :-

"2. Definitions.- (1) In this Act, unless the context otherwise requires,

(a) "agricultural produce" means all produce "whether processed or not" of agriculture, horticulture, animal husbandry, apiculture, pisciculture, or forest as specified in this Schedule".

It is relevant here to state that the words, "whether processed or not" occurring in the aforesaid provision were omitted by M. P. Act No. 5 of 1980. Section 2(m) defines notified agricultural produce and during the relevant time, it read as follows :-

"2(m) "notified agricultural produce" in relation to a market means all such produce specified in the Schedule".

Section 19 of the Act inter alia confers power on the Market Committee to levy market fee on notified agricultural produce, relevant portion of Section 19 of the Act reads as under :

"19. Power to levy market fee (1) Every Market Committee shall levy market fees on notified agricultural produce brought for sale or bought or sold in the market area at such rates as may be fixed by the State Government from time to time subject to the minimum rate of 50 paise or minimum rate of two rupees for every one hundred rupees of the price in the manner prescribed."

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9. True it is that in view of the authoritative pronouncement of the Supreme Court in the case of Rajasthan Flour Mills (AIR 1994 SC 64) (supra), "Maida" is different and distinct good from wheat, but here in the present case, in view of the definition of the agricultural produce under Section 2(1)(a) of the Act, it requires consideration as to whether Maida can be said to be a processed item of the Agricultural produce. Section 2(1)(mm) defines, processing which means - powdering, crushing etc. to an agricultural produce before final consumption. In my opinion, "Maida" is produced by powdering wheat and in view of definition of the agricultural produce during the relevant time which included the expression "whether processed or not", I do not have the slightest hesitation in holding that "Maida" is an agricultural produce.

10. Mr. Sapre's argument that the Legislature having omitted item "Maida" while enacting the present Act, which item formed part of the Schedule in the M. P. Agricultural Market Act, 1960, clearly shows its intention not to levy market fee on Maida, although is very attractive but on deeper scrutiny, it has no substance. It is relevant here to state that in the M. P. Agricultural Produce Act, 1960, "Maida" found place at Serial No. 1 of Part II of the Schedule.

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Aforesaid Act has been repealed by the present Act. In the repealed Act, agricultural produce was defined under Section 2(1)(i) in the following words-

"2. 2(1) - In this Act, unless the context otherwise requires-

(i) "agricultural produce" means the produce of agriculture, horticulture and animal husbandry and all other produce specified in the Schedule."

A plain reading of the aforesaid provision clearly shows that the words "whether processed or not" as appearing in the definition of "agricultural produce" in the present Act did not find place in the repealed Act. In my opinion, because of the absence of these words, in the repealed Act, it was incumbent upon the Legislature to include Maida specifically in the Schedule, whereas in view of definition of the agricultural produce in the present Act, which includes agricultural produce whether processed or not, it was unnecessary to include Maida in the Schedule.

11. It is well known rule of interpretation that Legislature is aware of the words which it has used in the repealed Act and in case the words occurring in the earlier Act do not find place in the latter Act, prima facie it shows a different intention. As pointed out earlier, agricultural produce was differently defined in the repealed Act than the present Act and hence, omission of Maida in the Schedule does not lead to the conclusion that Legislature intended not to subject Maida to market fee. In my opinion, intention of the Legislature to include Maida for payment of market fee is writ large from the use of the expression "whether processed or not" while defining agricultural produce.

12. I do not find any substance in the submission of Sri Sapre that as Maida has not been notified as agricultural produce, same cannot be subjected to market fee. As pointed out by Mr. Shukla, same is squarely answered by a Division Bench Judgment of this Court in the case of M/s. Manakchand Nathuram Agrawal v. Krishi Upaj Mandi Samiti, Itarsi, AIR 1983 Madh Pra 126, Paragraphs 2 and 3 of the said Judgment, which is relevant for the purpose read as follows :-

2. Shri M. C. Nihlani, learned counsel for the petitioner confined the attack to the levy of market fee on these four items of agricultural produce only on two grounds. His first contention is that the market fee being recoverable only on notified agricultural produce as defined in S. 2(m), by virtue of Sec. 19(1) of the Act, and these items of agricultural produce not being so notified, there is no lawful authority for its recovery in respect of these items sold in the market area. The other contention of the learned counsel is that there is no quid pro quo for recovery of the market fee, which is a sine qua non of its validity.

3. The aforesaid first contention has no merit. Section 2(m) of the Act defines 'notified agricultural produce' as any produce specified in the notification issued under Section 4. Section 3 of the Act provides for notification of the intention to establish a market for regulating purchase and sale of such agricultural produce and in such area as may be specified in the notification. Objections to the same received within a specified period are then to be considered and establishment of the market is required to be notified under S. 4 of the Act. Section 4 of the Act provides for another notification by the State Government to establish a market for the area specified in the notification under Sec. 3 or any portion thereof for the purpose of this Act in respect of all or any of the kind of agricultural produce specified in the earlier notification. Thus, Section 3 provides for notification of the intention to establish such a market and Sec. 4 for notification establishing the market, after considering and deciding the objections and suggestions as may be received in response to the notification issued under S. 3. Section 19(1) of the Act empowers the Market Committee to levy market fee on notified agricultural produce brought for sale in the market area at such rates as may be fixed from time to time, subject to the minimum rupees of the price. As earlier stated, 'notified agricultural produce' on the sale of which, within the market area, market fee can be levied, is defined in Sec. 2(m), as any produce specified in the notification issued under Sec. 4. In the present case, the relevant notification under Sec. 4 of the Act has been produced by the respondent and is at page 22 of the Paper Book. This notification was issued under the M. P. Agricultural Produce Market Act, 1960, which Act has been repealed under Section 82 of this Act, but the saving therein provides for continuance of the markets established,

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market areas declared and agricultural produce notified, etc., under the repealed Act. There is no dispute that this notification continues to be operative. A bare perusal of the same is sufficient to indicate that all the four aforesaid items of agricultural produce in respect of which this petition has been filed, are notified therein so as to satisfy the definition of 'notified agricultural produce' contained in Section 2(m) of the Act."

13. It is relevant here to state that various items have been included in the Schedule and the same forms part of the Act. Argument of Sri Sapre that incorporation of words "whether processed or not" in the definition of agricultural produce is only to enable the respondents to incorporate processed items in Schedule, is absolutely misconceived. Inclusion of an item in the Schedule in the present scheme of the Act is a Legislative function. I do not find any substance in this submission of Sri Sapre.

14. As regards submission of Sri Arpan Pawar that there being no exemption from payment of market fee by the State Govt. under Section 69 of the Act, market fee is leviable on Maida, I am of the opinion that even in relation to the items which are subject to payment of market fee, State Govt. has the authority to exempt the same from payment of market fee. This submission of Sri Pawar has been noted only for the purpose of keeping the record straight. In fact, same has no bearing on the decision of the present Writ Petitions.

15. In the result, I do not find any merit in both the Writ Petitions and they are dismissed accordingly. In the facts and circumstances of the case, there shall be no order as to cost. Security amount, if deposited be refunded to the petitioners.

Petitions dismissed.

AIR 2000 MADHYA PRADESH 212 "S. K. Goyal Oil Mill, M/s. v. Krishi Upaj Mandi Samiti, Indore"

MADHYA PRADESH HIGH COURT

(INDORE BENCH)

Coram : 1 DEEPAK VERMA, J. ( Single Bench )

M/s. S. K. Goyal Oil Mill and another, Petitioners v. Krishi Upaj Mandi Samiti, Indore and another, Respondents.

W.P. No. 155 of 1995, D/- 8 -2 -2000.

M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.19 - AGRICULTURAL PRODUCE - Market fee - Levy of - Goods purchased by petitioners from out of the State of M.P. for self-consumption - Market Committee cannot recover any market fee on such goods as there was no element of sale or purchase involved within area of Market Committee.

Case law discussed. (Paras 31, 33)

Cases Referred : Chronological Paras

Gaurav Traders v. Krishi Upaj Mandi Samiti Pandri, (1998) 1 MPWN (SN) 50 29

Himachal Pradesh Marketing Board v. Shankar Trading Co. Pvt. Ltd., (1997) 2 SCC 496 : (1996) 7 Supreme 218 28

Krishi Upaj Mandi Samiti Dewas v. Vippy Solvex Products Ltd., (1996) SLP (Civil) No. 22698 of 1994, D/- 26-4-1996 (SC) 18

Krishi Upaj Mandi Samiti v. Sajjan Mills Ltd., (1995) CA No. 2520 of 1981, D/- 20-7-1995 (SC) 13, 19

Alpine Industries Ltd. v. Krishi Upaj Mandi Samiti Neemuch, (1995) MP No. 1841 of 1995, D/- 25-8-1995 (Madh Pra) 20

Shri Satyanarayan Trading Co. v. Krishi Upaj Mandi Samiti, (1995) Misc Petn. No. D/- 1-9-1995 (Madh Pra) 17

Krishi Upaj Mandi Samiti v. Orient Paper and Industries Ltd., 1994 AIR SCW 5156 : (1995) 1 SCC 655 27

State of Maharashtra v. Kamla Mills Ltd., (1994) 94 STC 220 : (1994) 3 JT (SC) 350 26

Vippy Solvex Products Ltd. v. Krishi Upaj Mandi Samiti, (1994) MP No. 1561 of 1989, D/- 7-10-1994 31

Shri Bajrang Extraction Pvt. Ltd. v. Krishi Upaj Mandi Samiti Dhar, (1994) MP No. 206 of 1990, D/- 7-10-1994 (Madh Pra) 20

Malwa Vanaspati and Chemical Co. Ltd., Indore v. Krishi Upaj Mandi Samiti Indore, (1991) MP No. 891 of 1991, D/- 5-12-1991 (Madh Pra) 20, 21

Salonah Tea Co. Ltd. v. Supdt. of Taxes, Nowgong, AIR 1990 SC 772 : (1988) 1 SCC 401 32

Sajjan Mills Ltd. Ratlam v. Krishi Upaj Mandi Samiti Ratlam, AIR 1981 MP 30 : 1981 MPLJ 117 11, 15, 17

Ramchandra Kailash Kumar and Co. v. State of U.P., AIR 1980 SC 1124 : 1980 All LJ 490 25

Tilakraj Tuneja v. State of M.P., 1979 MPWN (SN) 255 20, 21

G. M. Chaphekar, Sr. Counsel with R. Saboo, for Petitioners; S. R. Phadnis with

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J. B. Nirwani, for Respondents.

Judgement

ORDER :- This order shall also govern disposal of W.P. No. 922 of 1995 (Anjane Solvent India v. Krishi Upaj Mandi Samiti) and W.P. No. 1671 of 1995 (M/s. Laxmi Solvant v. Krishi Upaj Mandi Samiti), as in all these petitions, common questions of law and facts are projected. Thus, all are being heard analagously and are being disposed of by a common order. Even otherwise, vide order dated 15-12-1999, and order dated 18-9-1996, passed respectively in W.P. No. 922 of 1995 and W.P. No. 1671 of 1995, they were directed to be heard along with this petition.

2. Even though, the question posed for consideration in the said petition, appears to have been answered by series of judgments of this Court, as well as by the Apex Court, from time to time, with each one of them, I would be dealing later, but still on account of obdurate attitude of respondent No. 1 Krishi Upaj Mandi Samiti, the petitioners have been constrained to approach this Court again for redressal of their grievances, which, I propose to deal and answer the same accordingly.

3. For the sake of convenience, the facts as extracted in the aforesaid petition are taken into consideration, which, in nutshell are as under :

(i) Petitioner No. 1 being a duly registered partnership Firm, is engaged in business of manufacturing Oil from oil-seeds from its factory situated at Indore. In the course of its business, it buys agricultural produce, i.e. groundnut for use in its factory as raw material for extraction of oil from it. The said seeds are purchased partly in the Mandi area of Indore, partly in other Mandi areas, situated within the State of M.P. and partly from place outside the State of M.P. This petition relates to claims of respondent No. 1-Krishi Upaj Mandi for levy of market fee, on the quantity of agricultural produce purchased by the petitioner from outside State of M.P. i.e. Challakeri (Karnataka).

(ii) Mandi Committee is authorised to levy market fee on agricultural produce brought for sale in the market yard by virtue of S. 19 of the M.P. Krishi Upaj Mandi Ahniniyam, 1972 (hereinafter shall be referred to as 'Adhiniyam'). According to the petitioners, market Committee is entitled to levy market fee on the notified agricultural produce under three categories :-

(i) Purchase of notified goods in the market area;

(ii) Sale of notified goods in the market area;

(iii) Bringing of notified goods in the market area for sale.

When the goods are brought in the market area, not for sale, but for selfconsumption in its own factory, from out of State of M.P., then, in that case, it would not attract levy of market fee, as no commercial activity of transaction is involved.

(iii) On 20-1-1995, petitioner No. 1 purchased 10 tons of ground-nut from M/s. Nayan Protiens Challakeri (Karnataka). The price thereof was paid at Challakeri. Invoice of this purchase has been filed as Annexure-B to the petition. The truck carrying the goods reached the border of the Mandi area, which was detained by the Officers of Respondent No. 1 and market fee was demanded. Event hough petitioner tried to explain that the consignment has been bought for self use and not for sale, thus it would not be liable for any fee, but, they refused to accept the petitioner's plea and refused to allow the truck to proceed, unless fee was paid.

(iv) It was also submitted that High Court has granted stay in identical matters, thus, no market fee be charged but they refused to acceed to it. Thus, under such compelling circumstances, petitioner had to deposit Rs. 1,990.00 being the market fee on 22-1-1995. Annexure-C is the receipt, issued by respondent No. 1 in this regard, with a note appended thereto that name was not found in the list of Mandi licence and the consignment was brought from out of State of M.P. thus Mandi fee was collected in cash.

(v) After payment of the Mandi fee, as mentioned above, the petitioners have approached this Court, challenging the manner, procedure and competence to levy market fee on such purchases and for its refund.

4. Respondents have submitted their return in oppugnation. They have justified their action of recovery of market fee on various grounds. They have contended that petitioner No. 1 being a 'Trader' would be liable to pay the fee. They have also referred to S. 19(1), 19(3), 19(4) and 19(5) and S. 69 of the Adhiniyam to justify the recovery. Initially they admitted that the said consignment has bought from out of State of M.P.,

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but by way of amendment, they half heartedly disputed this fact. It has further been contended that payment of market fee of Rs. 1,990.00 was made by the petitioners without any objections, protest or demur, which is manifest from Annexure-C. Thus, they have no cause of action for filing this petition. According to them it is nothing but an afterthought and after acceptance of the liability, the same cannot be subject matter of challenge.

5. Apart from the above, respondents have further contended, that the petition, involves disputed questions of facts, which cannot be gone into in the petition filed under Arts. 226/227 of the Constitution of India and the petitioners have approached this Court without exhausting the remedy available to them under the Act and the Bye-laws framed by the Samiti. Petitioners did not hold any licence as Traders, processors etc. under S. 32 of the Adhiniyam for this reason also the petition under Arts. 226/227 of the Constitution of India, would not be maintainable. Petitioners should have first made an appropriate representation before the Samiti, challenging the validity of the levy of the fee and only after decision on it and after availing of the heirarchy of appeals/revisions as provided under the Adhiniyam, Jurisdiction of this Court could have been invoked. Thus, it has been contended that petition is premature.

6. In the face of the rival contentions of both the parties, I have heard them at length and perused the record.

7. Since the moot question to be considered and decided in this petition is with regard to entitlement of respondents to levy market fee, on the notified agricultural produce, it would be relevant to extract S. 19 of the Adhiniyam as it stood then, which authorises the Market Committee to levy market fee. The said S. 19 of the Adhiniyam as it stood then, reads as under :

"19. Power to levy market fee - (1) Every Market Committee shall levy market fees on notified agricultural produce brought for sale or bought or sold in the market area at such rates as may be fixed by the (State Government) from time to time subject to the minimum rate of 50 paise or minimum rate of (two rupees) for every one hundred rupees of the price in the manner prescribed :

(Provided that no Market Committee other than the one in whose market area notified agricultural produce is brought for sale or bought or sold by an agriculturist or trader, as the case may be, for the first time shall levy such market fees)

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

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

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

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

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

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

(ii) more than once in the same market area, if it is resold -

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

(b) in the case of (ii) in the same market area.

in the course of commercial transactions between the traders or to consumers subject to furnishing of declaration, in such form as may be prescribed, by the person concerned to the effect that the notified agricultural produce being so resold has already suffered fee in the other market area of the State).

(4) If any notified agricultural produce is found to have been processed without payment of market fees due on such produce, the market fees shall be levied and recovered (on double the market value) of processed products of such products.

(5) The market functionaries, as the Market Committee may by bye-laws specify,

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shall maintain account relating to sale and purchase (or processing) in such forms and submit to the Market Committee such periodical returns as may be prescribed."

xxx xxx xxx xxx

8. Certain amendments in S. 19 of the Act have been incorporated w.e.f. 15-6-1997. From this date, even the raw materials which have been purchased from outside State of M.P., have been made exigible for levy of Mandi fee. Learned Sr. Counsel Shri G.M. Chaphekar and Shri R. Saboo, both have informed the Court that there is no dispute after the aforesaid amendments have been incorporated in the Adhiniyam, as petitioners are now paying fee even on the raw materials purchased by them from outside, Since in this petition, there is no dispute with regard to the right of the Mandi Samiti to collect fee, even on purchases made from outside State of M.P., after the aforesaid amendments dated 15-6-1997, the amendments so made, are not dealt with any further.

9. A perusal of the aforesaid section would show that the charging of Market fee is authorised to sub-sec. (1) of the said S. 19. According to the said sub-section, the Market Committee is entitled to levy market fees on the notified agricultural produce in the following circumstances :

(i) Agricultural produce brought for sale;

(ii) Agricultural produce bought in the market area; or

(iii) Agricultural produce sold in the market area.

It is only on fulfillment of the above conditions that market fee can be levied by the Market Committee.

10. Sub-section (4) of S. 19 speaks of processing of agricultural produce without payment of market fee due on such produce. This expression 'without payment of market fees due on such produce' necessarily postulates leviability of market fee in accordance with sub-sec. (1) of S. 19 of the Act. If market fee itself is not leviable under sec. (1) of S. 19, the question of its becoming due does not arise. Then the charging section itself is not attracted.

11. The question projected in this petition came to be considered by a Division Bench of this High Court for the first time in the matter of Sajjan Mills Ltd. Ratlam v. Krishi Upaj Mandi Samiti, Ratlam reported in 1981 MPLJ 117 : (AIR 1981 Madh Pra 30). The relevant operative part of the order of Division Bench is quoted as under :

"It does not need much argument to say that the respondent No. 1 is not entitled to charge any market fee on the agricultural produce purchased outside the market area and then brought it within that area. This is clear from the language used in S. 19 of the Act itself. Before a buyer of any notified agricultural produce is subject to payment of market fee, it has to be established that the notified agricultural produce was brought for sale or bought or sold in the market area. When the petitioner purchased notified agricultural produce (Cotton) outside the market area and then brought it within the market area for its use in the Mills, it cannot be said that the agricultural produce (Cotton in the present case) was bought for sale or brought and sold in the market area of the Krishi Upaj Mandi, Ratlam. Clearly, therefore, the respondent No. 1, could not recover any fee for such agricultural produce. We hold the petitioner not liable to pay any market fee for the cotton or any other agricultural produce specified in the schedule to the Act which was purchased by it outside the market area and which was not brought for sale or bought or sold in the market area. We further hold that the levy and recovery of market fee on such agricultural produce by the respondent No.1 is invalid."

12. Reading of the aforesaid judgment makes it clear that the two undernoted points were decided against the Mandi;

(i) Increase of Mandi fee from Rs. 0.50 paise to Rs. 1.00 per hundred rupees worth sale with in the market area was held to be invalid as there was no quid pro quo.

(ii) Mandi Committee was not entitled to charge any Mandi fee for the notified agricultural produce purchased outside, the State of M.P. and brought within the State for self- consumption or processing. Such levy was held to be invalid.

13. Krishi Upaj Mandi Samiti Ratlam, feeling aggrieved by the aforesaid order of the High Court, filed C.A. No. 2520 of 1981 in the Supreme Court, which was decided on 20-7-1995. From perusal of the judgment of Supreme Court, it is manifest that Mandi Samiti had challenged only the first aforesaid point, decided by High Court against it. That is to say striking down of the increase

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from Rs. 0.50 paise to Rs. 1.00 per hundred. Above noted Point No. 2 decided against the Mandi, was not challenged by it before the Apex Court.

14. Supreme Court allowed the appeal holding as under :

"For the above reasons, we allow the appeal, set aside the judgment of the High Court and uphold the increase in the market fee by the Market Committee, Ratlam. No costs."

15. Thus, the question which was neither raised nor challenged by the Market Committee, could not have been considered, nor was decided by the Apex Court. Only that part of the judgment of the High Court was set aside, whereby it had held the increase from 0.50 paise to Rs. 1.00 being valid. The remaining part of the judgment of the High Court, in the matter of Sajjan Mills, AIR 1981 Madh Pra 30) (supra) was kept intact, without disturbing the findings recorded by it. Thus, the Apex Court has put its seal of approcal, on the other findings, recorded by the High Court.

16. From the narration of aforesaid facts and position of law, it emerges and stands concluded, that no market fee was leviable on the agricultural produce brought from outside the State of M.P. for self-consumption, use or for processing. Once the aforesaid legal position was settled, there could not be any justification on the part of the Mandi to recover mandi fee on such consignments.

17. However, similar question cropped up for consideration again before a Division Bench, in Misc. Peth of Shri Satyanarayan Trading Co. v. Krishi Upaj Mandi Samiti decided on 1-9-1995, by the main seat at Jabalpur. The relevant portion may be quoted usefully as under :

"Our attention is invited to a decision of the Division Bench of this Court in Sajjan Mills Ltd. Ratlam v. Krishi Upaj Mandi Samiti, Ratlam, 1981 MPLJ 117 : (AIR 1981 Madh Pra 30) wherein it has been held that when agricultural produce is purchased outside the market area and thereafter brought within that area for use in the Mills and not for further sale, mandi fees is not leviable. With respect, we agree that this is the correct position emerging from reading of S. 19 of the Act. Annexure-P1, themselves make it clear that the agricultural produces covered by those notices were purchased from outside the State and brought within the local area for the purpose of being used as raw materials in the mills of the person concerned. That being so, in regard to agricultural produce covered to Annexure-P3, no mandi fee is leviable at all".

18. Even after the aforesaid judgments of this High Court and Supreme Court, the question cropped up again in number of cases. In all the cases, the steady and consistent view has been that no market fee would be leviable or chargeable on the agricultural produce brought from outside State of M.P. for self-consumption and use. The aforesaid reasons and findings have been recorded consistently in the following cases :

(i) S.L.P. (Civil) No. 22698 of 1994 (Krishi Upaj Mandi Samiti Dewas v. Vippy Solvex Products Ltd. decided on 26-4-1996 by the Supreme Court.

19. In the aforesaid judgment, it has been reaffirmed the question that was raised and decided by the Supreme Court in the matter of Sajjan Mills Ltd. It has been held as under :

"As regards the decision in Krishi Upaj Mandi Samiti v. Sajjan Mills Ltd. (C.A. No. 2520 of 1981 decided on July 20, 1995) the only question that was raised before this Court was whether the enhancement of the market fee from 50 paise to one rupee was valid. This Court, after holding that the principle quid pro quo was not applicable, has upheld the increase in the market fee by the Market Committee, Ratlam and has set aside the judgment of the High Court in that regard. The said judgment does not deal with the finding recorded by the High Court that under the Madhya Pradesh Krishi Upaj Mandi Samiti Adhiniyam, 1972, market fee could not be levied in respect of an agricultural produce brought from outside for consumption which was neither bought nor sold within the market area. In view of the sub-section (1) of S. 19 of the Krishi Upaj Mandi Samiti Adhiniyam, the High court has rightly held that market fee was not payable on Soyabean brought from outside market area into the market area for the purpose of extraction of oil."

20. Few more judgments/orders of this Court on the aforesaid question, have been dealt within the following matters : M.P. No. 1841 of 1995 (Alpine Industries Ltd. v. Krishi Upaj Mandi Samiti Neemuch)

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decided on 25-8-95; M.P. No. 206 of 1990 (Shri Bajrang Extractions Pvt. Ltd. v. Krishi Upaj Mandi Samiti Dhar) decided on 7-10-1994; M.P. No. 891 of 1991 (The Malwa Vanaspati and Chemical Col. Ltd. Indore v. Krishi Upaj Mandi Samiti Indore) decided on 5-12-1991 and M.P. No. 825 of 1974 (Tilakraj Juneja v. State of M.P.) decided on 25-9-1978 reported in 1979 MPWN (SN) 255.

21. The matters of M/s. Malwa Vanaspati (supra) and Tilakraj Juneja (supra) were taken to the Supreme Court. In the matter of Tilakraj Juneja, Apex Court had dismissed the appeal of Krishi Upaj Mandi Samiti and confirmed the findings recorded by the Division Bench, wherein it was held that merely by bringing the raw material within Mandi for self-consumption and use, no element of sale and purchase was involved, hence the question of charging of Mandi fee would not arise. In the case of M/s Malwa Vanaspati, matter was remanded to Mandi Samiti i.e. Market Committee, to determine the question, whether the Soyabean in dispute was purchased from outside the market area and also whether it was being used by the Company concerned for all extraction.

22. However, in the case in hand, the denial of the respondent that the goods were not brought from outside State of M.P. cannot be believed. Documents Annexure-B Invoice and C, respondents' own receipt fully prove to the satisfaction of this Court that the raw material was purchased and bought at Chellakeri and the sale was complete at Chellakeri itself. As has been mentioned earlier, there is only half hearted denial of the respondents to this fact, that too made by way of amendment. There does not appear to be any genuine, bona fide and honest denial of this fact. It appears to have been made on account of orders/judgments of this Court and Supreme Court passed in several matters from time to time. Thus, the said denial is of no consequence and the same cannot be treated at such. Petitioner's pleadings in para 5(g) and 5(h) show that they have pleaded specifically that the consignment of groundnut was purchased at Chellakeri, the payment thereof was also made there only. Thus the transaction of sale was completed there. Apart from the aforesaid pleadings Annexure-B Invoice and Annexure-C respondent's receipt charging Mandi fee on these said consignment fully corroborated the petitioner's pleadings.

23. As against these pleadings and documents, respondent's return in paras 5(g) and 5(h) show that they have said even if the consignment was purchased from Karnataka, Mandi fee would be leviable as the same was not paid to any of the Mandis in M.P. as contemplated under the Adhiniyam. In para 5(h) they have stated that for the reasons mentioned above, the demand of market fee and realisation of the same is in accordance with law as shown above in para 3 and para 5(b) above. Further with regard to petitioner's pleadings contained in para 5-C of the petition the respondents have admitted the said para 5(c) except that the present quantity of groundnut was actually purchased at Indore.

24. That the critical examination of the pleadings of parties show that there was no specific and categorical denial of the fact that petitioners had purchased the groundnut at Chellakeri, which is admittedly out of the State of M.P. Their denial was an afterthought and half hearted. Such denial does not amount to raising of disputed questions of facts. Thus, from the averments of parties, and documents I am of the considered opinion that it is manifestly proved from the same, that the groundnut was purchased by the petitioners from challekari, a place out of the State of M.P.

25. Now I shall deal with the judgments which have been referred to by Shri S. R. Phadnis learned counsel for the respondent. First case on which the placed reliance is reported in AIR 1980 SC 1124 (Ramchandra Kailash Kumar and Co. v. State of U.P.). This was a case where provisions of U.P. Krishi Utpathan Mandi Adhiniyam were considered. While interpreting S. 17(iii)(b) of the aforesaid Adhiniyam, their Lordships have held that 'sale of goods in particular Market Area is a must'. Para 29 of the said judgment which deals with this aspect of the matter is reproduced herein below :

"29. This point urged on behalf of the appellants is well founded and must be accepted as correct. On the very wordings of clause (b) of S. 17(iii) market fee is payable on transactions of sale of specified agricultural produce in the market area and if no transaction of sale takes place in a particular market area no fee can be chzrged by the Market Committee of that area. If goods are merely brought in any market area no fee

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can be charged by the Market Committee of that area. If goods are merely brought in any market area and are despatched outside it without any transaction of sale taking place therein, then no market fee can be charged. If the bringing of the goods in a particular market area and their despatch therefrom are as a result of transactions of purchase and sale taking place outside the market area, it is plain that no fee can be levied."

26. He then referred to (1994) 94 STC 220 (SC) (State of Maharashtra v. Kamla Mills Ltd.). This was a case with regard to payment of Sales Tax under Bombay Sales Tax Act, 1953. It has been held as under :

"We are of the opinion that the question whether the transactions were assessable to tax under the Act or not, is a question of fact which must be gone into by the appropriate authorities under the Act. It would have been different matter if the High Court had discussed the facts and had recorded a finding thereon, in which situation we would not have been inclined to remit the matter back to the appropriate Authority as we are proposing to do."

As has already been held by me in the earlier paras that the consignment in question was purchased at Chellakari, thus there does not appear to be any dispute in this regard. Thus the said judgment is of no help to the respondents.

27. It was then contended, as has been held in the matter of Krishi Upaj Mandi Samiti v. Orient Paper and Industries Ltd. reported in (1995) 1 SCC 655 : (1994 AIR SCW 5156), that levuy of Market fee was valid by Market Committees, on sale and purchase of Bamboos, irrespective of the fact whether it was for resale or self-consumption by the purchaser. But admittedly in the aforesaid case, bamboos were purchased within the local areas of different Market Committees, either at one place or several places, but within the State of M.P. Thus, there would not be any dispute with regard to the proposition of law as propounded in the aforesaid judgment. Thus, in the considered opinion of this Court, even this order does not clinch the issue in favour of the respondents.

28. Yet another judgment of the Supreme Court on which reliance has been placed is reported in (1997) 2 SCC 496 (himachal Pradesh Marketing Board. v. Shanker Trading Co. Pvt. Ltd.). This was a case where respondent company was engaged in manufacturing of 'katha' from khairwood and question was with regard to obtaining of licence under S. 4(3) of H.P. Agricultural Produce Markets Act 1969. The Supreme Court held in para 25 as under :

"The writ petitioners even though are producing katha, a specified agricultural produce by processing khairwood, a natural produce grown in the farm, in our view, cannot claim exemption from the requirement of obtaining licence under S. 4(3) and payment of levy under S. 21 because they themselves have not grown the khairwood but have purchased the 'agricultural produce' Khairwood grown by others and then processed the same to obtain katha even though katha itself is a specified agricultural produce."

Since the writ petitioners, themselves were not the producers of Khairwood, a natural produce grown in the farm, Court held that it would not be entitled to claim exemption.

29. Lastly learned counsel for respondents cited (1998) 1 N.P.W.N. (SN). 50 (Gaurav Traders v. Krishi Upaj Mandi Samiti Pandri) to contend that as alternative remedy under Statutory Provision was available under the Adhiniyam, therefore petition under Art. 226 cannot be entertained. This case shall also be of no help to the respondents as alternative remedy is of no avail to the petitioners as ultimately, the question to be decided is with regard to right of the Mandi Committee to recover Mandi fees. Apart from the above all these petitions, were directed to be listed for final hearing and matters have been pending in this Court for last five years. In the considered opinion of this Court, it would be too harsh on the petitioners to throw the petitions now on the ground of avaiability of alternative remedy.

30. The plea of the respondents that under Bye-Law 29 of the Samiti, remedy provided, should have been exhausted would also be of no help to them. This Bye law does not apply to the facts of the case.

31. Thus considering the matter from all angles I hold that respondent Samiti was not justified in recovering the Mandi fees on the goods purchased by the petitioners from out of the State of M.P. for self-consumption as there was no element of sale or purchase involved within the area of Market Committee.

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Thus the recovery of Mandi Fees was invalid. As a necessary consequence thereof, it is directed that the amount of Nandi fees collected by the respondents has to be returned back to the petitioners. This has been so directed in the matter of M.P. No. 1561 of 89 Vippy Solvex Products Ltd. v. Krishi Upaj Mandi Samiti decided on 7-10-1994.

32. Supreme Court has also held in the matter of Salonah Tea Co. Ltd. v. Supdt. of Taxes Nowgong reported in (1988) 1 SCC 401 : (AIR 1990 SC 772), where petition is for refund of tax illegally or unauthorisedly collected, Court normally directs refund by way of consequential relief. Since, it has been held that the Mandi fee was collected illegally, by the respondents, as a necessary corrolary, the same is to be redunded by the respondents.

33. In the result I allow this and the connected petitions and issue undernoted instructions :

(a) The respondents are held not entitled to recover any market fee for agricultural produce, when bought from out of State of M.P. for self-consumption.

(b) The respondents shall refund the amount of Rs. 1990.00 collected by them from the petitioners as Market fees and similar amounts Collected by them from other two petitioners.

Parties to bear their own costs. Security amounts be refunded back to the petitioners in all the petitions, subject to its verification.

A copy of this order be kept in each of the connected petitions.

Order accordingly.

AIR 2000 MADHYA PRADESH 257 "Akhtar Ali v. State of M.P."

MADHYA PRADESH HIGH COURT

(GWALIOR BENCH)

Coram : 1 S. P. SRIVASTAVA, J. ( Single Bench )

Akhtar Ali, Petitioner v. State of M.P. and Ors., Respondents.

W.P. No. 333/2000, D/- 10 -2 -2000.

M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.27 -- M.P. Krishi Upaj Mandi (Adhisuchana Prakashan Riti, Bharsadhak Samiti Tatha Mandi Samiti Gathan) Niyam (1974), R.17(4) - APPEAL - AGRICULTURAL PRODUCE - LIMITATION - Appeal against rejection of nomination paper - Filing of beyond prescribed time - Application for condonation of delay - Not tenable - Limitation Act is not applicable.

Limitation Act (36 of 1963), S.29(2).

Where nomination paper was rejected and appeal was filed beyond prescribed period same was not maintainable. In this connection application for condonation of delay is also not maintainable. (Para 16)

In the aforesaid connection, it may be noticed that if the provision of S. 29 (2) of the Limitation Act is applied to the proceedings under R. 17 (4), with the logical extension it will apply to the proceedings contemplated under R. 43 of the Rules of 1974 making it permissible to entertain the election petition even after the expiry of the limitation on making out a sufficient cause for the delay. (Para 16)

Further, the law does not operate in a vacuum. It cannot be interpreted without taking into account the social, political and economic setting in which it is intended to operate. A mechanical approach is altogether out of step in the modern positive approach which is to have a purposeful construction that is to effectuate the object and purpose of the Act. In the present case, the obvious object is to get the election process completed within the frame work prescribed maintaining the time schedule for holding the election and fill up the public office as early as possible. (Para 19)

Moreover, taking into consideration the rules regulating the election proceedings and the filing of the election petition it is apparent that Rules constitute a complete code in itself which does not admit of the application of the provision contained in Ss. 4 to 24 as stipulated in S. 29 (2) of the Limitation Act, 1963. (Para 20)

Cases Referred : Chronological Paras

Anwari Basavaraj Patil v. Siddaramaiah, AIR 1994 SC 512 : 1993 AIR SCW 3950 12

Nihalkaran v. Commissioner of Wealth Tax, 1988 Tax LR 584 : 1987 MPLJ 562 (FB) 21

H. N. Yadav v. L. N. Mishra, AIR 1974 SC 480 13, 14, 22

A. K. Shrivastava, for Petitioner; K. N. Gupta, Govt. Advocate, for Respondents.

Judgement

S.P. SRIVASTAVA, J. :- Heard Shri A. K. Shrivastava, learned counsel for the petitioner as well as Shri K. N. Gupta, learned Govt. Advocate representing the respondents/State who has put in appearance on advance notice.

Perused the writ petition.

1. The petitioner feels aggrieved by an order passed by the Collector/appellate authority, Krishi Upaj Mandi Nirvachan, District Shivpuri whereunder the appeal filed by the petitioner under the Madhya Pradesh Krishi Upaj Mandi (Adhisuchana Prakashan Riti, Bharsadhak Samiti Tathas Mandi Samiti Gathan) Niyam, 1974, which was directed against the rejection of his nomination paper by the election authority dated 21-4-1999 has been dismissed holding that the said appeal was not maintainable on the ground that the appeal had been filed beyond the prescribed period of limitation.

2. It may be noticed that the appeal had been filed on 2-2-2000 whereas the order rejecting the nomination paper in question had been passed on 21-4-1999.

3. The petitioner has asserted that along with the appeal he had submitted an application praying for the condonation of delay in filing the appeal, a copy of which has been annexed as Annexure P/1 to the writ petition. The only explanation in the application which has been furnished explaining the delay in filing the appeal was that in the evening of the day on which the nomination paper had been rejected, under an interim order passed by the High Court, the election had

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been stayed and since the election had been stayed, he could not submit the memorandum of appeal.

4. No affidavit in support of the aforesaid application had been filed. Even the copy of the interim order of the High Court referred to in the application had not been filed but from the assertions made in the application, it is indicated that the stay order was only for the postponement of the election and not the other proceedings leading up to the date fixed for holding the election itself.

5. The petitioner has prayed only for a direction requiring the appellate authority to decide the appeal on merits.

6. The learned Govt. Advocate has opposed this writ petition asserting that the Madhya Pradesh Krishi Upaj Mandi (Adhisuchana Prakashan Riti, Bharsadhak Samiti Tatha Mandi Samiti Gathan) Niyam, 1974, is a complete code in itself including the qualifications and disqualifications of all the contestants, providing for the Election Authority and Determination of Constituencies, Right to Vote and the Preparation and Maintenance of the List of Voters, Notice of Election, Nomination of Candidates, Procedure at and Conduct of Election, Counting of Votes and Publication of Election Result and Nominations, Election Petitions, Electoral Offences, Nomination of Members and the proceedings for filling up the Office of Adhyaksh of the Mandi Samiti, etc.

7. It is further pointed out that Rule 17 of the aforesaid Rules of 1974 regulates the procedure for Scrutiny of nominations and an order rejecting the nomination paper has been made appealable under Rule 17 (4) of the said Rules. Rule 17 (4) specifically provides that such an appeal shall not lie unless a notice is given by the affected candidate or his proposer or seconder to the election authority, expressing an intention to appeal, as soon as the order rejecting the nomination paper is passed by it and it is lodged in the office of the appellate authority before 2.00 p.m., on the day next to the date of scrutiny fixed under Clause (c) of sub-Rule (2) of Rule 14. The appellate authority has to take up all such appeals in the order in which they have been filed, commencing at 12 noon on the day following the date on which they have been filed. The appellate authority shall not be required to issue any notice but all candidates and their proposers or seconders shall be entitled to be present and every candidate shall be entitled to be heard in connection with any appeal relating to the constituency for which he is a candidate. Appearance by Counsel shall not be permitted.

8. The contention of the learned Govt. Advocate representing the respondents/State is that taking into consideration the urgency of the situation in the matter relating to the elections, when the election proceedings have already started, the Legislature in its wisdom has prescribed the period of limitation as indicated hereinabove for filing and entertainment of appeal and its disposal.

9. Under the scheme underlying the rules indicated hereinabove, no provision has been made for the condonation of delay in filing the appeal on its entertainment and the period prescribed there for. It is, therefore, urged that the appellate authority cannot be taken to have refused to exercise its jurisdiction by dismissing the appeal straightway holding it to be not entertainable. It is further urged that in fact the Appellate Authority was not vested with any jurisdiction to condone the delay in filing the appeal and the legislative intent underlying the provision in question was to exclude the entertainment of the appeals filed beyond the prescribed period of limitation.

10. The learned counsel for the petitioner has strenuously urged that though no provision has been made vesting the appellate authority with any jurisdiction to condone the delay in filing the appeal, yet in view of the provision contained in Section 29 sub-Clause (2) of the Limitation Act, the requisite jurisdiction in this regard has to be deemed to be there, and the appellate authority is bound to consider on merits the application seeking condonation of delay in filing the appeal and on finding that sufficient cause had been made out explaining the delay then the appeal should be heard on merits. The contention is that since the appeal though presented much beyond the prescribed period of limitation was accompanied by an application seeking condonation of delay in filing the appeal, therefore the appellate authority was bound to dispose of that application and thereafter should have taken up the appeal for consideration and in case the appellate authority was not satisfied with the explanation for the delay, the appeal could have been dismissed on the ground that it was barred by limitation but not otherwise.

11. The provision contained in Section 29 sub-Clause (2) of the Limitation Act, 1963 is

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to the following effect :

"29. Savings.-

(1) ... ... ...

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provision of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far, and to the extent to which, they are not expressly excluded by such special or local law."

(3) and (4) ... ... ...

(emphasis supplied)

12. The submission of the learned counsel for the petitioner is that under the Rules of 1974, there is no express exclusion of the applicability of Section 5 of the Limitation Act, 1963, and therefore in any appeal or application, the said provision automatically gets attracted and has to be taken to be applicable to any appeal or application filed under the aforesaid Rules of 1974.

13. A similar question had arisen before the Apex Court in the case of H. N. Yadav v. L. N. Mishra, reported in AIR 1974 SC 480, wherein the Apex Court had held that the words "expressly excluded" occurring in Section 29 (2) of the Limitation Act do not mean that there must necessarily be express reference in the special or local law to the specific provisions of the Limitation Act, the operation of which is sought to be excluded. It was held that if on an examination of the relevant provisions of the Special Act, it is clear that the provisions of the Limitation Act are necessarily excluded then the benefits conferred by the Limitation Act cannot be called in aid to supplement the provisions of the Special Act.

14. The aforesaid case of H. N. Yadav (supra) was a case arising under the Representation of the People Act and the question was whether Section 5 of the Limitation Act is applicable to the filing of the election petition. The test to determine whether the provisions of the Limitation Act applied to proceedings under the Representation of the People Act by virtue of Section 29 (2) of the Limitation Act was stated in the following words (at page 490) :

"The applicability of these provisions has, therefore, to be judged not from the terms of the Limitation Act but by the provisions of the Act relating to the filing of election petitions and their trial to ascertain whether it is a complete Code in itself which does not admit of the application of any of the provisions of the Limitation Act mentioned in S. 29 (2) of that Act."

15. In the present case, the statutory rules relating to the election proceedings contained in Rule 17 (4) of the Rules of 1974 specifically provide the period for the filing of the appeal. Further, Rule 43 clearly provides that an Election Petition has to be presented to the Collector within fourteen days from the date on which the result of the election was published under sub-Rule (3) of Rule 38.

16. In the aforesaid connection, it may be noticed that if the provision of Section 29 (2) of the Limitation Act is applied to the proceedings under Rule 17 (4) of the Rules of 1974, with the logical extension it will apply to the proceedings contemplated under Rule 43 of the Rules of 1974 making it permissible to entertain the election petition even after the expiry of the limitation on making out a sufficient cause for the delay. This could never have been intended in order to secure the finality of the election and the proper functioning of the public office, filled up on the basis of election in the public interest.

17. The submission if accepted will lead to absurdity and manifest injustice and the result would be to upset the balance of the Statute as a whole.

18. It must not be lost sight of that so far as regards the efficiency and policy and of that the legislature is the only judge its wisdom cannot be scanned by the Court. They are, however, responsible for what they do and of that the Court is the only judge.

19. The law does not operate in a vacuum. It cannot be interpreted without taking into account the social, political and economic setting in which it is intended to operate. A mechanical approach is altogether out of step in the modern positive approach which is to have a purposeful construction that is to effectuate the object and purpose of the Act. In the present case, the obvious object is to get the election process completed within the frame work prescribed maintaining the time schedule for holding the election and fill up the public office as early as possible.

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20. Taking into consideration the rules regulating the election proceedings and the filing of the election petition, it is apparent that it is a complete code in itself which does not admit of the application of the provision contained in Sections 4 to 24 as stipulated in Section 29 (2) of the Limitation Act, 1963.

21. The learned counsel for the petitioner has placed strong reliance on the decision in the case of Nihalkaran S/o Chhatrakaran Zamindar v. Commissioner of Wealth Tax, Bhopal reported in 1987 MPLJ 562 : (1988 Tax LR 584), rendered by a Full Bench of this Court, whereunder after noticing the legislative history of Section 27 of the Wealth Tax Act, 1957, the Court had come to the conclusion that unless application of Section 5 of the Limitation Act was expressly excluded to an application under Section 27 (3) of the Act, that would apply. Observing further that Parliament would be deemed to be aware of this changed legal position at the time when it enacted the Amendment Act, No. 46 of 1964.

22. The ratio of the aforesaid decision cannot be said to be attracted to the facts and circumstances of the present case specially in view of the clarification of the expression "expressly excluded" as contained in Section 29 (2) of the Limitation Act and its real import and significance as explained by the Apex Court in its decision in the case of H. N. Yadav (supra), which was later on reiterated by the Apex Court in its decision in the case of Anwari Basavaraj Patil v. Siddaramaiah reported in AIR 1994 SC 512.

23. In the aforesaid view of the matter, the situation which emerges in the present case is that the application seeking condonation of delay in filing the appeal itself was not entertainable. Even on a perusal of the application filed by the petitioner, a copy of which has been annexed, does not disclose any such circumstance which could prevent him from filing the appeal on the next day of the rejection of his nomination paper within the time as prescribed under Rule 17 (4) of the Rules of 1974 as according to the petitioner himself the interim order passed by the High Court was with regard to the stay of the election which was scheduled to take place later on and there is nothing to indicate that all the proceedings upto the date of election had been stayed.

24. In any view of the matter, since the application seeking condonation of delay in filing the appeal itself was not maintainable, no useful purpose is going to be served by directing the appellate authority to decide the same on merits. The issuance of such direction will be an exercise in futility, specially when the said application has been found to be not at all entertainable.

25. It may be noticed that the petitioner has prayed for a direction requiring the appellate authority to decide the appeal on merits. There is absolutely no justification for issuing any such direction in the peculiar facts and circumstances of the present case.

26. In view of my conclusions indicated hereinabove, no justifiable ground has been made out for any interference while exercising the extraordinary jurisdiction envisaged under Art. 226 of the Constitution of India.

27. The writ petition is accordingly dismissed.

Petition dismissed.

AIR 1998 MADHYA PRADESH 202 "Goyal and Sons v. Krishi Upaj Mandi Samittee"

MADHYA PRADESH HIGH COURT

(GWALIOR BENCH)

Coram : 2 SHACHEENDRA DWIVEDI AND S. P. SRIVASTAVA, JJ. ( Division Bench )

Goyal and Sons and another, Petitioners v. Krishi Upaj Mandi Samittee and another, Respondents.

L.P.A. 168 of 1997, D/- 22 -1 -1998.

M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.19(6) - AGRICULTURAL PRODUCE - Removal of processed product out of market proper - Requirement of permit/gate pass - Challenge as to - Provision of gate pass made to ensure whether market fee was paid on listed agricultural produce from which processed product was obtained - Persons who paid market fee on agricultural produce not required to pay market fee again on processed product to obtain gate pass - Petition against order for obtaining requisite permit/gate pass for removal of processed products - Not maintainable.

The payment of required market fee cannot be presumed, but the requirement of the permit or gate pass for removal of processed product from market proper was only for the purpose that the due payment of market fee as required under the Act can be ascertained. The concerned Mandi authorities have to verify as to whether the requisite market fee has been paid on the agricultural

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produce from which the product which is sought to be transported out of market proper has been processed. In case the market fee has already been paid on any agricultural produce from which the product which has been processed which is sought to be removed, then in that event petitioners were not require to pay market fee again, but they were required to obtain the gate pass only. Similarly, if any notified agricultural produce is found to have been processed without payment of market fee due on such produce, the market fee shall be levied and recovered on double the market value of processed products of such produce. In spite of the amendment in Section 2(1)(a) of the Act deleting the words "whether processed or not" occurring threrein the legislature continued to retain the provisions contained in Sections 19(4) and 19(6) regarding recovery of double market value of process products in case of failure to pay market fee on listed agricultural produce and permit to be obtained before removing processed product out of market respectively. Therefore, it being the legislative policy, the order requiring gate pass/permit for taking out the processed products out of market proper cannot be interfered with. (Paras 7, 15, 16, 17)

S. L. Basant, for Petitioner; S. P. Jain, for Respondent.

Judgement

S. P. SRIVASTAVA, J.:- The petitioners/appellants had approached this Court by means of a writ petition under Article 226 of the Constitution of India seeking quashing of the order passed by the respondent, Krishi Upaj Mandi Samiti Sabalgarh, District, Morena (hereinafter referred to as Samiti) requiring the petitioners/appellants to take out its processed articles out of the market proper only after obtaining the requisite "Gate pass" in the absence whereof the Samiti will not allow passing of the vehicles of the petitioners, carrying the processed goods. The petitioners also prayed for a direction requiring the respondents not to create hurdles in dealing of processed agricultural goods.

2. A learned single Judge of this Court by means of the impugned order dismissed the writ petition holding that it was without any merit.

3. Feeling aggrieved, out of the three petitioners, two of them have come up in this Letters Patent Appeal praying reversal of the impugned order.

4. We have heard the learned counsel for the appellants as well as the learned counsel representing the contesting respondents, and have carefully perused the record.

5. The facts, shorn of details, and necessary for the disposal of this appeal lie in a narrow compass. The petitioners had alleged that they were exclusively dealing with the sale of oil which is processed from the listed agricultural produce and is obtained from the agriculturists from the Mandi area (aangan) in respect whereof the market fee has already been paid and there remained no need of payment of market fee for the out going finished products. It was also alleged that the respondent-Samiti could only restrict the movement of agricultural produce but it had no jurisdiction to restrict in any manner the movement of the processed items which were not mentioned in the schedule attached to the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 (hereinafter referred to as the Act). It was further asserted that the order in question containing the impugned direction was without jurisdiction and contrary to law.

6. The claim of the petitioners was contested by the respondents asserting that in case the petitioners/appellants had paid the required market fee in accordance with the provisions of the Act, on the mustard from which oil is processed, then they were not required to pay the market fee, clarifying that the impugned directions contained in Annexure P/3 only required the petitioners/appellants to obtain permit or gate pass while removing the oil processed by them. It has been asserted that the oil or the finished product in question in fact, was a product which is processed from the mustard which is enumerated as a notified agricultural produce. If the petitioners had already paid the market fee on the agricultural produce out of which the oil is processed in that event they were not required to pay the market fee all over again. It was further stated that the petitioners were not required to obtain second permit or gate pass which is required to be obtained only at the time when any agricultural produce or any product processed therefrom is to be removed from the area of any market committee.

7. It was further pointed out that the payment

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of the required market fee contemplated under the Act cannot be presumed but the requirement of the permit or gate pass was only for the purpose that the due payment of market fee as required under the Act can be ascertained. The concerned Mandi authorities have to verify as to whether the requisite market fee has been paid on the mustard or any other agricultural produce from which the product which is sought to be transported out of the market proper has been processed. It has been reiterated that in case the market fee has already been paid on any agricultural produce from which the product has been processed which is sought to be removed then in that event the petitioners were not required to pay the market fee. The contesting respondents have asserted that the writ petition was totally misconceived and has rightly been dismissed.

8. It appears that before the learned single Judge, the petitioners had alleged that as the "processed goods" had been taken out of the purview of the definition of agricultural produce, therefore, any restriction placed on the movement of the processed goods from the Mandi area was beyond the scope of the Adhiniyam. The learned single Judge rejected the aforesaid submission under the impugned order upholding the provisions of Section 19(6) of the Act.

9. The learned counsel for the petitioners/appellants has strenuously urged that Section 2(1)(a) of the Act which defines "agricultural produce" was amended in the year 1990, by deleting the words "whether processed or not" occurring therein but Section 19(6) of the Act, was not amended so as to bring it in conformity with the amended Section 2(1)(a) of the Act. Therefore, it is urged that the provisions contained in Section 19(6) of the Act which include the "products processed from agricultural produce" which had been taken out of the ambit of the amended definition are liable to be ignored.

10. The learned counsel for the respondents has urged that the amendment in the definition of 'agricultural produce' as contained in Section 2(1)(a) of the Act cannot lead to any such inference as suggested as Section 19(6) has to be read conjointly with Section 19(4) of the Act. It is further urged that Section 19(6) of the Act does not suffer from any legal infirmity and taking into consideration its purpose and the object to be achieved, the impugned action of the respondent-Samiti cannot be held to be vitiated in law.

11. The 'agricultural produce' has been defined in Section 2(1)(a) of the Act as under-

"(a) "agricultural produce" means all produce (x x x) of agriculture, horticulture, animal husbandry, apiculture, pisciculture, or forest as specified in this Schedule."

12. The provisions contained in Sections 19(4) and 19(6) of the Act referred to hereinabove are to the following effect :

"19. Power to levy market fee,-

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(4) If any notified agricultural produce is found to have been processed without payment of market fees due on such produce, the market fees shall be levied and recovered on double the market value of processed products of such produce.

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(6) No notified agricultural produce nor any products processed therefrom shall be removed out of the market proper except in accordance with a permit issued by the Market Committee in such form as may be prescribed by bye-laws.

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13. A perusal of the aforesaid provisions indicate that if any notified agricultural produce is found to have been processed without payment of market fee due on such produce, the market fee shall be levied and recovered on double the market value of processed products of such produce.

14. The petitioners had asserted in paragraph 6 of the writ petition that the oil in the sale whereof they were dealing had been processed from the listed agricultural produce for which the market fee has already been paid. The contesting respondents have also clearly indicated in the return filed by them that in case the market fee had been paid on the agricultural produce utilised for the processed goods sought to be removed by the petitioners from the market proper they were not required to pay the market fee all over again but the petitioners had to disclose as to whether the requisite market fee on the agricultural produce from which the oil in question had been processed had been paid or not, and it was for this purpose obtaining of the permit or gate pass was required. The provisions contained in Section 19(6)

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of the Act, only require that no notified agricultural produce nor any products processed therefrom shall be removed out of the market proper except in accordance with a permit issued by the market committee in such form as may be prescribed by the bye-laws. The purpose of the permit or gate pass which is being insisted upon by the respondents appears to be to ensure that the market fee leviable on the notified agricultural produce from which the product sought to be removed from the market proper had been processed stands paid, as otherwise as contemplated under Section 19(4) of the Act, if any notified agricultural produce is found to have been processed without payment of market fee due on such produce, the market fee shall be levied and recovered at double the market value from processed products of such notified agricultural produce.

15. The learned counsel for the appellants tried to urge that in view of the amendment in Section 2(1)(a) of the Act deleting the words "whether processed or not", occurring therein in the year, 1990, the whole purpose of issuance of permits or requirement of obtaining permits contemplated under Section 19(6) of the Act, stood nullified, and therefore, no such restriction which was necessary before the coming into force of the amendment could be imposed.

16. In the aforesaid connection, suffice it to say that in spite of the amendment, the legislature in its wisdom continued to retain the provisions contained in Sections 19(4) and 19(6) of the Act. It is well established that so far as regards efficiency and policy; of that the legislature is the only Judge; they are responsible to a Court of justice for the lawfulness of what they do and of that the Court is the only Judge. Obviously, therefore, the wisdom of the legislative policy cannot be scanned by this Court. The contention of the learned counsel for the appellant is clearly devoid of merits and is not at all acceptable.

17. Taking into consideration the facts and circumstances as brought on the record and our conclusions indicated hereinabove, no justifiable ground had been made out for any interference by this Court while exercising the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India.

18. We do not find any justifiable ground to interfere with the impugned order dismissing the writ petition.

19. This appeal deserves to be and is hereby dismissed.

20. There shall, however, no order as to costs.

Appeal dismissed.

AIR 1995 MADHYA PRADESH 228 "National Pure Food Suppliers v. State"

MADHYA PRADESH HIGH COURT

Coram : 2 U. L. BHAT, C. J. AND RAJEEV GUPTA, J. ( Division Bench )

National Pure Food Suppliers, Jabalpur and others, Petitioners v. State of M.P. and others, Respondents.

Misc. Petn. No. 4046 of 1986, D/- 2 -2 -1995.

M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.19(1) - AGRICULTURAL PRODUCE - Market fee - Levy of -Traders - Petitioners, owners of roller flour mills obtaining wheat supply from Food Corporation of India - Petitioners buying wheat which is notified, agricultural produce and are therefore, traders - Transactions between traders taking place in market area - Attracts levy of market fee. (Para 3)

B. L. Nema, for Petitioners; Sanjay Seth, Govt. Advocate (for Nos. 1 and 2), S. C. Jain (for No. 3) and M. Tamaskar (for Nos. 5 and 6), for, Respondents.

Judgement

U. L. BHAT, C. J.:- Petitioners, who are owners of roller flour mills, carry on separate business of manufacture and sale of Wheat flour, Aata, Maida and Rawa. They obtain supply of wheat from the Food Corporation of India, third respondent. Third respondent pays Mandi Fees on the wheat sold by it to customers under Sec. 19 of the M. P. Krishi Upaj Mandi Adhiniyam, 1972 and collects the same from the petitioners. Petitioners contend that Mandi fee is not leviable in regard to these transactions and in any event, the liability is on the petitioners as buyers and not on the third respondent as seller. It is also pointed out that at the relevant time the

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petitioners could not purchase wheat from the open market and were required compulsorily to take supplies from the third respondent. The Supreme Court has held that even such compulsory sales are 'sales' for the purpose of the Sales Tax Law. (See 14 STC 31 and 14 STC 316).

2. Section 19(1) of the M. P. Krishi Upaj Mandi Adhiniyam, 1972 deals with power to levy market fee. Every Market Committee shall levy market fees on notified agricultural produce brought for sale or bought or sold in the market area at such rates as may be fixed by the State Government from time to time. Sub-section (2) states that the market fees shall be payable by the buyer of the notified agricultural produce and shall not be deducted from the price payable to the seller. The Second Proviso to sub-section (2) of Sec. 19 reads thus:

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

There is no dispute that the transaction between the petitioners and the third respondent are commercial transactions. But the contention is that since the petitioners only buy wheat but do not sell or process the wheat, they are not traders and the transactions are not between third respondent and traders.

3. Section 2(p) of the 1972 Act as it stood at the relevant time read as under :

"(p) 'trader' means a person who in his normal course of business buys or sells any notified agricultural produce, and includes a person engaged in processing of agricultural produce."

Petitioners buy wheat which is a notified agricultural produce and are therefore, traders. Even as persons engaged in processing agricultural produce, they are traders. Therefore, the transactions involved in this case are transactions between the traders and these transactions take place in the market area, therefore, the seller has to pay market fee. The seller can undoubtedly collect the same from the buyer, for under sub-section (2) of Section 19, primary liability is on the buyer and he is prevented from deducting the same from the price payable to the seller.

4. There is no merit in the petition. The same is accordingly dismissed with cost of Rs.250/-. The security deposit will be adjusted towards costs.

Petition dismissed.

AIR 1990 MADHYA PRADESH 14 "Sumerchand Jain v. Shyamlal Agarwal"

MADHYA PRADESH HIGH COURT

(GWALIOR BENCH)

Coram : 2 DR. T. N. SINGH AND K. K. VERMA, JJ. ( Division Bench )

Sumerchand Jain, Petitioner v. Shyamlal Agarwal and others, Respondents.

M. P. No.1033 of 1986, D/- 7 -2 -1989.

M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.79 - M.P. Krishi Upaj Mandi (Adhisuchana Prakashan Riti, Bharsadhak Samiti Tatha Mandi Samiti Gathan) Niyam (1974), R.17, R.43 and R.44 - AGRICULTURAL PRODUCE - ELECTION - Petition challenging election on ground that nomination papers of some elected candidates were illegally rejected - Election petition by voter is maintainable.

Two different types of rights are envisaged under Rr. 17 and 43 respectively as indicated by the Chapter captions. Rule 17 is found in Ch. VIII which appertains to process of "nomination of candidates" while Ch. XI deals with the subject to "election petition". There is no doubt that during the course of election right to contest decision rendered on a nomination paper is made subject-matter of an appeal under R.17 and that right is reserved to the candidate or to his proposer. While, the right envisaged under R.43 is a wider right to be exercised by candidates as also by "any voter" of the constituency concerned. Thus an election can be validly challenged on ground of illegal rejection of nomination papers of some elected candidates by a voter of the constituency. (Paras 3, 5)

K.K. Lahoti, for Petitioner; R.D. Jain, for Respondents.

Judgement

ORDER:- Considering urgency of this matter, as it appertains to election of the Krishi Upaj Mandi Samiti, we have heard this expeditiously.

2. Return has come but nothing turns on that. What we have to read is found in its entirety in the impugned order itself. Thus, valid complaint in this matter against the impugned order is that it had been passed on misconception of law and in that regard we have to say something. We do not have an iota of doubt even reading what we found in para 8 of the impugned order that the nomination paper of respondents 9 to 13 in the election petition had been rejected illegally. It is the finding of the Tribunal disposing the election petition, that we accept to reiterate and enforce. The Tribunal has held in categorical terms that those persons had produced receipts and on that basis thereof the allegation against them of being defaulters could not be sustained. However, unfortunately, the election petition was dismissed on a different ground to which we presently advert.

3. There are two sets of Rules to be read in the relevant M. P. Krishi Upaj Mandi (Adhisuchana ………. Gathan) Niyam, 1974. Two different types of rights are envisaged under Rr. 17 and 43 respectively as indicated by the Chapter captions. Rule 17 is found in Chap, VIII which appertains to process of "nomination of candidates" while Chap. XI deals with the subject of "election petition". There is no doubt that during the course of election right to contest decision rendered on a nomination

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paper is made subject-matter of an appeal under R.17 and that right is reserved to the candidate or to his proposer. While, the right envisaged under R.43 is a wider right to be exercised by candidates as also by "any voter" of the constituency concerned. This appears clear from the provisions of sub-rule (5) of R.43.

4. The purpose of election petition and the result that may obtain on disposal of such a petition are clearly expressed in Rr. 43 and 44. As per R.43 (1), a declaration may be made in the election petition that an election of any or all the candidates is void among other reliefs that can be granted; while under R.44, an election may be declared void, among others, the ground that "any nomination paper has been improperly rejected".

5. In the instant case, we have no doubt at all that the election tribunal has acted illegally and without jurisdiction in dismissing the election petition, holding that the petitioner who was a voter had no right to agitate the question of illegal rejection of the nomination papers of the candidate who figured as respondents 9 to 13 in the election petition. On the finding of the Election Tribunal, the position of facts has been well established that their nomination papers had been illegally rejected and on that ground the election could be declared void but that was not done on misconception of law as hereinabove explained.

6. In the circumstances aforesaid, we have no hesitation to hold that the Additional Collector, Guna, who heard and decided the election petition, acted illegally and without jurisdiction in dismissing the election petition. We accept the findings arrived by him in para 8 of his order and we hold accordingly that the election was vitiated for illegal rejection of the nomination papers of not one but five candidates who figured as respondents 9 to 13 in the election petition. We, accordingly, declare the election to be void of the concerned constituency namely of Traders of Krishi Upaj Mandi Samiti, Ashoknagar.

7. In the result, the petition succeeds and is allowed but we make no order as to costs.

8. Shri Lahoti submits that while dismissing the election petition, the Additional Collector had also ordered forfeiture of the security. That order also stands quashed because of the view we have taken.

9. The outstanding amount of security shall be refunded to the petitioner.

Petition allowed.

AIR 1989 MADHYA PRADESH 34 "Sagar A. A. T. Vyapari Sangh v. Krishi Upaj Mandi Samiti"

MADHYA PRADESH HIGH COURT

Coram : 2 N. D. OJHA, C.J. AND FAIZANUDDIN, J. ( Division Bench )

The Sagar Anaj Avam Tilhan Vyapari Sangh, Petitioner v. Krishi Upaj Mandi Samiti, Sagar and another, Respondents.

Misc. Petns. Nos.222 of 1983 and 3411 of 1985, D/- 21 -3 -1987.

Constitution of India, Sch.7, List 2, Entry 5, Entry 9 and Entry 54 - M.P. Nirashriton Avam Nirdhan Vyaktiyon Ki Sahayata Adhiniyam (12 of 1970), S.4(1)(ii), S.4(3) and S.4(3A) - AGRICULTURAL PRODUCE - LICENSE - LEGISLATIVE COMPETENCE - S.4(1)(ii) levy is 'tax' covered by Entries 5, 9 and 54 of List II of Sch.VII of Constitution - Non-crediting thereof in Consolidated Fund does not invalidate the collection - Licence under M.P. Krishi Upaj Mandi Adhiniyam,1973 cannot be cancelled for nonpayment of above tax.

M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.32 and S.33.

The levy u/s.4(1)(ii) of the M.P. Adhiniyam, intended for the benefit of local authorities for use in setting up and maintaining homes for the destitutes and indigent persons in the area falling within the jurisdiction of the market area concerned and being a compulsory exaction of money for public purpose enforceable by law is 'tax' falling in Entry 54 and is also justifiable by Entries 5 and 9 of List II of the VII Schedule to the Constitution. Merely because the collection is not credited to the Consolidated Fund before being diverted to the public purpose concerned does not invalidate the collection. The amount has to be collected in the manner stated in the Act and the grant or renewal of licence under S.32 of the M.P. Krishi Upaj Mandi Adhiniyam, 1973 cannot be refused for non-payment of the tax under the 1970 Act. AIR 1972 SC 2563, AIR 1972 Madh Pra 95 and AIR 1987 SC 27, Followed. (Paras 11, 12, 13, 14, 15)

Cases Referred : Chronological Paras

AIR 1987 SC 27 : 1987 Tax LR 2065 (Followed) 13

AIR 1986 SC 726 6

(1986) M. P. No. 1413 of 1983, D/-22-7-1986 (Madh Pra), Anaz Vyapari Samiti Mandla v. Krishi Upaj Mandi Samiti Mandla 5

AIR 1972 SC 2563 : 1973 Tax LR 1607 (Followed) 10

AIR 1972 MP 95 : 1972 MPLJ 568 (Followed) 3, 6, 8

V.S. Dabir, for Petitioner; M.V. Tamaskar, Addl. Advocate General, for the State; K.N. Agarwal, for Respondent No. 2.

Judgement

N.D. OJHA, C.J. :- The Order in this petition shall also govern the disposal of M.P. No. 3411 of 1985 (Vyapari Sangh Chirmiri Kshetra, Chirmiri v. State of M. P. and another).

2. Petitioner 1 in M. P. No. 222/83 is an Association of traders, whereas petitioner 2 is a member of petitioner 1 Association. He is a trader holding licence under the M.P. Krishi Upaj Mandi Adhiniyam, 1973 (hereinafter referred to as the 1973 Adhiniyam). The petitioner in M. P. No. 3411/85 is an Association of grain and oilseeds dealers. Its members are dealers within the meaning of the Mandi Adhiniyam. S.6 of the Mandi Adhiniyam empowers the market committee to control marketing of notified agricultural produce and for this purpose, a dealer is required to take a licence which is renewed from time to time.

3. The case set up by the petitioners in these two writ petitions is that the dealers are being required to pay a portion of their purchased agricultural produce u/s.4 of the

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M.P. Nirashriton Avam Nirdhan Vyaktiyon Ki Sahayata Adhiniyam, 1970 (hereinafter referred to as the 1970 Adhiniyam). They have challenged the constitutional validity of the provisions contained in S.4(1)(i) of the 1970 Adhiniyam. In support of this challenge, they have placed reliance on the decision of a Division Bench of this Court in Bhagwandas v. State of Madhya Pradesh, 1972 MPLJ 568 : (AIR 1972 Madh Pra 95). In that case, the provisions of S.4(1)(i) of the 1970 Adhiniyam were held to be illegal.

4. For the respondent, on the other hand, it was urged by Shri M.V. Tamasker learned Addl. Advocate General, that the levy which is being realised from the traders is not one as contemplated by S.4(1)(i) of the 1970 Adhiniyam, but that which is leviable under CL.(ii) of S.4(1) which inter alia, provides that market committee constituted under the Act shall..... (ii) collect from the purchasers of agricultural produce within the market area :

(a) such agricultural produce;

(b) at such rate not more than 500 grams per quintal as the State Govt. may by general or special order, specify.

Section 5-B of the 1970 Adhiniyam permits collection of levy u/s.4 to be made in kind or cash. Counsel for the respondents has placed reliance on the same decision on which reliance has been placed by counsel for the petitioners, namely, the D.B. decision of this Court in case of Bhagwandas (supra). In that case, while striking down S.4(1)(i) of the 1970 Adhiniyam, it was held that Cl. (ii) was, in no way, invalid. The relevant discussion is to be found in paras 8 and 9 of the report. Referring to the submissions made in that case challenging the validity of this clause, it was held as under :

"We are unable to agree with this contention of learned counsel for the petitioners. This collection by the Market Committee is clearly in the nature of a purchase tax covered by Entry 54 of List II in the Seventh Schedule to the Constitution which is as follows :

"Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92-A of List I.

The Legislature having fixed the maximum rate at which grain can be collected under this head, the delegation of power to fix the actual rate according to the varying needs of each local authority, which would get the benefit of such collection, cannot be said to be excessive delegation. The rate would depend upon the number of destitutes who have to be cared for and the amount that is likely to be collected depending upon the extent of grain trade being carried on in a particular area. The power of the State Government under sub-sec. (2) of S.4 of the Act to distribute this collection in a given proportion among the local authorities coming within the jurisdiction of a particular market area is also an essential part of the delegation and must depend upon the varying circumstances of each area. We, therefore, hold that S.4, so far as it provides for the collection of grain from the purchasers and its distribution according to the directions of the State Government, is not illegal."

As seen above, the constitutional validity of Cl. (ii) was upheld relying on Entry 54 of List II of the Seventh Schedule to the Constitution.

5. Reliance was also placed by counsel for the respondents on a recent decision of another D.B. Anaj Vyapari Samiti Mandla v. Krishi Upaj Mandi Samiti Mandla, M. P. No. 1413 of 1983, D/-22-7-1986 (Madh Pra) taking a similar view.

6. Counsel for the petitioners, however, urged that the law laid down by this Court in case of Bhagwandas (AIR 1972 Madh Pra 95) (supra) is no longer a good law in view of the decision of the Supreme Court in Omprakash Agrawal v. Giri Raj Kishori, AIR 1986 SC 726. That was case where the constitutional validity of S.3 of Haryana Rural Development Fund Act (12 of 1983) was challenged. The said Section 3 contemplated levy of a cess, whereas sub-sec. (5) of S.4 entitled the State Government to spend the cess credited to the fund in the rural areas in connection with development of roads, hospitals, means of communication, water supply, sanitation facilities and for the welfare of agricultural labour or for any other scheme approved by the State Government for the development of the rural areas. The constitutional validity

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of S.3 was challenged on the ground that the cess contemplated by S.3 came within the purview of 'fee' and was liable to be quashed in the absence of quid pro quo.

7. In this connection, it would be relevant to point out certain observations made by the Supreme Court in para 7 of the report, it was held as under :

"In these appeals, we are relieved of the necessity of finding out whether the cess in question is a tax leviable by the State, since such a claim is not made before us. The only question which remains to be considered is whether the cess levied under the Act is of the nature of a fee levied or leviable on a dealer in a market area."

Thereafter, the distinction between 'tax' and 'fee' was pointed out and it was held that the levy of cess u/s. 3 was liable to be quashed inasmuch as it did not conform with the requirements of a valid levy of fee.

8. In the instant case, the validity of Cl. (ii) of S.4(1) of the 1970 Adhiniyam was upheld in the decision of Bhagwandas (AIR 1972 Madh Pra 95) (supra) relying on Entry 54 of List II of the Seventh Schedule as already indicated above. Before us also Shri Tamasker placed reliance on the said entry and submitted that the levy under Cl. (ii) was a valid levy under the said entry 54 of List II of the Seventh Schedule to the Constitution. Entry 54 is as follows as already noted above :

"54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I."

Clause (ii) starts with the words 'collected from the purchasers of agricultural produce'. Apparently the levy under Cl. (ii) is consequent on sale and purchase of agriculture produce which will constitute goods within the meaning of entry 54 of List II of Seventh Schedule to the Constitution. Reliance was placed by learned counsel for the respondents also on entries 5 and 9 of List II of the Seventh Schedule. It was urged that keeping in view the purpose for which the levy contemplated by S.4(1)(ii) was to be realised, the levy is justifiable even under the aforesaid two entries. Entries 5 and 9 read as under : -

"5. Local government, that is to say, the constitution and powers of municipal corporation, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

9. Relief of the disabled and unemployable."

Sub-secs. (3) and (3-A) of S.4(1) of the 1970 Adhiniyam mainly deal with the purpose for which the levy has been made. They are as under :-

"(3). The Collector may, by order; apportion 25% of the contribution payable by a market committee under Cl. (i) of sub-sec. (1) and of the collections made by a market committee under Cl.(ii) thereof between the several local authorities within the jurisdiction whereof the market area concerned falls.

(3-A). The amount remaining after apportionment under sub-sec. (2) shall be utilised for the purpose of setting up and maintaining homes for destitutes and indigent person in the area falling within the jurisdiction of the market committee concerned :

Provided that .........."

9. In this connection, it was urged by counsel for the petitioners that since the levy contemplated by Cl. (ii) of S.4(1) of the 1970 Adhiniyam was realised by the market committee, it could not be said that the levy was in the nature of tax. According to him, in order to justify levy as a tax, the impugned tax has to be realised by the State Government or the Local Authority which imposes the levy and in case of tax by the Government, the amount has to be credited in the consolidated fund of the State and since in the instant case these ingredients are lacking it is not possible to justify the levy as a tax.

10. In Asstt. Collector of Central Excise Calcutta v. National Tobacco Co. of India Ltd., AIR 1972 SC 2563 it has been held that the term 'levy' does not extend to 'collection'. Art.265 of the Constitution makes distinction between them. Since there is distinction between levy and collection, there may be cases where even though the levy may be justified, but the manner of collection may

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be invalid. Consequently even if in a given case it may be established that the manner of collection was wrong, on that ground alone, the levy cannot be invalidated.

11. Counsel for the petitioners placed reliance on certain decisions laying down the distinction between tax and fee. In our opinion, it is not necessary to consider those decisions in detail inasmuch as the distinction between 'tax' and 'levy' is, by now, well settled. 'Tax' is a compulsory exaction of money by public authority for public purpose enforceable by law. In the instant case, if the levy is found to be a compulsory exaction of money by a public authority for public purpose, it will squarely fall within the purview of a tax. As already seen above and particularly in view of the D.B. decision of this Court in case of Bhagwandas (supra), the levy falls within the entry 54 of List II of the Seventh Schedule to the Constitution.

12. It may also be pointed out that as is apparent from sub-secs. (3) and (3-A) of S.4 of the 1970 Adhiniyam, levy is for the benefit of local authorities within the jurisdiction whereof the market area falls and the amount which remains after allotment to the local authorities, is under sub-see. (3-A) to be utilised for the purpose of setting up and maintaining homes for the destitutes and indigent persons in the area falling within the jurisdiction of the market area concerned.

13. In Kasturilal Harlal v. State of U. P., AIR 1987 SC 27, it was held as under :

"It is now well settled that an entry in a legislative List must be read in its widest amplitude and the legislature must be held to have power not only to legislate with respect to the subject matter of the entry, but also to make ancillary or incidental provision in aid of the main topic of legislation. "

If the exaction contemplated by S.4(1)(ii) of the 1970 Adhiniyam is for public purpose which in view of the provisions contained in sub-secs. (3) and (3-A) cannot be doubted, the mere fact that the amount of tax in place of being first credited to the consolidated fund before being diverted to the public purpose concerned is straightway permitted to be utilised for the public purpose concerned by making a provision for its collection and utilisation by a public authority, it will not invalidate even the collection. The levy would thus be justified in view of entry 54 of List II of the Seventh Schedule. It can also be justified keeping in view the purpose for which the levy has been made and in the light of the observations made by the Supreme Court in case of M/s. Kasturilal Harlal (supra) even under entries 5 and 9 of List II of the Seventh Schedule to the Constitution.

14. Lastly it was urged that even if the levy contemplated by Cl. (ii) of S.4(1) of the 1970 Adhiniyam was justified as a tax, it could be collected only in the manner provided for in the 1970 Adhiniyam and for non-payment of the tax, the licence of a dealer granted to him under the provisions of the M.P. Krishi Upaj Mandi Adhiniyam 1973 could neither be revoked nor could its renewal be refused. So far as this submission in concerned, we find substance therein. S.32 of the Krishi Upaj Mandi Adhiniyam deals with the power to grant licences. This section also deals with the renewal of the licences. S.33 of the said Adhiniyam on the other hand, deals with the power to cancel or suspend the licences. The various grounds on which a licence can be cancelled or suspended are to be found in S.33. Likewise the criteria for granting or renewing a licence are to be found in S.32. Nothing has been brought to our notice which may entitle the market committee to either refuse, to renew the licence of a dealer or to cancel or suspend his licence on the ground of non-payment of a tax levied by Cl. (iii of S.4(1) of the 1970 Adhiniyam which is an Act different from the M.P. Krishi Upaj Mandi Adhiniyam, 1973 under which the licence is granted. Each writ petition, even though it must fall in view of the foregoing discussion in so far as it challenges the validity of the levy, it has to be allowed to this extent that the respondents have to be directed not to take any action either for cancellation or suspension of licences of dealers or to refuse renewal of the licences on the ground of nonpayment of the levy aforesaid.

15. In the result, these two writ petitions, in so far as they challenge the validity of levy contemplated u/s.4(1)(ii) of the 1970

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Adhiniyam, fail and are dismissed. However, they are allowed to this extent that the respondent No. 1 in writ petition No. 222/83 and respondent 2 in writ petition No. 3411/85 namely the Mandi Samitis concerned are directed neither to refuse renewal of licences of dealers carrying on business within their respective areas, nor to suspend or cancel their licences for non-payment of the levy u/s.4(1)(ii) of the Adhiniyam of 1970. It shall, however, be open to them to collect the said levy in the manner provided for in the 1970 Adhiniyam. In the circumstances of the case, parties shall bear their own costs. Security amount be refunded to the petitioners.

Petitions partly allowed.

AIR 1988 MADHYA PRADESH 210 "Maheshkumar v. Addl. Collector, Hoshangabad"

MADHYA PRADESH HIGH COURT

Coram : 2 B. C. VARMA AND RAMPAL SINGH, JJ. ( Division Bench )

Maheshkumar, Petitioner v. Additional Collector, Hoshangabad and another, Respondents.

Misc. Petn. No. 4196 of 1986, D/- 30 -10 -1987.

M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.2(b) and S.11 - INTERPRETATION OF STATUTES - AGRICULTURAL PRODUCE - Election as member of Samiti - Member must be agriculturist Term "agriculturist" - Person should be wholly dependent on agricultural produce - He must also be cultivating on his own account - Word 'wholly' cannot be excluded in interpreting word "agriculturist" - Hardship or inconvenience cannot be taken into consideration - Person who is also a partner of a firm engaged in cloth business cannot be an agriculturist - Interpretation of statutes - Even persons engaged in trade connected with agricultural produce are not agriculturist - Plain words. (Paras 3, 4, 5)

Cases Referred : Chronological Paras

AIR 1974 SC 130 : 1974 Lab IC 149 3

AIR 1954 SC 749 3

AIR 1952 SC 369 3

AIR 1945 PC 48 : 46 Cri LJ 589 3

N.C. Jain with A.D. Deoras, for Petitioner; V.S. Shroti, for Respondent No. 2.

Judgement

B.C. VARMA, J. :- The petitioner filed his nomination paper claiming to be an agriculturist for election as Member of Krishi Upaj Mandi Samiti, Banapura His nomination paper was accepted. He contested the election and was duly elected. Voter Kailash, son of Mathura Prasad filed an election petition questioning the petitioner's election on the ground inter alia that the petitioner was not 'an 'agriculturist' within the meaning of S.2(b) of the Madhya Pradesh Krishi Upaj Mandi Adhiniyam (hereinafter referred to as the 'Act') as he was engaged in doing cloth business as a partner with his brothers. The

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heard the election petition found that the petitioner was a partner in a Firm which still exists and carries on cloth business. For this conclusion certain circumstances apart from oral testimony have been relied upon. Petitioner's statement that he was a partner in a Firm which was engaged in cloth business has also been taken into consideration. On this finding, it has been held that the petitioner was not entitled to contest the election as an agriculturist. Shri Jain, learned counsel for the petitioner urged that in view of the definition of the term 'agriculturist' contained in S.2(b) of the Adhiniyam, the petitioner should have been held to be an agriculturist.

2. In order to appreciate the contention raised on behalf of the petitioner it shall be useful to quote the definition of the term 'agriculturist' contained in S.2(b) of the Adhiniyam. It is as follows :-

2(b) "agriculturist" means a person whose source of livelihood is wholly dependent on agricultural produce and who cultivates land on one's own accounts :

(i) by One's own labour; or

(ii) by the labour of the either spouse or

(iii) under the personal supervision of oneself or any member of One's family referred to in sub-cl. (ii) above by hired labour or by servants on wages payable in cash or kind but not as crop share.

In view of this definition the person shall be an 'agriculturist' for the purpose of the Adhiniyam only when : (1) his source of livelihood is wholly dependent on agricultural produce and (2) he cultivates land on one's own account in the manner specified in three subclauses of cl.(b). A trader, commission agent, processor, broker, weighman or hammal has been expressly excluded from the term 'agriculturist' within this definition and therefore, includes only such persons who are wholly dependent on agricultural produce and who are themselves engaged in cultivation of their land. The stress seems to be on the complete dependence on agricultural produce and who are themselves engaged in cultivation of their land. The stress seems to be on the complete dependence of livelihood on agriculture. If source of livelihood of a person is dependent on agricultural produce as also on some other profession or business or there is any other source of livelihood of a person, he cannot be said to be an agriculturist as defined under the Adhiniyam. In this there appears to be a significant departure from the original definition of the term, according to which, an agriculturists would mean a person whose main source of livelihood is dependent on growth of agricultural produce or growth of agricultural production. In the earlier definition there was a scope for treating as agriculturist even such persons who had additional source of livelihood apart from agricultural produce as main source of livelihood. The definition as it now stands does not permit of such construction and the departure by substituting the words "whose source of livelihood is wholly dependent on agricultural produce" for the words "whose main source of livelihood is dependent on production" is significant. If, therefore, a person's source of livelihood is dependent on some other activity besides agricultural produce, it will be difficult to hold him an 'agriculturist' within the meaning of the terms as defined in S.2(b) of the Adhiniyam.

3. We are not impressed with the argument advanced by the learned counsel for the petitioner that the word 'wholly' occurring in the main clause of definition should be ignored in view of the subsequent clauses expressing the intention of the legislature that there should be representation by persons engaged in agriculture and capable of promoting agriculture. Learned counsel submitted that the literal meaning will defeat the object of the Adhiniyam. In our opinion there is no room for such a construction. It is now well settled that when the words of a statute are clear, plain or unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. In Emperor v. Benoarilal Sharma, AIR 1945 PC 48 Viscount Simonds, L.C. said "Again and again this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise which may follow from giving effect to the language used". In Rananjaya Singh v. Baijnath Singh AIR 1954 SC 749 S.R. Das, J. observed. "The spirit of the law may well be an elusive and

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unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the Sections of the Act". The rule is that after construing the words if the conclusion is that they can bear only one meaning, the duty is to give effect to that meaning. It is also settled rule of construction that while on one hand it is not permissible to add words or to fill any gap or lacuna, efforts on the other hand should be made to give meaning to each and every word used by legislature. Patanjali Shastry, C.J. in Aswini Kumar Ghose v. Arabinda, Bose, AIR 1952 SC 369 at P. 377 said to brush aside words in a statute as being inappropriate surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute (Sic). The legislature is not supposed to waste words or to say just anything in vain. A construction which attributes redundancy to legislature will not be accepted except for compelling reasons. Such is the rule laid down in Ghanshyamdas v. Regional Asstt. Commr. Sales Tax AIR 1964 SC 766 (See also D.R. Jerry v. Union of India AIR 1974 SC 130).

4. In the instant case, no compelling reason was assigned to permit this court to exclude the word 'wholly' occurring in the definition of the term 'agriculturist'. On the other hand, as we have pointed out above this term has been inserted by an amendment and presumably deliberately and, therefore, full effect must be given to its meaning.

5. Nothing also turns upon the submission made by Shri Jain, learned counsel for the petitioner, that if a small farmer is to make some income from other sources to supplement his agricultural income he shall have to be excluded from this definition if effect is given to the word 'wholly' occurring in the definition of the term 'agriculturist'. He also submitted that persons who save income from agriculture and invest those savings elsewhere and make income shall also have to be excluded. In our opinion much will depend upon the circumstances and facts of a given case and from facts it has to be ascertained whether the person's source of livelihood is completely dependent upon agricultural produce. The inference shall certainly depend upon the circumstances of a given case. We are further of the opinion that term 'agriculturist' as defined in S.2(b) of the Adhiniyam is open only to one meaning as we have shown and, therefore, hardship or inconvenience or surprising results, as the learned counsel for the petitioner has formulated, may be no consideration for refusing to give that meaning. We are, therefore, of the opinion that it will not be possible to omit the word 'wholly' occurring in the definition of the term 'agriculturist' in S.2(b) of the Adhiniyam while construing its meaning.

6. It was also urged that the definition of the term 'agriculturist' as it now stands after the amendment of the original definition is misleading for it may include even those who are engaged in trade connected with agriculture. The argument is wholly misconceived. A plain reading of the definition of the term 'agriculturist' contained in S.2(b) of the Adhiniyam itself would indicate that to be an agriculturist a person's source of livelihood should be wholly dependent on agricultural produce and in addition he must cultivate the land on his own account. The term expressly excludes trader, commission agent, processor, broker, weighman or hammal of agricultural produce although such trader, commission agent, processor, broker, weighman or hammal may also be engaged in production of agricultural produce. It can thus be plainly seen that persons engaged in trade connected with agricultural produce although engaged in production of agricultural produce are not 'agriculturist'. This contention, therefore, is rejected.

7. The Additional Collector deciding this dispute has, in the present case, found as a fact that the petitioner is a partner of a Firm which is engaged in doing cloth business. Return filed by the partnership Firm under the Sales Tax Act shows that the firm did have a considerable turnover. It has been found that the petitioner's source of livelihood is not wholly dependent upon agricultural produce. On these findings the petitioner has rightly been found not to be an agriculturist and his election has rightly been set aside.

8. The petition fails and is dismissed.

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There shall be no order as to costs. Security amount, if any, be refunded to the petitioner.

Petition dismissed.

AIR 1988 MADHYA PRADESH 236 "Bahadur Singh v. Pahalwan Singh"

MADHYA PRADESH HIGH COURT

(GWALIOR BENCH)

Coram : 2 Dr. T. N. SINGH AND R. M. RASTOGI, JJ. ( Division Bench )

Bahadur Singh, Petitioner v. Pahalwan Singh and others, Respondents.

Misc. Petn. No. 472 of 1987, D/- 8 -2 -1988.

Constitution of India, Art.226 - M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.79 - M.P. Upaj Mandi (Adhisuchana Prakashan Riti, Bharsadhak Samiti Tatha Mandi Samiti Gathan) Niyam (1974), R.44(2)(d)(iii) - AGRICULTURAL PRODUCE - ELECTION - Election petition - Clear finding by Election Tribunal that ballot paper which was valid vote as it showed seal or stamp being impressed on it, was counted illegally in favour of elected candidate - Opportunity to elected candidate for examining Handwriting Expert on that point - Not necessary - No violation of R.44 - R.38 also cannot be invoked for invalidating of Election Tribunal as it is applicable stage of counting only - Election petition liable to be dismissed. (Paras 5, 5-A, 6, 7)

N.K. Jain, for Petitioner; R.C. Lahoti, A. Dudawat, Addl. Govt. Advocate and J.S.L. Sinha, for Respondents.

Judgement

Dr. T.N. SINGH, J. :- A torn and tattered petition it is, so it is contended by respondent's counsel. Because, for the battered cause relief has to be sought in popular mandate and not in legal battle. That counsel submits, is the crux of the matter.

2. The result of petitioner's election to a Mandi Samiti has been found materially affected by the Election Tribunal as a result of a ballot paper being "received" (counted) in favour of the petitioner. On that ground petitioner's election has been set aside. It is contended, therefore, that there would be no complaint to be heard by us on the writ side.

3. Indeed, another forceful contention pressed at the threshold by Shri Lahoti is that necessary parties not being before the Court today the petition is not maintainable and no relief can be granted to the petitioner. In this connection the fact which is not denied is that respondents Nos. 2 to 5, who would now be the candidates in the re-election were given up and they were not noticed on the prayer made by the petitioner. Both contention pressed by Shri Lahoti are supported by Shri J.S.L. Sinha and Shri Arvind Dudawat, appearing for the Mandi Samiti and State respectively.

4. Despite the preliminary objection, which ought to prevail, we have looked into petitioner's grievance on merit. In so far as the relevant rules are concerned we have no doubt that there is no violation of R.44 of the M.P. Upaj Mandi (Adhisuchana Prakashan Riti, Bharsadhak Samiti Tatha Mandi Samiti Gathan) Niyam, 1974. The Election Tribunal, namely, the Deputy Collector in this case, is authorised to declare void any election on any ground set out in sub-r. (2) and in the instant case the ground is covered by Cl.(d), sub-clause (iii) of sub-r. (2). There is a clear finding by the Election Tribunal that the ballot No. 7359 was counted illegally in favour of the respondent in the election petition and the result of his election was accordingly materially affected. Taking that view the election of the said respondent before him was set aside.

5. Main contention of Shri N.K. Jain, counsel appearing for the petitioner, who figured as the respondent before the Election Tribunal, is that there was serious challenge to the validity of the said ballot paper and there ought to have been inquiry into that. In other words, the respondents ought to have been given by the Election Tribunal opportunity to examine a Handwriting Expert to do a special thing, namely, to identity whether on the ballot paper there was impressed any seal or stamp indicating exercise of franchise. We fail to understand how this contention could at all be pressed before us or the Election Tribunal. Because, the Handwriting Expert would not have bee allowed to give his opinion on the question of seal or stamp. It was a case of simple

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examination of the ballot paper in question with naked eyes to see whether any seal or stamp was impressed thereon and that exercise could have been validly undertaken only by the Election Tribunal. Indeed, there would have been room for some grievance if that had not been done by the Election Tribunal and the Tribunal, instead of discharging its duty, had accepted an "opinion" to influence him.

5-A. On perusal of the order passed on petitioner's application by the Election Tribunal, on 5-5-1987, we are satisfied that the right thing was done by the Election Tribunal having looked itself at the ballot-paper and taken the view that the ballot in question was a valid "vote" as it showed the seal or stamp being impressed on it. Indeed, the only question which had to be decided was whether it ought to be counted in favour of the petitioner by the Counting Officer which was challenged by the respondent. He took the view on perusal of the ballot-paper and on examination of the seal that the franchise exercised in respect thereto favoured the Election Petitioner and not the respondent.

6. Faced with this situation Shri N.K. Jain has still urged that we look at R.38 and hold that the Election Tribunal failed in its duty in not acting thereunder inasmuch as on the concerned ballot being counted in favour of the election-petitioner there was equality of votes. To this contention also there is a short answer that R.38 does not apply to the Election Tribunal and at the stage of counting only Rule 38 can be invoked. An Election Tribunal has to act within the parameters of R.44 and not beyond that. It can only declare void any election on any of the "grounds" enumerated in sub-r. (2) as is clearly reflected in the ambit of its jurisdiction defined in sub-r. (1).

7. For the several foregoing reasons we have no hesitation to hold that the petition is wholly meritless and we do not see any reason to interfere with any of the two impugned orders passed by S.D.O. on 6-6-1987 and by the Collector on the same date confirming the order of the S.D.O.

8. In the result, the petition fails and is dismissed but in the facts and circumstances of the case no order as to costs.

Outstanding amount of security, if any, shall be refunded to the petitioner.

Petition dismissed.

AIR 1988 MADHYA PRADESH 281 "Chandra Shekhar v. Krishi Upaj Mandi Samiti, Seoni"

MADHYA PRADESH HIGH COURT

Coram : 2 N. D. OJHA, C.J. AND K. K. ADHIKARI, J. ( Division Bench )

Chandra Shekhar Agarwal, Petitioner v. Krishi Upaj Mandi Samiti, Seoni and others, Respondents.

Misc. Petn. No. 2765 of 1987, D/- 10 -9 -1987.

M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.37(2)(c) (as substituted by Act 24 of 1986) - AGRICULTURAL PRODUCE - LICENSE - Validity - Failure on part of purchaser to pay price of agricultural produce to seller - Automatic cancellation of licence without affording any opportunity to purchaser to show cause - Held, excluding rule of natural justice would not render S.37(2)(c) as ultra vires. (Paras 9, 10)

Cases Referred : Chronological Paras

AIR 1971 SC 40 : 1971 Lab IC 8 7

AIR 1970 SC 150 7

K.N. Agarwal, for Petitioner; S.L. Saxena, Addl. Advocate General, for Respondents.

Judgement

N.D. OJHA, C.J. :- This writ petition seeks quashing of the order dated 15-1-1987, a copy whereof has been filed as Annexure-E with the writ petition.

2. The petitioner is carrying on business of grains at Seoni and holds a licence from the Krishi Upaj Samiti, Seoni, the respondent No. 1, for the said purpose. By the impugned order dated 15-1-1987, the petitioner was informed that this licence had been cancelled for non-payment of the amount mentioned in the said order which according to the petitioner, represents the amount of interest on the price of agricultural produce as the said amount of price had not been paid by the petitioner to the agriculturist concerned within 5 days of the date of sale. The cancellation purports to be under S.37(2) of the M.P. Krishi Upaj Mandi Adhiniyam, 1973, (hereinafter referred to as the Adhiniyam). The constitutional validity of Cl.(c) of Sub-Sec. (2) of S.37 has also been challenged in the present writ petition.

3. In order to appreciate the submission made by the learned counsel for the petitioner, it may be pointed out that Sub-Sec. (2) of S.37 of the Adhiniyam, as it stood earlier, was substituted by the M.P. Act No. 24 of 1986. It is this substituted provision which is sought to be declared as ultra vires.

4. For the sake of convenience, Sub-Sec. (2) of S.37 so substituted, is reproduced as hereunder

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"(2)(a). The price of the agricultural produce bought in the market yard shall be paid on the same day to the seller at the market yard;

(b) In case the purchaser does not make payment under clause (a), he shall be liable to make additional payment at the rate of one per cent per day of the total price of the agricultural produce payable to the seller within five days;

(c) In case the purchaser does not make payment with additional payment to the seller under clauses (a) and (b) above within five days from the day of such purchase, his licence shall be deemed to have been cancelled on the sixth day and he or his relative shall not be granted any licence under this Act for a period of one year from the date of such cancellation.

Explanation : For the purpose of this clause, 'relative' means the relative as specified in the explanation in clause (a) of Sub-Sec. (1) of S.11."

5. According to the petitioner, the date of sale of the agricultural produce concerned was not 18-11-86, but was 22-11-1986. Without going into its merits, even if it is accepted for the sake of argument that the date of sale was 22-11-1986, the price had to be paid either on the same date as contemplated by Cl.(a) or within five days thereof, together with interest as contemplated by Cl.(b).

6. Nothing has been brought to our notice a in this writ petition to indicate that price of the goods purchased by the petitioner was paid either on 22-11-86 or within five days thereof together with interest. That being so as a consequence thereof, the deemed cancellation of the petitioner's licence, as provided in Cl.(c) was automatic and no exception can be taken to the impugned order.

7. The plea about cl.(c) of Sub-Sec. (2) of S.37 being ultra vires may now be considered. The ground on which the said clause is sought to be declared ultra vires is that cancellation of the licence has been made automatic without affording any opportunity to the purchaser to show cause. In other words, the submission made by the learned counsel for the petitioner is that cl.(c) of Sub-Sec. (2) of S.37 is ultra vires being in violation of the rules of natural justice. On the facts of the instant case, we find it difficult to agree with this submission also. In Union of India v. J.N. Sinha, AIR 1971 SC 40 it was held :

" Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in Kraipak v. Union of India, AIR 1970 SC 150 'the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law but supplement it.' It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural justice, then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

8. There seems to be a definite purpose in excluding the requirement of the rule of natural justice in enacting Cl.(c) of Sub-Sec. (2) of S.37. Section 33 of the Adhiniyam is the Section dealing with the power to cancel or suspend the licence. Sub-Section (1) of S.33 enumerates various contingencies in which licence can be suspended or cancelled. Sub-Sec. (4) of S.33 provides that no licence shall be suspended or cancelled under this Section without giving an opportunity to show cause against such suspension or cancellation.

9. In enacting Cl.(c) of Sub-Sec. (2) of S.37, on the other hand, the legislature made a deliberate departure in the matter of issuing

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show cause notice to the person whose licence as deemed to have been cancelled on the happening of the contingencies enumerated in Cls. (a) and (b) of Sub-Sec. (2) of S.37. The Adhiniyam itself was enacted, as is well known for the benefit of the agriculturists and Sub-Sec. (2) of S.37 is aimed at achieving that purpose. An agriculturist, particularly in a State like M.P. having vast area, has to go to the market yard sometimes from long distance for selling his agricultural produce and the purpose of requiring payment of price of agricultural produce so sold as contained in Cl.(a) obviously was to ensure that the agriculturist may not be put to any inconvenience and discomfort so that he may be in a position to go back home to attend to his normal duties after selling the agricultural produce. In order to meet the situation where the purchaser may not be in a position to pay the price of the agricultural produce on the same day, concession was given to him to make payment within five days of the date of sale with interest as already indicated above. Requirement of paying additional amount as interest, as contained in Cl.(b) was again aimed at to compensate him for the expenditure which he may incur in staying a at a place away from his home. It is to ensure compliance of this requirement of payment of price of agricultural produce to the agriculturist that the consequence of deemed cancellation of the licence was provided for in Cl.(c) as deterrent. In our opinion, in this background it cannot be said that excluding the rule of natural justice would under Cl.(c) as ultra vires.

10. The matter can be looked into from other angle. Clause (c) contemplates that the licence would be deemed to have been cancelled on the sixth day if payment, as contemplated in Cls. (a) and (b) had not been made within five days from the date of purchase. If payment had not been made as required by Cls. (a) and (b), there was nothing being left to prove on a show cause notice being given. If on the other hand payment had been made as required but under some misapprehension, the licence is deemed to have been cancelled, the licensee, whenever is faced with such misconceived deemed cancellation of his licence, can show that he had made the requisite payment within five days of the date of purchase and consequently, the condition precedent for happening of the contingency of deemed cancellation, was not satisfied and as such, there could be no deemed cancellation.

11. For these reasons, the submission made by the learned counsel for the petitioner that Cl.(c) of Sub-Sec. (2) of S.37 was ultra vires also has no substance.

12. No other point has been pressed.

13. In the result, we find no merit in this petition. It is accordingly, dismissed.

Petition dismissed.

AIR 1983 MADHYA PRADESH 126 "M. N. Agrawal, M/s. v. Krishi Upaj Mandi Samiti, Itarsi"

MADHYA PRADESH HIGH COURT

Coram : 2 J. S. VERMA AND M. D. BHATT, JJ. ( Division Bench )

M/s. Manakchand Nathuram Agrawal, Petitioner v. Krishi Upaj Mandi Samiti, Itarsi. Respondent.

Misc. Petn. No. 340 of 1981, D/- 22 -2 -1983.

(A) M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.2(m), S.19(1) - WORDS AND PHRASES - AGRICULTURAL PRODUCE - Levy of market fee - Words "Notified agricultural produce" in under - Words refer to notification under S.4 and not under S.3 - Failure to produce notification under S.3 is immaterial.

The definition of notified agricultural produce in S.2 (m) refers to the notification under S.4 and not the earlier notification under S.3 which merely declares the intention to establish a market. (Para 4)

Hence, where the petitioner challenged the levy of a market fee on sale transactions of four items of agricultural produce namely Mungfali with or without chilka, Til, sarson and Binaulla, but the Krishi Upaj Samiti which levied the market fee, failed to produce the prior notification u/s.3 declaring the intention to constitute a market before it was so established by the subsequent notification establishing the market which was already filed by the samiti, this defect could not be said to be sufficient to indicate that these items were not notified agricultural produce within the meaning of S.2 (m) by virtue of S.19(1) and there was no lawful authority for recovery of market fee in respect of these items sold in the market area. (Para 4)

(B) M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.19(1) - SERVICE TAX - AGRICULTURAL PRODUCE - Levy of market fee - Validity - Presence of element of quid pro quo essential.

Constitution of India, Art.265.

A substantial amount of the market fec realised must be correlated to the services rendered to the person from whom the fee is charged. Where the Krishi Upaj Mandi Samiti levied some market fee and the Samiti filed the particulars of the expenditure incurred out of the amount so recovered which indicated that utilisation of most of the amount collected has been on construction of buildings and providing, amenities for the benefit of the purchasers coming to the market area and the facilities extended included even free telephone service to them and so the Samiti utilised at least 2/3rd if not 3/4th or even more of the amount collected on such items related to the service rendered to the purchasers of the agricultural produce in the market area, this would indicate presence of the element of quid pro quo and levy could not be said to be illegal. (Para 5)

Cases Referred : Chronological Paras

AIR 1981 MP 30 : 1981 MPLJ 117 5

M.C. Nihlani, for Petitioner; V.S. Shroti, for Respondent.

Judgement

J. S. VERMA, J. :- The petitioner firm carries on business of a grain merchant and commission agent at Itarsi. The challenge in this petition under Art.226 of the Constitution is to the levy of market fee by the respondent Krishi Upaj Mandi Samiti, Itarsi, on the sale transactions of four items of agricultural produce, namely, Mungfali with or without Chilka, Til, Sarson and Binaulla. The rate of market fee prescribed is fifty paise per one hundred rupees of the price obtained in the transaction and is to be paid ordinarily by the purchaser of the agricultural produce, and in case he cannot

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be identified, by the seller. This levy is made under the provisions of the M. P. Krishi Upaj Mandi Adhiniyam, 1972 (No. 24 of 1973).

2. Shri M.C. Nihlani, learned counsel for the petitioner confined the attack to the levy of market fee on these four items of agricultural produce only on two grounds. His first contention is that the market fee being recoverable only on notified agricultural produce as defined in S.2(m), by virtue of Sec.19 (1) of the Act, and these items of agricultural produce not being so notified, there is no lawful authority for its recovery in respect of these items sold in the market area. The other contention of the learned counsel is that there is no quid pro quo for recovery of the market fee, which is a sine qua non of its validity.

3. The aforesaid first contention has no merit. Section 2 (m) of the Act defines 'notified agricultural produce' as any produce specified in the notification issued under Section 4. Section 3 of the Act provides for notification of the intention to establish a market for regulating purchase and sale of such agricultural produce and in such area as may be specified in the notification. Objections to the same received within a specified period are then to be considered and establishment of the market is required to be notified under S.4 of the Act. Section 4 of the Act provides for another notification by the State Government to establish a market for the area specified in the notification under S. 3 or any portion thereof for the purpose of this Act in respect of all or any of the kind of agricultural produce specified in the earlier notification. Thus, Section 3 provides for notification of the intention to establish such a market and Sec.4 for notification establishing the market, after considering and deciding the objections and suggestions as may be received in response to the notification issued under S.3. Section 19 (1) of the Act empowers the Market Committee to levy market fee on notified agricultural produce brought for sale in the market area at such rates as may be fixed from time to time, subject to the minimum rate of fifty paise for every one hundred rupees of the price. As earlier stated, 'notified agricultural produce' on the sale of which, within the market area, market fees can be levied, is defined in S.2(m) as any produce specified in the notification issued under S.4. In the present case, the relevant notification under S.4 of the Act has been produced by the respondent and is at page 22 of the Paper Book. This notification was issued under the M. P. Agricultural Produce Market Act, 1960, which Act has been repealed under Sec. 82 of this Act, but the saving therein provides for continuance of the markets established, market areas declared and agricultural produce notified, etc., under the repealed Act. There is no dispute that this notification continues to be operative. A bare perusal of the same is sufficient to indicate that all the four aforesaid items of agricultural produce in respect of which this petition has been filed, are notified therein so as to satisfy the definition of 'notified agricultural produce' contained in Section 2 (m) of the Act.

4. Faced with this situation, Shri Nihlani has contended that the respondent has not produced the prior notification under Sec. 3, declaring the intention to constitute a market before it was so established by the subsequent notification establishing the market, which has been filed by the respondent. Learned counsel contends that this defect is sufficient to indicate that these items are not notified agricultural produce. It is difficult to accept this submission. The definition of notified agricultural produce in S.2 (m) refers to the notification under S.4 and not the earlier notification under S.3, which merely declares the intention to establish a market. It having been shown that all these four items of agricultural produce were duly notified so that they are notified agricultural produce, the first contention must be rejected.

5. The second contention of Shri Nihlani may now be considered. Shri Nihalani relied on a decision of this Court in Sajjan Mills Ltd. v. Krishi Upaj Mandi Samiti, Ratlam, 1981 MPLJ 117 : (AIR 1981 Madh Pra 30) to point out the essentials for upholding the validity of such a fee. Referring to the earlier decisions of the Supreme Court and the settled law on the point, it was reiterated in that decision that a substantial amount of the fee realised must be correlated to the services rendered to the person from whom the fee is charged, and where this proportion was 2/3rd or 3/4th of the collection made, the validity of the imposition of fees can be upheld, since the essential element of quid pro quo is made out in such cases. In that case, the market fee was raised from fifty paise per one hundred rupees of the price to rupee one per one hundred rupees of the price and it was the increase above fifty paise, which was challenged and was held to be invalid. The validity of imposition to the extent of fifty paise per one hundred

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rupees was not even challenged. The increase above fifty paise was quashed on account of the fact that its utilisation indicated its expenditure on items which were not correlated to the services rendered to the person from whom fee was charged. Apart from the fact that the amount of fifty paise per one hundred rupees of the price is the minimum prescribed by the statute, the amount is really so insignificant that not much scrutiny is required for determining the essential element of quid pro quo necessary to uphold the validity of this fee. The respondent has filed particulars of the expenditure incurred out of the amount so recovered which indicates that utilisation of most of the amount collected, has been on construction of buildings and providing amenities for the benefit of the purchasers coming to the market area and the facilities extended included even free telephone service to them. Having perused the items on which expenditure had been incurred by the respondent out of the market fees collected. We are satisfied that utilisation of at least 2/3rd, if not 3/4th or even more, of the amount collected is on items related to the service rendered to the purchasers of the agricultural produce in the market area. There is thus material to indicate presence of the element of quid pro quo essential to the validity of the levy. In our opinion, the levy of the market fees cannot be successfully challenged even on this ground. This contention also fails.

6. Consequently, the petition is dismissed. There will be no order as to Costs. The security amount be refunded to the petitioner.

Petition dismissed.

AIR 1981 MADHYA PRADESH 30 "Shri Sajjan Mills Limited v. Krishi Upaj Mandi Samiti"

MADHYA PRADESH HIGH COURT

Coram : 2 G. P. SINGH, C.J. AND B. C. VARMA, J. ( Division Bench )

Shri Sajjan Mills Limited, Ratlam, Petitioner v. Krishi Upaj Mandi Samiti, Ratlam and others, Respondents.

Misc. Petn. No. 272 of 1979, D/- 25 -8 -1980.

(A) M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.2(1)(j), S.2(1)(p), S.32, S.6 - AGRICULTURAL PRODUCE - Market functionary - Definition of - Includes a textile mill it being a "trader" - It must obtain licence for purchasing cotton in market area - Not exempt under S.6(b) - User for trade or commerce - Not private consumption within S.6(b).

The definition of "market functionary" in Section 2(1)(i) does not in term include a manufacturer. All the same it includes a 'trader' which according to Section 2(1)(p) means a person who in his normal course of business buys or sells any notified agricultural produce. (Para 4)

A textile mill which manufactures textiles and for which purpose it buys cotton which is a notified agricultural produce in the normal course of business would be a trader under S.2(1)(p) and as such a market functionary; and since it operates in the market area of the Market Committee as a trader in respect of notified agricultural produce (cotton), it would be bound to take licence in terms of S.32 before it can be permitted to so operate in market area. (Para 4)

The fact that textile mill uses the purchased cotton solely for the purpose of manufacturing cloth does not mean that it is exempted under the proviso to S.6(b) from taking licence. The expression "own private consumption" occurring in Cl.(a)(ii) of the proviso to S.6(b) covers sale or purchase of agricultural produce for being used up by an individual as opposed to sale or purchase for purposes of trade and commerce. (Para 5)

(B) M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.19 - AGRICULTURAL PRODUCE - Market fee - Enhancement of fate - No relation to service to be rendered - Enhancement is invalid.

Constitution of India, Art.265.

Where the Market Committee had raised the market fee from 0.50 to Re. 1.00 per one hundred rupees of the purchase price under the notification and it was specifically directed by the notification that the amounts so raised must be kept separate and should be spent only after issuance of direction by the State Government in that behalf, however the major amount of market fee collected was spent by the market Committee on the purchase of plant protection pesticides which was not a purpose correlated with the service to the buyers of agricultural produce, the levying and charging of market fee at more than 0.50 paise per one hundred rupees of the price would be invalid and illegal in view of theory of quid pro quo. AIR 1980 SC 1124, Distinguished. (Para 7)

(C) M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.19 - AGRICULTURAL PRODUCE - Levying of market fee - Agricultural produce purchased outside of market area and brought in market area but not for purpose of sale - Levy and recovery of market fee on such agricultural produce - Invalid. (Para 9)

(D) M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.33 - AGRICULTURAL PRODUCE - LICENSE - WRITS - Cancellation of licence - Opportunity to show cause not given - Order not showing reasons for cancellation - Cancellation would be in contravention of S.33.

Constitution of India, Art.226. (Para 10)

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Cases Referred : Chronological Paras

AIR 1980 SC 1008 7, 8

AIR 1980 SC 1124 : 1980 All LJ 490 8

AIR 1971 SC 344 : (1970) 2 SCR 348 7

AIR 1971 SC 1182 7

AIR 1968 SC 1119 : (1968) 8 SCR 374 : 1968 All LJ 926 7

A.K. Chitaley, for Petitioner; Y.S. Dharmadhikari, (for No. 1) and L.S. Baghel, Dy. Advocate General, (for Nos. 2 to 4), for Respondents.

Judgement

B. C. VARMA, J.:- The petitioner is a company engaged in the business of sale and manufacture of textiles. It has textile mills at Dhamnod Road, Ratlam, within the market area of Krishi Upaj Mandi, Ratlam (respondent No. 1), established under the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 (hereinafter called the Act). For the purpose of manufacture of textiles, the petitioner purchases unginned cotton from agriculturists. This cotton is then ginned, pressed and spinned and is then finally converted into finished product, viz., the cloth. All this process is undertaken by the petitioner in the Mills. The cloth is then marketed through dealers. 'Cotton' is one of the commodities included in the Schedule to the Act and is admittedly an 'agricultural produce' within the meaning of term as defined under Section 2(1)(a) as meaning all produce whether processed or not, of agriculture, horticulture, animal husbandry, apiculture, pisciculture, or forest. The petitioner has obtained a licence under Section 32 of the Act. The respondent No. 1 has levied and charged market fee for purchase of cotton from the petitioner. The rate of market fee so charged is at 0.50 per one hundred rupees of the price except for a period between 1-4-1976 to 31-7-1977 when market fee was charged at Re. 1/- per one hundred rupees of the price. The petitioner objected to levy and recovery of the market fee and also protested against its liability to take a licence under Section 32. By order dated 9-5-1977 (Annexure-C), the respondent-Samiti rejected the objection. Appeal/reference against the order of the Samiti (respondent No. 1) was also rejected by the Joint Director of Agriculture (respondent No. 2) by order, dated 14-11-1977 (Annexure-D). This petition was then filed on 30-1-1978 the respondent No. 1 cancelled the petitioner's licence.

2. According to the petitioner, it is not a market functionary within the meaning of Section 2 (1)(j) of the Act as the petitioner's undertaking only consumes the agricultural produce (i. e., cotton) as a raw material and is, therefore, not within the mischief of the Act. The petitioner, therefore, asserts that it is not required to take any licence under section 32 nor is required to pay any market fee on the purchase of cotton for use in the manufacture of textiles. Further challenge in this petition under Art.226 of the Constitution is to the levy and recovery of market fee at more than 0.50 p. on the ground that the increase from 0.50 p. to Re. 1/- is not correlated to the services rendered by the respondent No. 1 and that no fee at all can be charged on the agricultural produce purchase outside the market area. The petitioner prays for quashing of the orders, Annexures-C and D, and for a further direction for refund of the fee paid. It is also prayed that the respondents be directed not to realise any market fee. The order, dated 30-1-1978, passed by the respondent No. 1 cancelling the petitioner's licence has also been questioned.

3. We may first take up the question of petitioner's liability to pay the market fee levied under Section 19 and also to take out a licence under Section 32 of the Act. The contention is that being a manufacturer, the petitioner cannot be said to be a market functionary. Even otherwise, if the purchase is made from the producers for its "own private consumption", it can use any place in the market area for marketing of cotton which is a notified agricultural produce. Further contention is that since the petitioner is neither a trader nor the owner or occupier of any processing or pressing factory or such other market functionary, it is not required to obtain a licence to operate in the market area of Krishi Upaj Mandi Samiti, Ratlam. In order to appreciate this contention, certain provisions of the Act have to be noted. Section 2(1)(j) defines 'market functionary' to include a broker, a commission agent, an exporter, a ginner, an importer, a presser, a processor, a stockist, a trader, a weighman, warehouseman, hammal, surveyor and such other person as may be declared under the rules or the bye-laws to be a market functionary. According to S.2(1)(p), 'trader' means a person who in his normal course of business buys or sells any notified agricultural produce and includes a person engaged in processing of agricultural produce. Section 6 provides for control of marketing of notified agricultural produce. According to sub-section (b) of Section 6, no person

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shall, except in accordance with the provisions of the Act and the rules and bye-laws made thereunder - (i) use any place in the market area for the marketing of the notified agricultural produce; or (ii) operate in the market area as a market functionary. To this sub-section is added a proviso which runs thus;

"Provided that nothing herein shall apply to -

(a) the sale or purchase of such agricultural produce-

(i) the producer whereof is himself its seller an such sale is made to a person who purchases it for his own private consumption;

(ii) which is brought by head loads;

(iii) which is sold through retail;

(b) the transfer of such agricultural produce to a Co-operative Society for the purpose of securing an advance therefrom".

Chapter VI of the Act provides for regulation of trading. Section 31, which falls in that Chapter, is as follows:

"31. Regulation of persons operating in market area. No person shall, in respect of any notified agricultural produce, operate in the market area as commission agent, trader, broker, weighman, hammal, surveyor, warehouseman, owner or occupier of processing or pressing factories or such other market functionary except in accordance with the provisions of this Act and the rules and bye-laws made thereunder."

According to sub-section (1) of Sec.32, every person specified in S.31, who desires to operate in the market area, shall apply to the market committee for grant of a licence or renewal thereof. Section 33 contains powers of a marketing committee to suspend or cancel a licence. In terms of that section, the market committee is required to record its reasons for suspending or cancelling a licence and, according to sub-section (4), is required to give an opportunity, to show cause against such suspension or cancellation.

4. While supporting his contention, the learned counsel for the petitioner drew our attention to the conspicuous absence of the word 'manufacturer' in the inclusive definition of the term 'market functionary' and the definition of the term 'trader'. He also pointed out that the market committee constituted under Section 11(1) of the Act provides for no representation of either a manufacturer or an industrialist. Similar non-inclusion of persons doing business in textiles in Section 31 was also adverted to. It was stressed that since manufacturer is not included in the class of persons enumerated in Section 31, the petitioner is not required to take any licence. We, however, find ourselves unable to accede to the petitioners contention in this behalf. It is true that the definition of market functionary in Section 2(1)(j) of the Act does not in term include a manufacturer. All the same, it includes a 'trader', which according to Section 2(1)(p) means a person who in his normal course of business buys or sells any notified agricultural produce. The petitioner's business is admittedly manufacture of textiles. It is the case of the petitioner itself that cotton, which is a notified agricultural produce, is bought by it in the normal course of business. The petitioner thus is a person who in the normal course of business buys a notified agricultural produce, namely, cotton. That being so, the petitioner is a trader and as such a market functionary. Since the petitioner operates in the market area of the respondent-Committee as a trader in respect of notified agriculture produce namely cotton, it is bound to take a licence in terms of S.32 before it can be permitted to so operate in the market area.

5. The proviso to sub-section (b) of Section 6 of the Act also does not help the petitioner. It is true that the raw material, that is, cotton, purchased by the petitioner is used by itself and is ultimately turned into textiles. In that sense, the cotton so purchased as raw material can loosely be said to have been consumed by it. By consumption is meant the act of consuming. To consume means to destroy or use up, to eat or drink up. In its economic sense, consumption may mean just the use which a purchaser chooses to make of the goods purchased for his own purpose. He does not have to destroy them nor does he have to diminish their value or utility. It may thus mean the usual use made of an article for purposes of trade and commerce. In our opinion, however, in the context in which the phrase "who purchases it for his own private consumption", is used in clause (a)(1) of the proviso to S.6(b), it cannot be said that the petitioner purchases cotton for its own private consumption. The words "own private consumption" as used in the proviso to Section 6(b) can only mean complete disappearance by use by an individual such as eating away of a food article. The term does not seem to have been used to include the use of an agricultural produce

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in a commercial activity for production or conversion into a different commodity. This is also made clear by the subsequent amendment made in that proviso by the Madhya Pradesh Krishi Upaj Mandi (Dwitiya Sanshodhan) Adhiniyam, 1979. By this amendment, the applicability of item (a) of the first proviso to Cl.(b) of Section 6 is limited to the purchase not exceeding four quintals at a time to a person who purchases it for his own domestic consumption. This limitation put upon the quantity clearly shows that what is covered by that clause is sale or purchase of agricultural produce for being used up by an individual as opposed to sale or purchase for purposes of trade and commerce.

6. It is then urged on behalf of the petitioner that the increase of licence fee from 0.50 to Re. 1.00 per one hundred rupees of the price of agricultural produce purchased between 1-4-1976 to 31-7-1977 is illegal. The argument is that although the fee has been enhanced, the respondent No. 1 has not rendered nor contemplated to render services to the traders in the notified market area, nor any substantial portion of the fee so realised by enhancement is shown to be spent for that purpose. This argument has substance and must be accepted. In paragraph 13 of the petition, the petitioner has specifically alleged that the respondent No. 1 has made no provision for the market fee which may be collected to be earmarked to meet the expenses of rendering any service. It is alleged that there is no correlation between the fee imposed by the respondent No. 1 and the expenses incurred by it for rendering services to the sellers and purchasers of agricultural produce within the market area. The increase in levy is, therefore, said to be mechanical. In answer to this averment, the respondent No. 1 has filed an additional return showing the expenditure incurred out of the additional fees so recovered. Out of the total realisation of Rs. 3,36,845.27 from 1-4-1976 to June 1978, Rs. 2,20,651.46 are shown as spent on plant protection pesticides and equipments and other items like publicity etc. Only Rs. 2,000/- are said to have been spent on electric fittings of godowns in the market yard and approximately Rs. 79,646/- are shown as spent on construction of auction platform and shops. At the time of hearing, the learned counsel for the respondents also placed before us a copy of Notification dated 19-3-1976, issued from the Directorate of Agriculture, Madhya Pradesh, whereunder the market fee in Ratlam Krishi Upaj Mandi was increased from 0.50 to Re. 1/- per one hundred rupees of the purchase price. The said Notification directs that accounts of the additional fees so recovered shall be separately maintained by the Market Committee and that the amount should only be spent on instructions issued by the State Government. The Notification thus clearly shows that the additional fees so recovered was not meant for any service to be rendered by the respondent No. 1 within its market area, but was to be kept as a reserve to be spent on the directions of the State Government. Similarly, the additional return filed by respondent No. 1 shows that more than 60 per cent of the additional fees so recovered was spent for purchase of plant protection pesticides etc. and only a very small portion of it was spent for services towards the purchasers and sellers of agricultural produce within the market area.

7. Section 19 of the Act, which empowers the levy of market fee, is as follows:

"19. Power to levy market fees.- (1) Every market committee shall levy market fees on notified agricultural produce brought for sale or bought or sold in the market area at such rates as may be fixed by the Director from time to time subject to the minimum rate of fifty paise or maximum rate of one rupee for every one hundred rupees of the price in the manner prescribed.

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

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

(3) The market fees referred to in sub-section (1) shall not be levied more than once on a notified agricultural produce in a market area if it is resold in the market area but outside the market yard in the course of commercial transactions between the licenced traders or to consumers...."

It was not disputed before us, and in our opinion very rightly, that the levy permitted under Section 19 of the Act is in the nature of a fee. The levy is not on the agricultural produce in the sense of imposing any kind of tax or duty on the agricultural produce. It is also not a tax

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on the transaction of purchase or sale, it is an impost on the buyer of the agricultural produce in the market in relation to transactions of his purchase. Generally speaking, the fee is defined to be a charge for special service rendered to individuals by some Government agency. The element of quid pro quo must be established between the payer of the fee and the party charging it. By and large, the party collecting the fee must show that the service which they are rendering in lieu of fee is for some special benefit to the payer of the fee. It must be shown with some amount of certainty, reasonableness or preponderance of probability that quite a substantial portion of the amount fee so realised is spent for the special benefit of its payers; See Kewal Krishan v. State of Punjab, AIR 1980 SC 1008, Para 8. In that case, their Lordships cited with approval the following passage from an earlier decision of the Supreme Court in Indian Mica and Micanite Industries Ltd. v. State of Bihar, AIR 1971 SC 1182:

"From the above discussion it is clear that before my levy can be upheld as a fee, it must be shown that the levy has reasonable correlationship with the services rendered by the Government. In other words, the levy must be proved to be a quid pro quo for the services rendered. But in these matters it will be impossible to have an exact correlationship. The correlationship expected is one of a general character and not as of arithmetical exactitude".

In Kewal Krishnan's case (supra), the Supreme Court was concerned with the provisions of the Punjab Agricultural Produce Markets Act which also contains similar provisions for levying and charging of market fee on agricultural produce bought or sold in the notified market area. After discussing the law on the subject at length, their Lordships pointed out that at least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services to the licensees (under the Punjab Act) in relation to the transactions of purchase or sale of agricultural produce. Not all the benefits must be conferred on them, but some special benefits must be shown to have been conferred. It was particularly pointed out that spending the amount of market fees for the purpose of augmenting the agricultural produce, its facility of transport in villages and to provide other facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground that such services in the long run go to increase the volume of transactions in the market ultimately benefitting the traders also. Such an indirect and remote benefit to the traders is in no sense a special benefit to them. Spending of fee on development of agriculture by providing all sorts of facilities to the agriculturists including the facilities of link roads to the markets was held not permissible. Similarly, the expenditure on propaganda in favour of the agricultural improvement and expenditure for production and betterment of agricultural produce have also been held to be unjustified. Similarly imparting education in agriculture in general has been held to be not correlated with the market fee. The Supreme Court rejected the contention upheld by the High Court that the use of the funds created by recovery of market fee for supply of pesticides and spray pumps on subsidized basis as also the electrification of villages was permissible expenditure. Instead, it was held that utilising a good and substantial portion of the market fee collections for supply of pesticides and spray pumps on subsidized basis goes against the concept of quid pro quo which is very essential in case of fees. From the aforesaid decision in Kewal Krishnan's case, (AIR 1980 SC 1008) (supra), the raising of market fee from 0.50 to Re. 1.00 cannot be held to be justified when according to the return more than 60 per cent of it is shown to have been utilised for the purchase of plant protection pesticides and when the Notification by which the fee was raised specifically directed that the amounts so raised must be kept separate and should be spent only after issuance of directions by the State Government in that behalf. In Nagar Mahapalika, Varanasi v. Durga Das Bhattacharya, (1968) 3 SCR 374 : (AIR 1968 SC 1119) the expenditure incurred by the Municipal Board for the benefit of the licensees constituted 44 per cent of the total income of the Municipal Board and it was held that there was no sufficient quid pro quo established in the circumstances of the case. However, in another decision in Delhi Cloth and General Mills Co. Ltd. v. Chief Commissioner Delhi, (1970) 2 SCR 348 : (AIR 1971 SC 344) where 60 per cent of the amount of licence fees charged from the mills was actually spent on services rendered to the factory owners, the impost was upheld. In Kewal Krishnan's case

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(supra), the Supreme Court added that the rule of 60 per cent cannot be of universal application and that such a rule is not static. It was observed that in case of licence fees, a substantial element of regulatory measure is involved and that a good portion of the fee in the neighbourhood of 66 per cent or more must be correlated to the service rendered to the person from whom the fee is charged. Two-thirds or three-fourths of such collection must be shown with reasonable certainty as being spent for rendering services to its payers. We have earlier shown that in the present case the major amount of market fee collected was spent on the purpose of plant protection pesticides, and that being not a purpose correlated with the service to the buyers of agricultural produce the imposition must be held to be invalid. We therefore, hold that the levying and charging of market fee at more than 0.50 per one hundred rupees of the price by the respondent No. 1 was illegal.

8. Learned counsel for respondent No. 1 sought to justify the increase on the ground that it was being charged throughout the State of Madhya Pradesh by all the Market Committees. Reliance was placed on the decision in Ram Chandra Kailash Kumar and Co. v. State of U. P., AIR 1980 SC 1124. In that case the fee levied at 1 per cent was upheld as it did not go beyond the quid pro quo theory discussed in Kewal Krishnan's case (AIR 1980 SC 1008) (supra) where also to levy was upheld on the basis of the services rendered. In Kewal Krishnan's case, the Court upheld the levy of minimum of 1 per cent as the facts placed before the Court were too meagre to indicate that the services to the extent of the fee levied were not being rendered. In the present case, we have shown from the return exhibited by the respondent No. 1 itself that the major portion of the fee so realised was spent for no service to the buyers. In our opinion, the observation made in Ramchandra Kailash Kumar and Co.'s case (supra) lend no support to the respondents.

9. It does not need much argument to say that the respondent No. 1 is not entitled to charge any market fee on the agricultural produce purchased outside the market area and then brought in within that area. This is clear from the language used in Section 19 of the Act itself. Before a buyer of any notified agricultural produce is subjected to payment of market fee, it has to be established that the notified agricultural produce was brought for sale or bought or sold in the market area. When the petitioner purchased notified agricultural produce (cotton) outside the market area and then brought it within the market area for its use in the Mills, it cannot be said that the agricultural produce (cotton in the present case) was brought for sale or bought and sold in the market area of the Krishi Upaj Mandi, Ratlam. Clearly, therefore, the respondent No. 1 could not recover any fee for such agricultural produce. We hold the petitioner not liable to pay any market fee for the cotton or any other agricultural produce specified in the Schedule to the Act which was purchased by it outside the market area and which was not brought for sale or bought or sold in the market area. We further hold that the levy and recovery of market fee on such agricultural produce by the respondent No. 1 is invalid.

10. It was lastly urged that the cancellation of the petitioner's licence, vide Annexure-F, dated 30-1-1978 by the respondent No. 1 was illegal and unwarranted. The power to suspend or cancel licence is contained in Section 38 of the Act. According to sub-section (1) of Section 33, a licence can be cancelled or suspended by the market committee which is required to record its reasons in writing for such suspension or cancellation. The licence can be cancelled or suspended on one or more of the grounds specified in Cls.(a) to (f) of sub-section (1) of Section 33. The licence in the present case has been cancelled by the Officer-in-charge of the respondent No. 1. The impugned order (Annexure-F) does not show that opportunity to show cause against the cancellation was given to the petitioner. It appears that on rejection of the petitioner's appeal by the State Government against the imposition and enhancement of the market fee, the order directing cancellation of its licence followed as a matter of course. The order also does not exhibit any reason why the licence was being cancelled. In our opinion, the cancellation of the petitioner's licence was in contravention of the provisions of S.33 of the Act. We, therefore, quash the order (Annexure-F).

11. We petition succeeds and is partly allowed. The petitioner is held liable to obtain a licence to act as a market functionary within the market area of the Krishi Upaj Mandi, Ratlam. The petitioner is also held liable to pay market fee. The levy and recovery of market fee for a

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period from 1-4-1976 to 31-7-1977 in excess of 0.50 per one hundred rupees of the price laid by the petitioner for purchase of the notified agricultural produce (cotton) is hereby quashed and the petitioner is held entitled to refund of any market fee paid in excess of 0.50 per one hundred rupees of the price. The order, dated 30-1-1978 (Annexure-F), passed by the Officer-in-charge of respondent No. 1 is hereby quashed. The petitioner shall get its costs from respondent No. 1. Hearing fee Rs. 200/-. The security deposit shall be refunded to the petitioner.

Petition partly allowed.

AIR 1981 MADHYA PRADESH 220 "Bhanwarlal v. State"

MADHYA PRADESH HIGH COURT

FULL BENCH

Coram : 3 G. P. SINGH, G.G. SOHANI AND R. K. VIJAYVARGIYA, JJ. ( Full Bench )

Bhanwarlal, Petitioner v. State of M.P., and others Respondents.

M.P. No. 299 of 1976, D/- 21 -4 -1981.

(A) M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.21, S.19 - AGRICULTURAL PRODUCE - WRITS - Best judgment assessment - Petitioner failing to produce accounts when called upon to do so - Market Committee can proceed to assess him in a quasi-judicial manner.

M. P. No. 37 of 1967. D/- 10-4-1970 (M.P.) Overruled.

Constitution of India, Art.226.

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A power of assessment in accordance with a quasi-judicial procedure is implicit in the power to levy market fees. Therefore the Market Committee had power to proceed to assess the petitioner, a person carrying on business of buying and selling of agricultural produce, in a quasi-judicial manner under the provisions of S.21 as the petitioner failed to produce accounts when called upon to do so. M.P. No. 37 of 1967 D/- 10-4-1970 (M.P.) Overruled; 1975 Tax LR 1932 (M.P.) Approved. (Para 5)

(B) Constitution of India, Art.226 - WRITS - PLEA - New plea - Petitioner never represented to market committee that the estimate made by it was arbitrary or capricious - He cannot be allowed to urge that ground. (Para 6)

(C) Constitution of India, Art.226 - WRITS - PLEA - New plea - Question regarding validity of levy of market fees by market committee not raised in writ petition - Petitioner cannot be permitted to assail validity of levy of market fees. (Para 7)

(D) M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), S.17, S.19 - AGRICULTURAL PRODUCE - WRITS - Performance of all the duties prescribed under S.17 is not a condition for levy of market fee.

Constitution of India, Art.226, Art.265.

S.19 which empowers a Market Committee to levy market fees, does not provide that performance of all the duties, which the Committee has to perform under the provisions of S.17 of the Act, is a condition precedent for levy of market fees. In point of fact, a Market Committee would be able to properly discharge its duties only when it is able to collect market fees levied by it. If a Market Committee fails to perform any statutory duty, appropriate proceedings for compelling the Market Committee to perform the statutory duties can be taken. However, in writ petition, the petitioner has not sought that relief. Therefore, the contention advanced on behalf of the petitioner that the levy of market fees is invalid on the ground that the Market Committee is not performing its duties cannot be upheld. (Para 8)

Cases Referred : Chronological Paras

AIR 1980 SC 1008 7

(1976) M.P. No. 576 of 1975, D/- 12-3-1976 (Madh Pra). Shri Ram Rice Trading Co. v. Krishi Upaj Mandi Samiti, Raipur 4

1975 Tax LR 1932 : 1975 MP LJ 326 1, 5

AIR 1972 SC 2563 : 1973 Tax LR 1607 5

(1970) MP No. 37 of 1967, D/- 10-4-1970 (Madh Pra). Girwarlal v. Krishi Upaj Mandi Committee 1, 3, 5

AIR 1962 SC 1517 5

(1925) 10 Tax Cas. 88 : 134 LT 98 : 95 LJ KB 165, Whitney v. Commrs. of Inland Revenue 5

K.L. Sethi, for Petitioner; J.B. Nirwani and Govt. Advocate, for Respondent Nos. 1 and 4.

Judgement

SOHANI, J. :- This Full Bench has been constituted to hear this petition under Art.226 of the Constitution on a reference being made by a Division Bench of this Court which initially heard this petition. The Division Bench was of the opinion that there was a conflict between two Division Bench judgments of this Court, one reported in Roopchand v. K.U.M. Samiti, Raipur (1975 MP LJ 326) : (1975 Tax LR 1932) and the other delivered in Girwarlal v. Krishi Upaj Mandi Committee, (MP No. 37 of 1967 decided on 10th April, 1970). The matter was, therefore, placed before the Chief Justice for constitution of a Full Bench to hear this petition. That is how this petition came up for hearing before us.

2. The material facts giving rise to this petition briefly are as follows : The petitioner carried on, at the material time, the business of buying and selling agricultural produce at Petlawad. District Jhabua. Under the provisions of the M.P. Agricultural Produce Markets Act, 1960, the State Government constituted a Market Committee by the name of Krishi Upaj Mandi Samiti, Petalawad, hereinafter referred to as the 'Market Committee', for regulating the purchase and sale of agricultural produce in the market established under the provisions of that Act at Petalawad. On 1st June, 1973, M.P. Krishi Upaj Mandi Adhiniyam, 1972, hereinafter referred to as the 'Act' came into force. By Section 82 of the Act, the M.P. Agricultural Produce Markets Act, 1960, was repealed, but the Market Committees

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constituted under that Act were to be deemed to have been constituted under the provisions of the Act. In pursuance of the powers conferred by Section 19 of the Act, the Market Committee, Petalawad, levied market fees, and the petitioner was called upon to produce his account-books for assessing market fees payable by the petitioner. As the petitioner failed to produce the accounts, he was informed by the notice dated 16th April 1976 (annex.-F/2) that in the event of his failure to produce accounts within a week of the receipt of that notice, an estimate of his transactions would be made as stated in the notice and market fees would be assessed on the basis of that estimate. The petitioner did not produce any account-books and made a representation (annex.-G/3) to the Director of Agriculture that the Market Committee was not empowered to levy any market fees. However, before the respondent Market Committee could proceed to assess the petitioner, he filed the present petition praying for the issuance of a writ to prohibit the respondent Market Committee from making any recovery under the provisions of the Act.

3. The first contention advanced by Shri Sethi, learned counsel for the petitioner, was that Section 21 of the Act no doubt empowered the Market Committee to make an assessment with regard to fees payable by a person under Section 19 of the Act, if that person failed to produce accounts as directed but no manner having been prescribed as contemplated by Section 19 of the Act, the Market Committee had no power to proceed to make best judgment assessment under S.21 of the Act. Reliance was placed on the decision of a Division Bench of this Court in Girwarlal v. Krishi Upaj Mandi Committee (M.P. No. 37 of 1967).

4. To appreciate the contention advanced on behalf of the petitioner, it is necessary to refer to the relevant provisions of the Act. Section 19(1) of the Act empowers "every market committee to levy market fees on notified agricultural produce brought for sale or bought or sold in the market area." Section 20 confers power on any officer or servant of the market committed empowered by the State Government in this behalf to order any person carrying on business in notified agricultural produce to produce the accounts and to furnish any information relating to the stocks of such agricultural produce or purchase, sale and delivery of such agricultural produce and also to furnish any other information relating to payment of the market fees by such person. The section further confers power to enter or search any place of business, warehouse, office etc. where the accounts, registers etc. relating to notified agricutural produce are kept by a businessman. Power of seizure has also been conferred by Section 20. Section 21 then provides as follows :-

"21. Best judgment assessment of fees : If any person required to produce accounts or furnish information under sub-section (1) of Section 20 fails to produce such accounts or to furnish information or knowingly furnishes incomplete or incorrect accounts or information or has not maintained proper accounts of the sales and delivery of the notified agricultural produce, the market committee shall, in the prescribed manner, assess such person for fees levied under S.19."

As held by this Court in Shri Ram Rice Trading Co. v. Krishi Upaj Mandi Samiti, Raipur, (M.P. No. 576 of 1975 decided on 12th March 1976), it would be open to a market committee to delegate its power of making assessment of market fees to any sub-committee appointed under Section 18 of the Act and that such a sub-committee may consist even of one member. The petitioner, however, contends that unless the manner is prescribed as contemplated by Section 21 of the Act the Market Committee has no power to make any assessment under Section 21 of the Act.

5. Now. it was not disputed before us that rules have not been framed as contemplated by Section 21 of the Act prescribing the manner in which b Market Committee is required to "proceed" in the matter of assessment in the event of failure by an assessee to produce his accounts. It is significant to note that the Act does not even provide that a Market Committee shall proceed to make an assessment when account books are produced before it in pursuance of a notice issued in that behalf. No provision of the Act or the rules

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made thereunder have been brought to our notice containing any express provision for making an assessment. The question then that arises for consideration is whether, in the absence of any manner having been prescribed by the Act or the rules, a Market Committee has power to assess market fees when it has been empowered to levy market fees by the provisions of Section 19 of the Act. A similar question arose for consideration before a Division Bench of this Court in Roopchand v. K.U.M. Samiti, Raipur (1975 MP LJ 326) : (1975 Tax LR 1932). The Division Bench observed as follows : (at p. 1934 of Tax LR)

"Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. The word 'tax' in this article includes any impost such as duties, cesses or fees :

"Muhammadbhai v. State of Gujarat, AIR 1962 SC 1517 (Art.367(18)). The words 'levy' and 'collection' in the article are also used in a comprehensive sense to cover all steps beginning from imposition and ending with recovery. The word 'levy' thus covers not merely imposition but also assessment. A taxing statute has, therefore, to provide not only for the imposition of the tax or fees with which it deals, but also for its assessment and collection. Article 265, however, does not lay down that any detailed machinery should be provided for assessment. The procedural provisions for assessment must, of necessity depend upon the nature of the tax or fees which is sought to be imposed by the statute. We have already referred to the material provisions of the Act and Rules. Section 20 of the Act, read with Rule 56, authorises a Market Committee to levy and collect market fees. The word 'levy' in these provisions must, in our opinion, include assessment. It is true that neither the Act nor the Rules expressly lay down any procedure for assessment. The Bye-laws also do not contain any express provision for assessment. We are, however, of opinion that the authority to make an assessment in accordance with the principles of natural justice must be implied from the terms of Rule 56 read with bye-law 84. This we say on the principle that an authority to do something essential for the exercise of the powers conferred can be legitimately inferred as a matter of construction."

In arriving at the aforesaid conclusion, the Division Bench relied upon the decision of the Supreme Court in Asstt. Collector. C.E. v. N.T. Co. of India Ltd. (AIR 1972 SC 2563). The Supreme Court has held in that case that it is a well established rule of construction that a power to do something essential for the proper and effectual performance of the work, which the statute has in contemplation, may be implied. Learned counsel for the petitioner, however. relied on another decision of a Division Bench of this Court in Girwarlal v. The Krishi Upaj Mandi Committee (MP No. 37 of 1967). In that decision, it has been held by another Division Bench of this Court that in the absence of any provision for assessment to be made under the M.P. Agricultural Produce Markets Act, 1960, market fees could not be held to be legally due from any trader. This decision, with respect, fails to take into account a well known rule in the construction of statutes that that construction should be preferred which makes the machinery workable. As observed by Lord Dunedin in Whitney v. Commrs. of Inland Revenue ((1925) 10 Tax Cas 88). "A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable". In our opinion, therefore, the decision in Girwarlal v. Krishi Upaj Mandi Committee etc. (supra) does not lay down correct law. It was rightly held in Roopchand v. K.U.M. Samiti, Raipur (1975 MP LJ 326) : (1975 Tax LR 1932) that a power of assessment in accordance with a quasi-judicial procedure is implicit in the power to levy market fees. We, therefore, hold that the respondent Market Committee had power to proceed to assess the petitioner in a quasi-judicial manner under the provisions of Section 21 of the Act as the petitioner failed to produce accounts when called upon to do so.

6. It was then contended that the assessment proposed by the notice (annex.-F/2) would be excessive. The petitioner did not, however, dispute the correctness of the estimate of his transactions made in the notice (annex.-F/2) in the representation made to the Director

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of Agriculture or in any reply shown to have been sent to the Market Committee. The petitioner never represented to the Market Committee that the estimate made by it was arbitrary or capricious. The petitioner cannot, therefore, be allowed to urge that ground when no such ground was advanced before the respondent Market Committee

7. The next contention advanced on behalf of the petitioner was that the levy of market fees by the respondent Market Committee could not be held to be valid inasmuch as the element of quid pro quo was not established between the payer of the fee and the authority charging it. Reliance was placed on the decision of the Supreme Court in Kewal Krishan v. State of Punjab (AIR 1980 SC 1008). In that decision the Supreme Court has laid down the following two amongst other tests for a valid levy of market fees on the agricultural produce bought or sold by licensees in a notified market area :-

"\* \* \* \* \* \* \*

(6) That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.

(7) At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above."

But the question as to whether the aforesaid tests are or are not satisfied does not really arise in the instant case because the levy of market fees by the respondent Market Committee has not been assailed in the petition on the ground that the aforesaid tests laid down by the Supreme Court were not satisfied. We repeatedly asked learned counsel for the petitioner to point out the specific ground taken in that behalf in the petition, but he was unable to do so. The petitioner cannot therefore be permitted to assail the validity of the levy of market fees by the respondent Market Committee on a ground not taken in the petition.

8. It was then contended that the respondent Market Committee was not performing the duties which it was bound to perform under the provisions of Section 17 of the Act, and hence it was not entitled to levy market fees. The allegation that the respondent Market Committee was not performing its statutory duties was denied by the respondents. In the return reference to various duties which are being performed by the Market Committee in terms of Section 17 of the Act has been made. This fact was not denied by the petitioner by any counter-affidavit. In these circumstances the allegation that the respondent Market Committee was not performing its statutory duties is not well founded. Moreover, Section 19 of the Act, which empowers a Market Committee to levy market fees, does not provide that performance of all the duties, which the Committee has to perform under the provisions of Section 17 of the Act, is a condition precedent for levy of market fees. In point of fact, a Market Committee would be able to properly discharge its duties only when it is able to collect market fees levied by it. If a Market Committee fails to perform any statutory duty appropriate proceedings for compelling the Market Committee to perform its statutory duties can be taken. However, in this writ petition, the petitioner has not sought that relief. Therefore, the contention advanced on behalf of the petitioner that the levy of market fees is invalid on the ground that the Market Committee is not performing its duties cannot be upheld.

9. No other ground in support of the petition was urged before us.

10. For all these reasons, this petition fails and is accordingly dismissed. In the circumstances of the case parties shall bear their own costs of this petition. The security deposit, if any, shall be refunded to the petitioner.

Petition dismissed.

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AIR 1979 MADHYA PRADESH 133 "Onkarmal Radhakishan v. State"

MADHYA PRADESH HIGH COURT

Coram : 2 G. P. SINGH C.J. AND B. C. VARMA, J. ( Division Bench )

M/s. Onkarmal Radhakishan, Petitioner v. State of M.P. and others, Respondents.

Misc. Petn. No. 255 of 1973, D/- 25 -4 -1979.

M.P. Agricultural Produce Markets Act (19 of 1960), S.2(1)(i), Sch., Category IV - AGRICULTURAL PRODUCE - INTERPRETATION OF STATUTES - Expression - "Agricultural Produce" - Scope of - Includes oil as well as oil seeds of each item enumerated under Category IV.

Interpretation of Statutes - Heading - Construction of. (Paras 4, 6, 7)

Cases Referred : Chronological Paras

(1969) 3 All ER 1640 : (1970) 2 WLR 279 Director of Public Prosecution v. Schildkamp 5

AIR 1959 SC 960 : 1959 Cri LJ 1223 : 1959 All LJ 557 5

N.S. Kale, for Petitioner; Dilip Naik, for Respondent No. 2.

Judgement

B.C. VARMA J. - By this writ petition under Article 226 of the Constitution of India, the petitioner, which is a partnership firm, challenges the levy and collection of fee by the Krishi Upaj Mandi Samiti, Rajnandgaon (respondent No. 2) on the groundnut oil imported by the petitioner within the market area of that Krishi Upaj Mandi.

2. The petitioner trades in pulses, oil-seeds and oil in Rajnandgaon within the market area of Krishi Upaj Mandi, Rajnandgaon. It imported and sold ground nut oil within the market area of the Krishi Upaj Mandi. Consequently, respondent No. 2 levied fee under S.20 of the Madhya Pradesh Agricultural Produce Markets Act, 1960, on the groundnut oil brought and sold by the petitioner within the market area for the period between 1-4-1971 to 31-12-1971. The petitioner objected to this levy of fee. The objection was rejected by respondent No. 2, vide its order, dated 26-12-1972. Thereupon, respondent No. 3, who is Incharge Recoveries of Krishi Upaj Mandi Samiti, Rajnandgaon, served a demand notice under Section 146 of the M.P. Land Revenue Code, 1959, requiring the petitioner to pay the amount of fee. This demand notice is Annexure-IV. The petitioner claims before us that this levy of Mandi-fee on groundnut oil and its consequent recovery being illegal and without jurisdiction are liable to be quashed.

3. The main contention advanced by Shri N.S. Kale, learned counsel for the petitioner, is that groundnut oil is not an agricultural produce as defined in Section 2(1)(i) of the Madhya Pradesh Agricultural Produce Markets Act, 1960. It was submitted by the learned counsel that various items under Category IV of the Schedule annexed to the Act do not indicate that groundnut oil is also included in that category. Elaborating his argument, learned counsel proceeded to say that the heading 'Oil-seeds and edible oils' assigned to Category IV of the Schedule is only for the sake of convenience of grouping together various items. The produce sought to be brought within the term 'agricultural produce' are only those which are enumerated in various items under Category IV. It was, therefore, argued that groundnut oil as such is not an agricultural produce as defined in Section 2(1)(i) of the Act and no Mandi-fee could, therefore, be levied on the sale of groundnut oil within the market area of Krishi Upaj Mandi, Rajnandgaon.

4. Having heard the counsel for the parties, we are of opinion that the contention raised by the petitioner cannot be accepted. The period for which the fee is recovered is prior to the coming into force of the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 (Act 24 of 1973), and therefore the present case is governed by the provisions of the M.P. Agricultural Produce Markets Act, 1960. Section 2(1)(i) of the Act defined 'agricultural produce' to mean the produce of agriculture, horticulture and animal husbandry and all other produce specified in the Schedule. The Schedule annexed to the Act specified various agricultural products in which there are thirteen categories and has assigned heading to each of the categories. Category IV bears the heading 'Oil-seeds and Edible Oils' and is as follows :

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"SCHEDULE

IV. Oil-seeds and Edible Oils -

1. Groundnut (Shelled and unshelled),

2. Linseed.

3. Sesamum.

4. Safflower.

5. Cotton seed.

6. Castor seed.

7. Sarson.

8. Soha.

9. Ramtilli.

10. Laha.

11. Mahua seed (gulli)."

Various items under this category are only seeds. Oil as such from those seeds is not actually mentioned in those entries. All the same, the heading assigned to the entry seems to bring edible oils also as 'agricultural produce' within the meaning of Section 2(1)(i) of the Act. Under these circumstances, therefore, the heading assumes significance. The heading assigned to Category IV is in the nature of preamble. It cannot be said that this heading is just a convenient mode to group together various seeds which the Legislature intended to bring within the term 'agricultural produce'. In fact, the heading is the key opening the mind and leads to the interpretation of the entries. Maxwell in his treatise on Interpretation of Statutes, 11th Edition, at page 48, has stated the law in this behalf as follows :-

"The headings prefixed to Sections or Sets of Sections in some modern statutes art regarded as preambles to those Sections. They cannot control the plain words of the statute but they may explain ambiguous words.

A cross-heading in an Act can probably be used as giving the key to the interpretation of the Section unless the wording of the Section is inconsistent with such interpretation."

5. The above passage from Maxwell was applied by the Supreme Court in Bhinka v. Charan Singh. AIR 1959 SC 960. It was a case under Section 180 of the U.P. Tenancy Act, 1939, which provided for ejectment of a person who retained possession of land otherwise than in accordance with the provisions of the law for the time being in force. The question was whether a person retaining possession under order passed under S.145 of the Criminal Procedure Code could retain possession under that Act. The Supreme Court construed the words 'possession in accordance with the law for the time being in force' as meaning possession with title. In reaching this conclusion, support was taken from the heading of that Section which read 'Ejectment of person occupying land without title.' It would also be useful here to refer to the speeches delivered in the House of Lords in the case of Director of Public Prosecutions v. Schildkamp (1969) 3 All ER 1640. During his speech, Lord Reid said :

"I would not object to taking all these matters (punctuation, cross-heading and side-notes) into account provided that we realise that they cannot have equal weight with the words of the Act.......... A cross-heading ought to indicate the scope of the Sections which follow it but there is always a possibility that the scope of one of these Sections may have been widened by amendment."

Lord Upjohn, in the same case, observed :

"In this somewhat conflicting state of authorities what role do cross-headings play ? In my opinion, it is wrong to confine their role to the resolution of ambiguities in the body of the Act. When the Court construing the Act is reading it through to understand it, it must read the cross-headings as well as the body of the Act and that will always be an useful pointer as to the intention of Parliament in enacting the immediately following Sections. Whether the cross-heading is no more than a pointer or label or is helpful in assisting to construe or even in some cases to control the meaning or ambit of those Sections must necessarily depend on the circumstances of each case, and I do not think it is possible to lay down any rules".

Lord Upjohn and Lord Reid used the heading, the punctuation and the cross-heading under Section 322(3) of the Companies Act, 1948, to restrict the prosecution for offences created by the said Section when a Company went into liquidation and the prosecution was held to be not tenable while it was a going concern.

6. A close reading of the heading to Category IV reveals that in fact it combines two categories, namely, (i) the oil-seeds and (ii) edible oils. Various items under this category including groundnut at item No. 1 should be read as if falling under both these categories (oil-seeds and edible oils) separately. It will, there fore, mean that what is included as "agricultural produce" is the oilseeds as also the edible oils of each item enumerated under the category. Item No. 1 under that category is groundnut. The

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way we read the entry it would mean that what is included as "agricultural produce" is groundnut as oil-seed and as edible oil. Thus we are of opinion that groundnut oil is also included in that category as an edible oil.

7. There is another way to look at this entry. Oil-seeds of different kinds are enumerated under this category. In case in which from the seeds so enumerated edible oil can be produced, it can well be treated to be included under that entry. This would be so if we attribute significance to the heading "Oil-seeds and Edible Oils". We have shown above that such headings are keys opening the mind of the Legislature. There is no dispute that groundnut oil produced from groundnut is edible. The word 'edible' according to the Random House Dictionary means an article fit to be eaten as food. It is common knowledge that groundnut oil is very commonly so used. In fact, learned counsel for the petitioner did not dispute that groundnut oil is edible.

8. We are, therefore, of opinion that groundnut oil is also an item included in Category IV of the Schedule annexed to the Act and, therefore, is 'agricultural produce' within the meaning of S.2(1)(i) of the Act. Thus the only contention raised in support of the petition fails.

9. The petition consequently fails and is hereby dismissed with costs. Counsel's fee Rs. 100. The balance of the security amount be refunded to the petitioner.

Petition dismissed.

AIR 1972 MADHYA PRADESH 38 (V. 59 C 9) "Bhagwandas v. State"

MADHYA PRADESH HIGH COURT

(GWALIOR BENCH)

Coram : 2 R. J. BHAVE AND K. K. DUBE, JJ. ( Division Bench )

Bhagwandas Gajju, Petitioner v. State of M. P. and others, Non-Petitioners.

Misc. Petn. Case No.22 of 1970, D/- 27 -4 -1971.

M.P. Agricultural Produce Markets Act (19 of 1960) (as amended by 1968 and 1969 Ordinances and 1970 Amendment Act), S.7A - AGRICULTURAL PRODUCE - Replacement of officer-in-charge by committee - Officer appointed after a deemed nominated committee referred to in S. 43 Proviso 1 is dissolved under the 1968 Ordinance cannot be replaced by a nominated committee.

M.P. Agricultural Produce Markets Act (19 of 1960) (as amended by 1968 and 1969 Ordinances and 1970 Amendment Act), S.8(3), and S.43, Proviso 1.

M.P. Agricultural Produce Markets (Amendment) Ordinance (1968), S.4 (Para 6)

His appointment is not under the section since Section 4 of that Ordinance itself has conferred the power to appoint such officers for the committees dissolved by it and has referred to S.7-A only for the tenure of their office and powers. As such the replacement power under the section cannot be exercised in his case. (Para 8)

Swami Saran, for Petitioner; P.L. Dubey, Govt. Advocate, for Non-Petitioners.

Judgement

BHAVE, J.:- This petition under Article 226 of the Constitution of India is directed against the Notification dated 27-2-1970 of the Agriculture Department purporting to appoint, in exercise of powers under Section 7-A of the Madhya Pradesh Agricultural Produce Markets Act, 1960, a Managing Committee for Bhander Market in Tahsil Bhander of Gwalior District.

2. Section 7-A of the Act provides that when a market is established for the first time the State Government shall have powers to appoint etc. etc." The contention is that the provisions of Section 7-A of the Act are applicable to markets established for the first time under the present Act and not to the markets which were already in existence and were continued under the present Act. The market in question, which was established under the Qawaid Mandi Hat Gwalior and further continued under the Madhya Bharat Agricultural Produce Markets Act, 1952 and under the present Act, could not be said to be the first market established under the present Act and the exercise of the power of appointing a Committee was, therefore, illegal and ultra vires of the powers of the State Government.

3. At the outset, it must be observed that the counsel for both the sides did not help us by producing the uptodate law before us. The return filed by the State is also not complete. Under the circumstances, we were required to hunt out all the amendments of the Act from time to time and to consider the overall effect.

4. The present Act repealed all the previous Acts operating in the various parts of the State on the same subject, including the Madhya Bharat Agricultural Produce Markets Act, 1952, under which a properly elected Committee was functioning with regard to the market in question. The first proviso to Section 43 of the present Act which repeals the various Acts reads thus:

"Provided that the markets established or market areas declared under the said Acts or Qawaid shall be deemed to be markets established or market areas declared under this Act and the market committees or mandi committees constituted for such markets or market areas and holding office immediately prior to the date on which this Act comes into force shall be deemed to be the first market committees constituted under sub-section (3) of Section 8 for the said markets or market areas."

Sub-section (3) of Section 8, to which reference is made in the first proviso, indicates that when a market committee is constituted for the first time all the members of the market committee shall be nominated by the State Government and that such members shall hold office for a period of two years. Thus, by operation of Section 43 of the Act and its first proviso, the elected market committee of the Bhander Market became a nominated committee. No new committee contemplated by Section 8(1) of the Act was, however, constituted and it appears that the 'deemed nominated committee' of the market in question continued as provided for under sub-section (5) of Section 8 of the Act till 1968.

5. In the year 1968 the Madhya Pradesh Agricultural Produce Markets (Amendment) Ordinance, 1968 was promulgated. By the said Ordinance sub-section (3) of Section 8 of the Act was omitted and a new section, namely, Section 7-A was added. Section. 7-A was to the following effect:

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"7-A. Appointment of Officer-in-cbarge pending constitution of first market committee.

(1) When a market is established for the first time under this Act, the State Government shall, by notification, appoint a person to be the officer-in-charge for a period not exceeding six months who shall, subject to the control of the State Government, exercise all the powers and perform all the duties of the market committee under this Act:

Provided that the State Government may, from time to time extend the period of appointment of the Officer-in-charge by such further period as it may think fit so however that the total period does not exceed one year;

Provided further that if the market committee is constituted before the expiration of the period aforesaid, the Officer-in-charge shall cease to hold office on the date appointed for the first general meeting of the newly constituted market committee:

(2) The Officer-in-charge shall take steps in connection with the preparation of voters' list and holding elections in accordance with the provisions of this Act or the rules or bye-laws made thereunder.

(3) Any person appointed Officer-in-charge under sub-section (1) shall receive from the market committee fund, for his services such pay and allowances as may be fixed by the State Government."

Section 4 of the said Ordinance further provided that the market committees constituted under sub-section (3) of Section 8 of the Act and in existence on the date of the repeal of sub-section (3) of Section 8 of the Act shall cease to exist and all the members thereof shall vacate their office. It further provided that the administration of the market committee shall vest in the officer-in-charge to be appointed by the State Government and the provisions of sub-section (1) so far as they related to the period of appointment of the officer-in-charge and sub-sections (2) and (3) of Section 7-A of the principal Act shall apply to the officer-in-charge appointed under Section 4 of the Ordinance as they applied to the officer-in-cbarge appointed under that section. The effect of the Ordinance was that the nominated committee of the Bhander Market stood dissolved as the State Government was entitled to appoint an officer-in-charge under Section 4 of the Ordinance. The provisions of Section 7-A were made applicable only to the extent of the period for which such an officer could be appointed and other connected matters. The committee, was, however, not one appointed under Section 7-A.

6. By the Madhya Pradesh Agricultural Produce Markets (Amendment and Validation) Ordinance, 1969 (Ordinance No.13 of 1969) Section 7-A was substituted by a new section 7-A and the amendment was gives retrospective effect, that is to say, it was deemed to be on the statute from 7th of July, 1968, the date on which Section 7-A was brought into force under the previous Ordinance. The new Section 7-A is to the following effect:

"7-A. Appointment of Officer-in-charge or Committee-in-charge pending constitution of first Market Committee :-

(1) When a market is established for the first time under this Act, the State Government shall, by notification, appoint:-

(a) a person to be the offcer-in-charge; or

(b) a. Committee consisting of not exceeding seven persons to be constituted in the manner prescribed to be the Committee-in-charge;

for period not exceeding one year. The officer-in-charge or the Committee-in-charge shall, subject to the control of the State Government, exercise all the powers and perform all the duties of the market committee under this Act;

Provided that the State Government may, from time to time, extend the period of appointment of the officer-in-charge or the Committee-in -charge by such further period as it may think fit, so however, that the total period does not exceed two years:

Provided further that the State Government may at any time during the period aforesaid appoint Committee-in-charge in place of officer-in-charge and officer-in-charge in place of Committee-in-charge and the officer-in-charge or Committee-in-charge, as the case may be, so appointed shall hold office or shall function for the remainder of the period available to his predecessor:

Provided also that if the Market Committee is constituted before the expiration of the period aforesaid, the Officer-in-charge shall cease to hold office or the Committee-in-charge shall cease to function on the date appointed for the first general meeting of the newly constituted market committee.

(2) Any person appointed officer-in-charge under sub-section (1) shall receive from the Market Committee fund for his services such pay and allowances as may be fixed by the State Government and every member of the Committee-in-charge shall receive allowances at such rate at which allowances are payable to members of the Market Committee."

Under this section the State Government could appoint, when a market was established for the first time, an officer-in-charge or a nominated committee and could also replace an officer-in-charge by a committee or vice versa and the period during which the officer or the committee held the office was raised to two years. Section 4 of the said Ordinance validated the continuance of the officer-in-charge appointed under the original Section 7-A even if he continued to remain in office beyond the period of one year prescribed under the original Act.

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7. The Madhya Pradesh Agricultural Produce Markets (Amendment and Validation) Act, 1970 replaced the Ordinance of 1969 by incorporating the same provisions and giving them the same retrospective effect and validating the continuance in office of the officer-in-charge beyond one year. It appears that the State Government, taking advantage of the provisions of the substituted Section 7-A, appointed a nominated committee for the market in question in place of the officer-in-charge who was appointed in exercise of the powers under Section 4 of the Ordinance of 1968. It may also be noted at this stage that by Ordinance No.9 of 1970 (sic) the period of two years prescribed under the first proviso to Section 7-A (1) is raised to three years.

8. The combined effect of the amendments of the Madhya Pradesh Agricultural Produce Markets Act, 1960 uptodate is that the 'deemed market committee' stood dissolved and an officer-in-charge was appointed and by virtue of the amendment of Section 7-A from time to time the officer-in-charge continued to hold the officer beyond the original period of six months till the new committee was appointed. The only question is as to whether the officer-in-charge could be replaced by a nominated committee.

Under the first proviso to Section 43 of the Act the elected committee of the market in question was made a 'deemed appointed committee' under sub-section (3) of Section 8. When that sub-section was omitted by the Ordinance of 1968, Section 4 thereof did not provide that on the nominated committee having ceased to Function the State Government shall appoint an officer-in-charge in exercise of powers under Section 7-A. On the contrary, Section 4 itself conferred power of appointment of an officer-in-charge on the Stats' Government. For the period during which such officer would hold office and the powers that he would exercise reference was made to Section 7-A. It cannot, therefore, be held that the officer-in-charge was appointed in exercise of the powers under Section 7-A. The amendment of Section 7-A so as to facilitate the replacement of the officer-in-charge by a committee cannot, therefore, properly be made use of by the State Government so far as the officer-in-charge in question is concerned. The State Government could of course take advantage of the period proscribed under Section 7-A by amendments as that part of Section 7-A was specifically made applicable by Section 4 of the Ordinance of 1968.

9. In the result, in our opinion, the State Government had no authority to replace the officer-in-charge by a nominated committee in the case of the Bhander Market. The Notification dated 27-2-1970 must, therefore, be quashed. The petition is allowed and the impugned notification is quashed. In the circumstances of the case, we make no order as to costs. The security amount be refunded to the petitioner.

Petition allowed.

AIR 1970 MADHYA PRADESH 191 (V. 57 C 36) "Beni Prasad v. Jabalpur Improvement Trust"

MADHYA PRADESH HIGH COURT

Coram : 2 BISHAMBHAR DAYAL, C.J. AND K. L. PANDEY, J. ( Division Bench )

Beni Prasad Tandan and others,' Petitioners v. Jabalpur Improvement Trust and others, Respondents.

Misc. Petn. No. 316 of 1966, D/- 16 -1 -1970.

(A) M.P. Town Improvement Trusts Act (14 of 1961) (1960), S.52(2) - IMPROVEMENT TRUST - TRUST - Procedural irregularities in framing and sanctioning scheme - They are cured under S.52(2). Case law discussed. (Para 7)

(B) M.P. Town Improvement Trusts Act (14 of 1961) (1960), S.68(1) - IMPROVEMENT TRUST - TRUST - LAND - Acquisition of lands under Act - Notice of intention of Improvement Trust to acquire lands - Notice to individual owners is not necessary. (Para 8)

(C) M.P. Town Improvement Trusts Act (14 of 1961) (1960), S.70 - IMPROVEMENT TRUST - Inquiry under - Not obligatory.

Under S. 70 it is open to the State Government, if it so thinks fit, to make an enquiry, but it is not obliged to do so. The reason is that under S. 68 the Improvement Trust gives a public notice of its intention to acquire land for purpose of any scheme, invites objections, gives an opportunity of being heard and then takes decisions on the objections, if any. Thereafter, when applying to the State Government under S. 69 for sanction of the proposed acquisition, it is required to send the record of the aforesaid proceedings, a report containing a summary of the objections and its decisions thereon and other information. (Para 9)

(D) Constitution of India, Art.31(2) - M.P. Town Improvement Trusts Act (14 of 1961) (1960), S.34 - RIGHT TO PROPERTY - IMPROVEMENT TRUST - TRUST - Public purpose - Scheme framed under Act - Whether for public purpose.

The expression "public purpose" occurring in Article 31 (2) of the Constitution has no inflexible or rigid connotation enuring for all times. It is elastic in concept, taking colour from the statute in which it occurs and varying in meaning with the time and state of society in which it is required to be considered. (Para 12)

The scheme framed under the M. P. Town Improvement Trusts Act, ,1960 which provides for rehabilitation of persons required to be displaced from a thickly populated area in Jabalpur City for the reason that it is necessary to remove therefrom congestion and the resulting nuisance, insanitary conditions and health hazards, is in the general interest of the community. That being so, acquisition of the land needed for the purpose is for a public purpose. It is not necessary that the entire community, or even a considerable portion thereof should directly enjoy, or participate in the enjoyment of,

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the improvement. It is enough if the object advances the general interest of the community. It may be that, in execution of the scheme, certain individuals incidentally derive benefit but so long as they do so not as individuals but in furtherance of the object of public utility, the scheme is not assailable as unsupported by public purpose, that is general interest or the community. (Para 12)

(E) M.P. Town Improvement Trusts Act (14 of 1961) (1960), S.34 and S.38 - IMPROVEMENT TRUST - Scheme framed under Act - Scheme combining two types mentioned in sections - Scheme is not unauthorised.

Where a scheme under the Act is framed for shifting the existing wholesale grain market and Dal and Oil Mills and other like industries situated in crowded localities in the city of Jabalpur to a new site outside the thickly inhabited area for establishing there other wholesale and retail markets and also for development there of residential plots suitable for workers in those markets and industries, the scheme is a combination of two types described in Sections 34 and 38 and is not unauthorised and illegal. AIR 1966 SC 207, Disting. (Para 13)

(F) M.P. Town Improvement Trusts Act (14 of 1961) (1960), S.34 - IMPROVEMENT TRUST - AGRICULTURAL PRODUCE - MUNICIPALITIES - Scheme framed under Act for shifting wholesale market from crowded localities to site outside city and establishing retail markets there - It is not usurpation of function of market committee under M. P. Agricultural Produce Markets Act, 19 of 1960 and of Municipal Corporation under M. P. Municipal Corporation Act, 23 of 1956. (Para 10)

Cases Referred : Chronological Paras

(1966) AIR 1966 SC 207 (V 53) : 1966-1 SCJ 566, Municipal Corporation of the City of Jabalpur v. Kishan Lal 13

(1966) AIR 1966 SC 693 (V 53) : 1966-1 SCR 964, Municipal Board, Hapur v. Raghuvendra Kripal 7

(1965) AIR 1965 SC 895 (V 52) : 1965-1 SCR 970, Raza Buland Sugar Co. Ltd., Rampur v. Municipal Board, Rampur 7

(1964) AIR 1964 SC 264 (V 51) : 1964 (1) Cri LJ 156, Afzal Ullah v. State of U. P. 13

(1963) AIR 1963 SC 976 (V 50) : 1963-1 SCR 242, Trust Mai Lachmi Bradari v. Chairman, Amritsar Improvement Trust 7

(1962) AIR 1962 SC 420 (V 49) : 1962-1 SCR 596, Berar Swadeshi Vanaspathi v. Municipal Committee, Shegaon 6, 7

(1958) AIR 1958 SC 232 (V 45) : 1958 SCR 1052, P. Balakotiah v. Union of India 13

(1940) AIR 1940 Nag 293 (V 27) : ILR (1940) Nag 446, Onkarsa Tukaram v. Municipal Committee Nandura 6

(1930) AIR 1930 Nag 157 (V 17) : 127 Ind Cas 337, Municipal Committee, Khandwa v. Radhakisan Jaikisan 6

Y.S. Dharmadhikari, for Petitioners; H.J. Khaskalam, for Respondents.

Judgement

PANDEY, J. :- This order shall dispose of Miscellaneous Petition No. 357 of 1966 also. Both these petitions are directed against-

(i) Development Scheme No. 5 framed by the Jabalpur Improvement Trust (respondent 1) and sanctioned and announced by the State Government (respondent 3) under the provisions of the M. P. Town Improvement Trusts Act, 1960 (hereinafter called the Act);

(ii) sanction accorded to that Scheme by the State Government and announced by a notification dated January 18, 1965, issued under Section 52 (1) of the Act and further sanction given by an order dated September 14, 1965, passed under Section 70 of the Act to acquisition of the land needed for the Scheme; and

(iii) all orders passed and notices issued thereafter in regard to the Scheme, acquisition of land therefor and delivery of possession of such land.

The petitioners have further asked for a writ of mandamus to restrain the respondents from giving effect to the aforesaid Scheme.

2. The broad facts that gave rise to these petitioners may be shortly stated. The respondent 1 framed Development Scheme No. 5 for shifting the existing whole-sale grain market and Dal and Oil Mills and other like industries situated in crowded localities in the city of Jabalpur to a new site outside the thickly inhabited area, for establishing there other whole-sale and retail markets and also for development thereof residential plots suitable for workers in the aforesaid markets and industries. The Scheme provides for acquisition of 59.59 acres of land out of Khasra No. 204, area 88 acres, of Madhotal belonging to the petitioners, which, it is not now disputed, is situated within the limits of Municipal Corporation, Jabalpur. Similarly, the Scheme provides tor acquisition of 131.29 acres of land out of 161.08 acres belonging to the petitioners in the other petition, as detailed in Annexure A thereto. All this land too is situated within the limits of the Municipal Corporation, Jabalpur. The notification relating to the Scheme was duly published in the M. P. Rajpatra and also in a local paper as required by Section 46 (2) of the Act. The petitioners in the two cases raised several objections which were, however, rejected and then the State Government issued the aforesaid notification under Section 52 (1) of the Act and passed the impugned order under Section 70 of the Act. Thereafter, notices were issued under Section 71 (3) of the Act requiring the petitioners to deliver possession of the lands. They raised objections

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and also requested that their lands be released but the respondent No. 1 did not accede to their request. It was, thereafter, that the petitioners in the two cases filed these petitions.

3. The Improvement Scheme No. 5 and the action taken therefor have been challenged in the two petitions inter alia on the following grounds:

(i) The Municipal Corporation, Jabalpur, is the authority empowered to regulate markets, including the wholesale grain market, within the limits of the Corporation. Further such a market can be established and regulated under the provisions of the Agricultural Produce Markets Act, 1960. That being so, the respondent I could not undertake, or be allowed to usurp, the functions of those authorities and the action taken by it is, therefore, illegal.

(ii) Acquisition of land for such a purpose is not a public purpose within the meaning of Article 31 (2) of the Constitution.

(iii) The Scheme, as framed, is not an improvement scheme specified in Section 31 of the Act. It is not covered by Sections 37 and 39 of that Act.

4. Other grounds raised relate to matters of procedure. According to the petitioners, the notices published under Section 40 of the Act were not in accordance with the requirements of that section. Further, while no notice under Section 48 (1) of the Act was given to one set of petitioners (M. P. No. 357 of 1966), those served on others were not issued within the prescribed time. Moreover, a reasonable opportunity of being heard as contemplated by Section 50 of the Act was also not afforded. Finally, before sanction for acquisition was accorded by the State Government, individual notices under Section 68 (1) of the Act were not sent in one case [M. P. No. 357 of 1966] and no enquiry was made and no opportunity was given to the petitioners to make any representation.

5. The respondents 1 and 2 and the State Government filed separate returns, denied that there were any material irregularities in procedure, traversed all other adverse allegations made in the two petitions and contested the claims of the petitioners to the reliefs sought by them.

6. We have heard the counsel at some length and reached the conclusion that these petitions must be dismissed. In our opinion, Sec. 52 (2) of the Act is a complete answer to the procedural irregularities and relieves us of the duty to consider whether the respondent I committed any irregularities which affected the validity of the manner in which the Scheme was framed or sanctioned. As we have already indicated, the State Government had sanctioned the Scheme and announced it by a notification published under Section 52 (1) of the Act. Sub-section (2) of that Section reads:

"(2) The publication of a notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned." A somewhat similar provision was made in Section 67 (8) of the C. P. and Berar Municipalities Act, 1922 which read as follows:

"(8) A notification of the imposition of a tax under this section shall be conclusive evidence that the tax has been imposed in accordance with the provisions of this Act." This Court and the Supreme Court considered the meaning and effect of the expression "conclusive evidence". In Municipal Committee, Khandwa v. Radhakisan Jaikisan, AIR 1930 Nag 157, it was held that the expression 'conclusive evidence' implied that the publication of the notification dispensed with all corroborative evidence of imposition of the tax in accordance with the provisions of the Act and forbade consideration of all contra-indicating evidence. In Onkarsa Tukaram v. Municipal Committee, Nandura, AIR 1910 Nag 293 a Division Bench of this Court stated that the notification served to validate the entire proceeding relating to the imposition of the tax and precluded any objection to its regularity or legality. Finally, in Berar Swadeshi Vanaspathi v Municipal Committee, Shegaon, AIR 1962 SC 420 it was stated:

"This notification, therefore, clearly is one which directs imposition of octroi and falls within sub-section (7) of Section 67 and, having been notified in the Gazette, it is conclusive evidence of the tax having been imposed in accordance with the provisions of the Act 'and it cannot be challenged on the ground that all the necessary steps had not been taken,' (underlined (here in ') by us)

7. In Punjab Development and Damaged Areas Act, 1951, sub-sections (3) and (4) of Section 5 provided as follows :

"(3) The State Government shall then notify the scheme, either in original or as modified by it and the scheme so published shall be deemed to be the sanctioned scheme.

(4) The publication under sub-section (3) shall be conclusive evidence that a scheme has been duly framed and sanctioned." The Supreme Court considered the meaning and effect of these provisions in Trust Mai Lachmi Sialkoti Bradari v. Chairman, Amritsar Improvement Trust, AIR 1963 SC 976 and observed:

"The conclusive effect postulated by Section 5 (4) can only be in regard to the formalities prescribed by Sections 3, 4 and 5 and does not touch a case where there is complete lack of jurisdiction in the authorities to frame a scheme." (Page 980)

However, a somewhat different opinion was expressed in Raza Buland Sugar Co. Ltd., Rampur v. The Municipal Board, Rampur, AIR 1965 SC 895. In that case, their Lordships were considering the effect of Section 135 (3) of the Uttar Pradesh Municipalities Act, 1916, which provided as follows:

'A notification of the imposition of a tax under sub-section (2) shall be conclusive proof

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that the tax has been imposed in accordance with the provisions of this Act."

It was observed by Wanchoo, J., who spoke for the majority, that the aforesaid provisions would not preclude an attack on the validity of imposition of any tax if there was no compliance with the mandatory provisions of the procedure for imposition of such tax. But, in Municipal Board, Hapur v. Raghuvendra Kripal, AIR 1966 SC 693, the view taken in AIR 1962 SC 420 (supra) was reaffirmed. The passage from the judgment delivered in that case, which we have reproduced above, was recalled and it was held that the protection of Section 135 (3) would be available against the defects in procedure. Hidayatullah, J., who had recorded a dissenting opinion in AIR 1965 SC 895 (supra) observed:

"As observed already some of the provisions controlling the imposition of a tax must be fully complied with because they are vital and therefore mandatory, and the others may be complied with substantially but not literally, because they are directory. In either case the agency for seeing to this compliance is the State Government. It is hardly to be expected that the State Government would not do its duty or that it would allow breaches of the provision to go unrectified. One can hardly imagine that an omission to comply with the fundamental provisions would ever be condoned. The law reports show that even before the addition of the provision making the notification conclusive evidence of the proper imposition of the tax, complaints brought before the Courts concerned provisions dealing with publicity or requiring ministerial fulfilment. Even in the two earlier cases which reached this Court and also the present case, the complaint is of a breach of one of the provisions which can only be regarded as directory. In cases of minor departures from the letter of the law especially in matters not fundamental, it is for the Government to see whether there has been substantial or reasonable compliance. Once Government condones the departure, the decision of Government is rightly made final by making the notification conclusive evidence of the compliance with the requirements of the Act. It is not necessary to investigate whether a complete lack of observance of the provisions would be afforded the same protection. It is most unlikely that this would ever happen and before we pronounce our opinion we should like to see such a case."

We may add that the defects in procedure put forward in these petitions are not of mandatory character. Therefore, even if there were those defects - and their existence has in fact been disputed in the returns - the protection of Section 52 (2) would be available against them and it must accordingly be held that the Scheme was framed and sanctioned in accordance with the provisions of the Act

8. Another defect alleged to exist is that no notice of the intention of the respondent 1 to acquire the lands was given to individual owners. The short answer to this is that Section 68 of the Act does not contemplate such notices and, therefore, no objection can be taken on that ground. It is not claimed that notices in accordance with Section 68 (1) were not issued. That being so, if some of the petitioners did not raise any objection or avail of the opportunity of being heard so afforded to them, they cannot legitimately make a grievance that the requirements of that section were not fulfilled. In this connection, we may mention the fact that the petitioners in this case [M. P. No. 316 of 1966] had utilised that opportunity, though their objections were rejected.

9. It is next argued that, before according sanction for acquisition of the lands, the State Government did not make any enquiry as contemplated by Section 70 of the Act to satisfy itself that the acquisition was in public interest. Moreover, being the ultimate or final authority to sanction the acquisition, it was obliged to afford to the petitioners an opportunity of being heard. In our opinion, there is no substance in this contention. Under Section 70 of the Act, it is open to the State Government, if it so thinks fit, to make an enquiry, but it is not obliged to do so. The reason is this. Under Section 68 of the Act, the Improvement Trust gives a public notice of its intention to acquire land for purpose of any scheme, invites objections, gives an opportunity of being heard and then takes decisions on the objections, if any. Thereafter, when applying to the State Government under Section 69 of the Act for sanction of the proposed acquisition, it is required to send the record of the aforesaid proceedings, a report containing a summary of the objections and its decisions thereon and the following information:

(i) the names of the owner and occupier of the land;

(ii) full description of the land and of any structure thereon;

(iii) the purpose for which the land is required;

(iv) such other particulars as may be prescribed.

It would thus appear that the procedure prescribed by Sections 68, 69 and 70 of the Act is substantially similar to the one envisaged by Sections 4, 5A and 6 of the Land Acquisition Act, 1894. As we have indicated in the foregoing paragraph that procedure was followed in this case. That being so, the sanction accorded by the State Government in this case cannot be assailed on the ground that it did exercise its discretionary power of further making under Section 70 of the Act "such enquiry as it may deem necessary".

10. This takes us to the three main grounds urged in support of these petitions.

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The first of these grounds is that the Improvement Trust could not be permitted to usurp the functions of the market committee under the M. P. Agricultural Produce Markets Act, 1960 and the Municipal Corporation functioning under the M. P. Municipal Corporations Act, 1956. Quite apart from the consideration that the objects of the M. P. Agricultural Produce Markets Act, 1960 are different from, and not in conflict with, those of the Act, there was, at the material time, no market committee constituted and incorporated under Section 12 of the former Act that could undertake this work. Further, although the Municipal Corporation functioning under the M. P. Municipal Corporations Act, 1956 may be entitled to acquire, or cause to be acquired, land for purposes of that Act, the scope of town planning under Chapter XXIII thereof is very limited and, what is more, it is not exclusive. Section 292 of that Act enacts that where a town planning scheme has been sanctioned under the Town Improvement Act, the Municipal Corporation shall not make or undertake it.

11. The second ground is that acquisition of land for purposes of Development Scheme No. 5 is not a public purpose within the meaning of Article 31 (2) of the Constitution. The necessity for framing and proceeding to implement this scheme arose on account of congestion, insanitation and health hazards created by the existence of the wholesale grain market and Dal and Oil Mills in thickly populated localities of the city of Jabalpur. So, in their return, the respondents 1 and 2 stated as follows:

"The whole-sale grain market and Dal and Oil Mills in Niwarganj and Miloniganj are situated in a very congested thickly populated locality causing nuisance and insanitary conditions in the locality with consequent hazard to public health of the persons residing in the locality." [Paragraph 12 (a)]

In regard to the area vacated by the removal of whole-sale grain market and Dal and Oil Mills, another Scheme was envisaged. So it was stated:

"After the whole-sale markets, Dal and Oil Mills are removed, the area vacated by them would be developed with a view to make the localities good and safe residential areas with modern amenities like broad roads, parks, underground sewers, good water supply etc. For this purpose a separate scheme would be prepared."

We accept the factual position, which has not been challenged before us.

12. The expression "public purpose" occurring in Article 31 (2) of the Constitution has no inflexible or rigid connotation enuring for all times. It has been recognised to be elastic in concept, taking colour from the statute in which it occurs and varying in meaning with the time and state of society in which it is required to be considered. The scheme in this case has been framed under the M. P. Town Improvement Trust Act, 1960, which, as the preamble shows, was enacted for the purpose of making and executing town improvement schemes in certain towns of the State. In our opinion it would be idle to think of making any improvement in a town unless the authority concerned is empowered to remove from thickly populated localities causes of congestion, particularly when they bring about nuisance, insanitary conditions and health hazards. We are also of the view that the rehabilitation of persons thus displaced is also an essential part of any reasonable town improvement scheme. It is not necessary that the entire community or even a considerable portion thereof should directly enjoy, or participate in the enjoyment of, the improvement. It is enough if the object advances the general interest of the community. It may be that, in execution of the scheme, certain individuals incidentally derive benefit but so long as they do so not as individuals but in furtherance of the object of public utility, the scheme is not assailable as unsupported by public purpose, that is to say, general interest of the community. Regarded in the light of these considerations, we are clearly of opinion that the scheme, which provides for rehabilitation of persons required to be displaced from a thickly populated area in Jabalpur city for the reason that it is necessary to remove therefrom congestion and the resulting nuisance, insanitary conditions and health hazards, is in the general interest of the community. That being so, acquisition of the land needed for the purpose is for a public purpose.

13. The last ground, and the one which was tenaciously pressed before us, is that the Scheme is not a development scheme as contemplated by Section 37 of the Act nor is it one which can be regarded as a housing accommodation scheme under Section 38 of the Act or a town expansion scheme under Section 39 thereof. The submission is that the action taken should, therefore, be held to be unauthorised and illegal. We are unable to accept this contention also. Section 31 of the Act, which enumerates various types of schemes that can be undertaken under the Act, reads:

"31. Types of improvement schemes. - An improvement scheme shall be of one of the following types or may combine any two or more of such types or of any special features thereof, that is to say -

(a) a general improvement scheme;

(b) a re-building scheme;

(c) a re-housing scheme;

(d) a street scheme;

(e) a deferred street scheme;

(f) a development scheme;

(g) a housing accommodation scheme;

(h) a town expansion scheme;

(i) a drainage or drainage including sewage disposal scheme; and

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(j) a playground, stadium and recreation ground scheme."

From the plain language of this section it is clear that any scheme undertaken by an Improvement Trust need not be a one-type pure scheme excluding all or any of the features of any other type. In any such scheme, it is permissible to combine any two or more of such types or any special features thereof. That being so, the scheme in this case cannot be condemned as unsanctioned by the Act only because it does not rigidly conform to the development schemes as provided by Section 37 or to any other one-type scheme. The respondents 1 and 2 denied that the scheme in this case is a Town Expansion Scheme as contemplated by Section 39 (paragraph 12 (b)). We would, therefore, leave that non-descript scheme out of account. Since housing is not necessarily confined to making provision for residential buildings and is wide enough to include within its ambit the making of provision for any building required for carrying on any business or industry, we are of opinion that, though the scheme here has been misdescribed as a development scheme, it is really a combination of two types described in Sections 34 and 38 of the Act. Those sections provide -

"34. Re-housing scheme. - The Trust may frame a re-housing scheme for the construction, maintenance and management of such and so many dwellings and shops as it may consider ought to be provided for persons who -

(a) are displaced by the execution of any improvement scheme sanctioned under this Act; or

(b) are likely to be displaced by the execution of any improvement scheme which it is intended to frame or to submit to the State Government for sanction under this Act.

38. Housing accommodation scheme - Whenever the Trust is of opinion that it is expedient and for the public advantage to provide housing accommodation for any class of the inhabitants within the Trust area, the Trust may frame a housing accommodation scheme for such purpose." In this case, while Section 34 would cover dwellings and shops for persons likely to be displaced, Section 38 would cover other accommodation needed for the following classes, namely whole-sale grain dealers and owners of Dal and Oil Mills. Residential accommodation for workers in the whole-sale markets and the aforesaid two industries would also be covered by Section 38. Our attention has, however, been drawn to Municipal Corporation of the City of Jabalpur v. Kishan Lal, AIR 1966 SC 207. That was a case where, under the relevant enactment, the power of the Corporation was restricted to providing "for the construction of buildings for the accommodation of the poorer and working class" but the Corporation proceeded to acquire land to develop plots and then to sell those plots, or to sell the plots with buildings constructed on it, to the public. The action taken was struck down as incompetent by this Court. That view was affirmed by the Supreme Court when the case came up before it in appeal by special leave. But the action taken in this case is, as shown, well within the powers conferred by the widely worded provisions of the Act. It is hardly necessary to add that those powers do not cease to be available for defending the action though purportedly taken under a wrong section or a mistaken label. (P. Balakotaiah v. Union of India, AIR 1958 SC 232; Afzal Ullah v. State of Uttar Pradesh, AIR 1964 SC 264.)

14. The result is that these petitions fail and are dismissed. The petitioners in each case shall bear their own costs and pay out of the security amount those incurred by the respondents 1, 2 and 3. There shall be two sets of costs, one for the respondents 1 and 2 and another for the respondent 3. The remaining amount of security, if any, shall be refunded. Hearing fee Rs. 100/-.

Petitions dismissed.

AIR 1969 MADHYA PRADESH 186 (V. 56 C 47) "Ghanshyamdas v. State"

MADHYA PRADESH HIGH COURT

Coram : 2 P. V. DIXIT, C.J. AND G. P. SINGH, J. ( Division Bench )

Ghanshyamdas Badrilal, Petitioner v. State of M.P. and another, Respondents.

Misc. Petns. Nos. 322 and 323 of 1968, D/- 4 -12 -1968.

(A) M.P. Agricultural Produce Markets Act (19 of 1960), S.3, S.4, S.5, S.15 - M.P. Agricultural Produce Markets Rules (1962), R.54(1) - AGRICULTURAL PRODUCE - SALE - Restricting the sale and purchase of a particular agricultural produce in one of the market yards does not result in total prohibition of trading in that produce in the entire market area - Such direction therefore is not ultra vires rule-making power of Government and can be validly issued under R.54(1).

By a notification issued under Section 4 (1) of the M. B. Agricultural Produce Markets Act a market area was established for the area Indore Tahsil for regulating the purchase and sale of agricultural produce including cotton. By another notification three market yards were declared in the market area. Consequent on the repeal of the M. B. Act by M. P. Act, by a notification issued under Section 3 (4) of the M. P. Act the Government superseded the notification issued under the M. B. Act. One of the three market yards was declared to be sub-market yard and its limits were defined. A new market yard was declared in place of the other existing yard and was made the principal yard. By an order under R. 54 (1) the new market yard was declared to be principal market yard and the transactions in the sale and purchase of cotton were to be effected only in the new market yard. This order was challenged on the ground that the R. 54 (1) of the Rules only empowered the State Government to give directions regarding management of the markets and did not empower the Government to prohibit business in a notified agricultural produce at any market yard and that if Rule 54 were to be construed as giving to the Government the power to issue a direction prohibiting the sale and purchase of cotton in a market yard, the rule would be ultra vires the rule making power conferred on the Government by Section 38 (5) of the Act.

Held that the Scheme of Ss. 3, 4 and 5 showed that after a market is established for a certain area for regulating the purchase and sale of such agricultural produce in the area as are specified in the notification issued under Section 3 (3), any inclusion in or exclusion of any kind of agricultural produce from a notification issued under Section 3 (3) can be made only after complying with the provisions of Sections 4 and 5. If an agricultural produce is included in a notification issued under Section 3 (3) establishing a market, then trading in the sale and purchase of that commodity can be effected in any of the market yards in the market area unless trading in that particular commodity at a particular market yard was prohibited in accordance with law. In a market area where there are several market yards the prohibition of trading in a particular notified agricultural produce at a market yard did not, however, result in the total prohibition of trading that agricultural produce in the entire market area. There was therefore, no exclusion of any agricultural produce from a notification issued under Section 3 (3) if trading in that produce was restricted to the principal market yards or one of the sub-market yards in the market area. (Paras 8 and 9)

(B) M.P. Agricultural Produce Markets Act (19 of 1960), S.38(2)(V) - AGRICULTURAL PRODUCE - R.54 is intra vires rule-making power u/S.38(2). (Para 10)

(C) WORDS AND PHRASES - Words and Phrases-Management - Management means administration, control etc.

Management means administration, control, etc. and one of the synonyms of 'management' is 'government', which means control. (Para 9)

A. K. Chitale and R. K. Verma, for Petitioner; K. K. Dubey, Govt. Advocate, for the State; R. S. Dabir and B. M. Lal, for Respondent No. 2.

Judgement

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DIXIT, C.J.:- This order will also govern the disposal of Misc. Petition No. 323 of 1968.

2. These are two petitions under Article 226 of the Constitution, one by a person carrying on the business of sale and purchase of cotton at Sanyogitagunj market yard, Indore, and another by a cultivator selling cotton produced by him at the said market yard, challenging the legality of an order under Rule 54 of the Madhya Pradesh Agricultural Produce Markets Rules 1962 (hereinafter referred to as the Rules) issued to the Market Committee established for tha Indore market area under Section 8 of the Madhya Pradesh Agricultural Produce Markets Act, 1960 (hereinafter referred to as the Act), directing that transactions in the sale and purchase of cotton shall be effected only in the principal market yard of the Indore market area, namely, Laxmibai Nagar market yard and nowhere else.

3. The matter arises thus. On 23rd September 1953 the Madhya Bharat Government issued a notification under Section 4 (1) of the Madhya Bharat Agricultural Produce Markets Act, 1952, establishing a market for the area, Indore tahsil for regulating the purchase and sale of agricultural produce including cotton specified in the notification. On the same date, another notification was issued declaring three market yards in the market area. The three market yards were known as Sanyogitagunj, Malhargunj and Pardeshipura market yards and their limits were specified in the notification. The Madhya Bharat Agricultural Produce Markets Act, 1952, was however, repealed by Section 43 of the Madhya Pradesh Agricultural Produce Markets Act, 1960, which came into force on 15th October 1960. By virtue of Section 43 of the Act the market established for the Indore tahsil area and the market yards therein were continued and transactions in the agricultural produce including cotton notified on 23rd September 1953 continued to be effected in the Sanyogitagunj, Malhargunj and Pardeshipura market yards.

4. On 16th December 1961 the State Government issued a notification under Section 3 (4) of the M. P. Agricultural Produce Markets Act, 1960, superseding the notification issued by the Madhya Bharat Government on 23rd September 1953 and declaring Sanyogitaganj market yard to be a sub-market yard and defining its limits. Another notification was issued by the State Government on the same date under Section 3 (4) of the Act declaring a new market yard in place of the Pardeshipura market yard, defining its limits and making it the principal market yard. This principal market yard came to be known as Laxmibai Nagar market yard.

Thereafter, on 8th September 1964 the Government issued an order under Rule 54 (1) of the Rules to the Market Committee directing that transactions in the sale and purchase of cotton shall be effected only at the Laxmibai Nagar principal market yard. It appears that after this order was made, a petition under Article 226 of the Constitution was filed in this Court by one Chhangalal challenging the validity and legality of the order. When that petition was withdrawn the Government addressed a letter to the Market Committee on 3rd July 1968 asking it to give effect to the direction issued to the Committee under Rule 54 (1) of the Rules on 8th September 1964 with regard to transactions in sale and purchase of cotton being effected only in the Laxmibai Nagar principal market yard.

5. Shri A. K. Chitale, learned counsel appearing for the petitioners, argued that the directions given by the State Government to the Market Committee on 8th September 1964 and 3rd July 1968 were invalid inasmuch as in making those directions the State Government did not at all follow the mandatory provisions, contained in Sections 3, 4 and 5 of the Act and did not invite objections from the traders and cultivators concerned and give them a hearing before making those directions as required by Sections 3, 4 and 5. It was further said that Rule 54 (1) of the Rules only empowered the State Government to give directions regarding management of the markets and did not empower the Government to prohibit business in a notified agricultural produce at any market yard; that if Rule 54 were to be construed as giving to the Government the power to issue a direction prohibiting the sale and purchase of cotton in a market yard, the rule would be ultra vires the rule making power conferred on the Government by Section 38 (5) of the Act.

Learned counsel proceeded to say that under Rule 54 (1) an order could be made by the Government only in the best interests of the trade and regard being had to the convenience of the trade in the notified agricultural produce, but that those considerations were not borne in mind by the State Government while making the impugned orders; that in fact under Section 15 (2) the Market Committee was enjoined to carry out only those directions of the State Government which provided reasonable facilities in the market yard; and that the direction of the State Government prohibiting trading in cotton at any market yard other than Laxmibai Nagar principal

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market yard was in no sense a direction dealing with provision of reasonable facilities in any market yard.

6. Before examining the tenability of these contentions it is necessary to refer to the material provisions of the Act. The Act, as its preamble shows, is concerned with "the establishment of markets with a view to secure better regulation of buying and selling of agricultural produce in Madhya Pradesh". By Section 2 (i) (v) "market" has been defined as meaning "a market established under Section 3". Clause (vi) of Section 2 (1) says that "market area" means "the area for which a market is established under Section 3". According to the definition given in Section 2 (i) (vii) "market yard" includes principal market yard and sub-market yards. "Market Committee" has been defined by Section 2 (1) (viii) as meaning a committee established under Section 8.

Section 3 provides for the constitution of markets and gives power to the Government to declare, by notification, its intention to regulate the purchase and sale of such agricultural produce and in such area as may be specified in the notification; objections and suggestions are invited within the period specified in the notification; thereafter the Government, after considering the objections and suggestions, if any, and after holding such enquiry as may be necessary, establishes under sub-section (3) a market for the area specified in the notification under sub-section (1) or any portion thereof in respect of all or any of the kinds of agricultural produce specified in the notification under sub-section (1). By sub-section (4) of Section 3 the State Government has been given the power to declare, by notification, any enclosure, building or locality in any market area to be the principal market yard for the area and other enclosures, buildings or localities to be one or more sub-market yards for such area.

The consequences of the establishment of a market area are given in sub-section (5). We are not concerned with it here. Section 4 inter alia lays down that the State Government may, by notification, signify its intention to include in, or exclude from, a notification issued under Section 3 (3) any kind of agricultural produce. Section 5 provides that any person affected by a notification under Section 4 can submit his objection in writing to the State Government within six weeks from the date of the publication of the notification and the State Government is required to take his objection into consideration. After considering such objections and suggestions and holding such enquiry as may be necessary the State Government may, by notification under Section 5 (2), include in, or exclude from, a notification under Section 3 (3) all or any of the kinds of agricultural produce specified in the notification under Section 4.

7. The duties of the Market Committee have been prescribed by Section 15. The first two sub-sections, which are material here, ran thus :-

"15. (1) - It shall be the duty of the market committee to enforce the provisions of this Act and the rules and bye-laws made thereunder in the market area.

(2) The Committee shall carry out any directions which the State Government may issue from time to time for providing reasonable facilities in the market yard."

Section 38 (1) empowers the Government to make rules for carrying out the purposes of the Act. Sub-section (2) of Section 38 provides that in particular and without prejudice to the generality of the provisions contained in sub-section (1) such rules may provide for or regulate the matters enumerated in the various clauses of that sub-section. Clause (v) of Section 38 (2) gives to the Government the power to make rules for regulating the management of market. Rule 54 (1) of the M. P. Agricultural Produce Markets Rules, 1962, is as follows :-

"The market committee shall have absolute control over the market yard or yards. Subject to these rules and to the general or special orders of the State Government and to such control as is by these rules or by any other law vested in the Collector, or Director or in the local authority, the market committee shall manage the market yard in the best interests of the trade, having regard always to the convenience of the trade in notified agricultural produce and the purposes for which the control is vested in the market committee. It shall be open to any market committee to place any market yard in charge of any officer appointed by it."

8. It will be seen from the scheme of Sections 3, 4 and 5 that after a market is established for a certain area for regulating the purchase and sale of such agricultural produce in the area as are specified in the notification issued under Section 3 (3), any inclusion in or exclusion of any kind of agricultural produce from a notification issued under Section 3 (3) can be made only after complying with the provisions of Sections 4 and 5. If an agricultural produce is included in a notification issued under Section 3 (3) establishing a market, then trading in the sale and purchase of that commodity can be effected in any of the market yards in the market area unless trading in that particular commodity at a particular market yard is prohibited in accordance

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with law. In a market area where there are several market yards, the prohibition of trading in a particular notified agricultural produce at a market yard does not, however, result in the total prohibition of trading in that agricultural produce in the entire market area. There is, therefore, no exclusion of any agricultural produce from a notification issued under Section 3 (3) if trading in that produce is restricted to the principal market yards or one of the sub-market yards in the market area.

That being so, Section 4 (1) (i), which is concerned only with inclusion in or exclusion from a notification issued under Section 3 (3) of any agricultural produce, has no applicability whatsoever in a case where it is intended to restrict the trading in a notified agricultural produce to the principal market yards or one of the sub-market yards in the market area.

If Section 4 cannot apply, then Section 5 cannot come into operation. Here, the State Government has in no way excluded cotton from the notified agricultural produce for which a market for the Indore tahsil area was established. What has been done by the impugned orders made under Rule 54 is to restrict trading in the purchase and sale of cotton only at the principal market yard, namely, Laxmibai Nagar market yard. The contention, advanced on behalf of the petitioners that exclusion of trading in cotton in Sanyogitaganj sub-market yard and restricting it to the principal market yard of Laxmibai Nagar was made in violation of the provisions contained in Sections 3, 4 and 5 cannot, therefore, be accepted. Those provisions have no applicability here at all.

9. In regard to the contention that the Market Committee is under an obligation to carry out only those directions of the State Government which deal with the matter of providing reasonable facilities in the market yard and consequently the Government could not issue an order to the Committee saying that transactions in sale and purchase of cotton shall be effected only in the Laxmibai Nagar principal market yard, it is no doubt true that sub-section (2) of Section 15 lays down that the Committee shall carry out any directions of the Government for providing reasonable facilities in the market area and restricting of trading in a particular commodity at a particular market area is not making a provision for reasonable facilities in the market area.

But by sub-section (1) of Section 15 the Market Committee is enjoined to enforce the provisions of the Act and the Rules and bye-laws made thereunder in the market area. Now, Rule 54 gives to the Market Committee absolute control over the market yard or yards. But this control of the Committee over the market yard or yards has been made subject to the Rules and to the general or special orders of the State Government. With these limitations a Market Committee is required to manage the market yard in the best interests of the trade having regard to the convenience of the trade in the notified agricultural produce and the purposes for which the control is vested in the Market Committee.

In the management of the market yard, the Market Committee has to carry out the general or special orders of the State Government, for it is one of the duties of the Market Committee to enforce the provisions of the Rules. Now, management of the market yard does not mean merely the administrative management or superintendence of the market yard. It includes directing and controlling in a particular manner the use of the market yard. It has been stated in Browne's Judicial Interpretation of Common Words and Phrases that "management means administration, control, etc., and one of the synonyms of 'management' is 'government', which means control so that under a power to provide for the management of slaughter-houses a city has power to prohibit the operation of slaughter-houses within the city."

If then the Market Committee has the power of controlling and managing a market yard and this power of management is subject to any general or special orders of the State Government, then it is clear that where there is one principal market yard and several sub-market yards in a market area, the Market Committee has the power to prohibit trading operations in a notified agricultural produce at the sub-market yards and to restrict them at the principal market yard. Likewise, the Government has overriding power of asking the Market Committee to impose such a restriction. That the power of management includes the power to impose such restriction is clear also from the fact that under Rule 54 the Market Committee is required to manage the market yard in the best interests of the trade, having regard always to the convenience of the trade in a notified agricultural produce.

The power of management of the Market Committee is, therefore, not confined merely to administrative matters but extends to the regulation of trade in a notified agricultural produce keeping in mind the best interests of the trade and the convenience of the trade in the produce. The State Government, therefore, acted within its rights in issuing the order to the Market Committee directing that transactions in the sale and purchase

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of cotton shall be effected only at the Laxmibai Nagar principal market yard.

10. On this construction of the expressions "manage the market yard" and "management of market", Rule 54 (1) is clearly intra vires the rule making power conferred by Section 38 (2) (v). Clause (v) of Section 38 (2) gives to the Government the power to make rules for the management of market, and that power includes the power to make a rule enabling the Government to impose restrictions in trading operations in a notified agricultural produce at sub-market yards and principal market yard.

11. Learned counsel for the petitioners also urged that in making the impugned orders the Government did not give due consideration to the best interests of trade in cotton and to the convenience of the traders, and the restriction imposed by the Government would result in compelling the producers of cotton to carry their produce for long distances, thus imposing on them extra expenditure. It is not open to this Court to determine the validity of the impugned orders after entering into an examination of the question whether restriction of trading in cotton only at Laxmibai Nagar principal market yard would or would not be in the best interests of the trade and convenient to the traders. The convenience of the traders and the best interests of trade are matters of which the Government is the sole judge. It may, however, be pointed out that it would to a great extent defeat the very object of the Act if trading in a notified agricultural produce is permitted at all sub-market yards and is not centralized at a particular market yard.

12. For all these reasons, the challenge to the legality of the directions issued by the State Government under Rule 54 (1) on 8th September 1964 and 3rd July 1968 must fail. The result is that both these petitions are dismissed with costs. Counsel's fee in each case is fixed at Rs. 100/-. The outstanding amount of the security deposit after deduction of costs shall be refunded to the petitioner in each case.

Petitions dismissed.

AIR 1967 MADHYA PRADESH 17 (V 54 C 6) "Municipal Council, Kanker v. State"

MADHYA PRADESH HIGH COURT

Coram : 2 P. V. DIXIT, C.J. AND R. J. BHAVE, J. ( Division Bench )

Municipal Council, Kanker, Petitioner v. State of M. P. and another, Respondents.

Misc. Petn. No. 282 of 1965, D/- 7 -5 -1966.

(A) M.P. Agricultural Produce Markets Act (19 of 1960), S.2(1) - AGRICULTURAL PRODUCE - Notification under - Specification of area - Area described as one comprising all revenue and forest villages falling within specified development block - Area though wide in extent, does not become unspecified or vague. (Para 6)

(B) M.P. Agricultural Produce Markets Act (19 of 1960), S.3(3) - AGRICULTURAL PRODUCE - Notification under - Holding of enquiry is not condition precedent. (Para 6)

(C) M.P. Agricultural Produce Markets Act (19 of 1960), S.14 and S.35 - AGRICULTURAL PRODUCE - MUNICIPALITIES - Question of fact, viz. whether lands and buildings Included in market yard belong to Municipal Council, and if so, whether any of those lands or buildings was being used by Municipal Council, for purposes of market immediately before establishment of market - Question cannot be decided in writ proceedings - Proper remedy for Municipal Council is to file suit to establish facts alleged - Such suit is not barred by S.35. (Paras 9, 10)

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Cases Referred : Chronological Paras

(1964) AIR 1964 SC 1873 (V 51) : (1964) 5 SCR 517, Provincial Govt. Madras v. J. S. Basappa 9

(1949) AIR 1949 Nag 215 (V 36) : ILR (1948) Nag 971, Municipal Committee Karanja v. New East India Press Co. Ltd. Bombay 9

A.P. Sen, R.S. Dabir and N.B. Sirpurkar, for Petitioner; K.K. Dube, Govt. Advocate, for the State; R.K. Verma, for Respondent No. 2.

Judgement

DIXIT, C. J. :- This application under Article 226 of the Constitution by the Municipal Council, Kanker, is for the issue of a writ of certiorari for quashing the notifications issued by the Government on 12th September 1963, 24th September 1964 and 27th November 1964 under the Madhya Pradesh Agricultural Produce Markets Act, 1960, (hereinafter referred to as the Act), with regard to the establishment of a market for regulating the purchase and sale of the agricultural produce specified in the notification dated the 24th September 1964 for the areas mentioned in that notification and declaring the areas notified by the notification dated the 27th November 1964 as the principal market yard and market proper. The petitioner-Council also seeks a direction restraining the opponent-State from giving effect to the aforesaid notifications, and a direction to the respondent No. 2. the Kamala Nehru Krishiupaj Mandi Samiti, Kanker, restraining that Samiti from interfering with the management of a market said to be owned and run by the Council on an area of 3.19 acres of Khasra No. 384 included in the area notified on 24th September 1964.

2. The first notification was issued by the Government on 12th September 1963 in the exercise of its powers under section 3(1) of the Act declaring its intention to establish a market for regulating the purchase and sale of the agricultural produce enumerated in the notification and in the areas specified in the notification. After considering the objections and suggestions received to the proposal contained in the notification dated the 12th September 1963, the Government issued another notification under section 3 (3) of the Act establishing a market at Kanker "in the area comprising all Revenue and Forest villages falling within Development Block Kanker, in Ranker Tahsil of Bastar District" for regulating the purchase and sale of the agricultural produce specified in the Schedule to the notification. On 27th November 1964 a notification was issued under section 3(4) of the Act declaring the locality specified in that notification to be the "principal market yard." On that date, the Government also issued a notification in the exercise of the powers conferred by rule 53 of the Madhya Pradesh Agricultural Produce Markets Rules, 1962, declaring (a) the area falling within the jurisdiction of the Municipal Council, and (b) the area included in the villages, enumerated in that notification. of Tehsil Kanker, falling within the distance of about three miles from the Principal Market Yard, as the "market proper" for Mandi Kanker of Bastar district. For the area for which the market was established by the notification under section 3, the Government constituted a Market Committee which is known and styled as "Kamla Nehru Krishiupaj Mandi Samiti".

3. According to the petitioner-Council, this Mandi-Samiti is interfering with the management of the municipal market owned and run by it, that is the Council, and is also without any authority recovering rent in respect of shop-sites within the municipal market and also realising fees from traders exposing their goods for sale in the municipal market, and recovering licence-fees from flour-mills located in the municipal market and from merchants trading in agricultural and forest produce in the municipal market.

4. The contention of the petitioner-Council is that the notifications issued on 12th September 1963 and 24th September 1964 were invalid as they did not specify the area over which the market was intended to be established; and that the notification dated the 24th September 1964 was invalid also for the reason that it was issued by the Government without holding any enquiry and without affording to the Council any opportunity of lodging objections to the intention of the Government to establish a market. It was also contended that the land, which has been declared to be the Principal Market Yard by the notification dated the 27th November 1964, belongs to the Municipal Council, and on that land, besides land and buildings used for the purposes of market by the Municipal Council, are situated structures belonging to the Council which were not used by the Council for the purposes of market immediately before the establishment of the market; that the respondent No. 2, the Market Committee, was not entitled to the land and building situated within the market yard which were being used by the Council for non-market purposes; and that the Committee was also not entitled to exercise any right or authority even on that land or building which was being used for market purposes, when that land has not been transferred by the Council to the Market Committee in accordance with section 14 (1) of the Act and when the land and buildings have not even vested in the Committee under sub-section (2) of section 14 of the Act.

5. On behalf of the respondent No. 2, the Market Committee, it was argued by Shri Verma, learned counsel appearing for the Committee, that the notification dated the 24th September 1964 gave sufficient specification of the area where the market was established and was issued by the Government after giving to the persons concerned an opportunity to prefer their objections and suggestions to the proposal of the Government notified under section 3(1) on 12th September 1963 to establish a market for the area specified in that notification; and that the notification was, therefore, valid and could not be declared to be invalid merely

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because the Municipal Council did not lodge any objection or make any suggestion to the proposal contained in the notification dated the 12th September 1963. It was further said that the land situated within the market-yard notified by the notification dated the 27th November 1964 did not belong to the Municipal Council but belonged to the State, and consequently it was not necessary for the Committee to have the land transferred to itself in accordance with section 14 of the Act; and that without any transfer or vesting of the land and buildings under section 14, the Committee could exercise the powers conferred upon it under rules 54 and 55 within the market-yard.

6. In our judgment, there is no substance in the contention that the notifications dated the 12th September 1963 and 24th September 1964 were invalid inasmuch as they did not specify the area for which the market was intended to be established and was established. Both these notifications clearly say that the area for which the market has been established is the "area comprising all Revenue and Forest villages failing within Development Block Kanker, in Kanker Tehsil of Bastar District". Thus the area for which the market has been established covers the entire area of all Revenue and Forest villages falling within the Development Block, Ranker. This area may be wide in extent. But for that reason it does not become unspecified or a vague area. The notification dated the 24th September 1964 followed the notification issued on 12th September 1963 under section 3(1) of the Act. That notification invited objections and suggestions to the proposal to establish a market contained in it. It cannot, therefore, be maintained that the notification dated the 24th September 1964 under sub-section (3) of section 3 of the Act was issued without giving to the Council an opportunity of submitting its objections or giving its suggestions to the declaration of intention to establish a market made by the earlier notification of 12th September 1963. Even if the notification dated the 24th September 1964 was issued without holding any enquiry into the objections and suggestions received under sub-sections (2) and (3) of section 3 of the Act, it does not become invalid. Sub-section (3) of section 3 only says that "after the expiry of the period specified in the notification issued under sub-section (2) and after considering such objections and suggestions as may be received before such expiry and holding such enquiry as may be necessary the State Government may, by notification, establish a market for the area specified in the notification under sub-section (1)". The holding of an enquiry is thus optional with the State Government, as is clear from the use of the words "as may be necessary" which follow the word "enquiry" in sub-section (3). The holding of an enquiry is not a condition precedent to the validity of a notification under subsection (3). The attack on the validity of the notifications dated the 12th September 1963 and 24th September 1964 must, therefore, fail.

7. On the question of the authority of the Market Committee to exercise the powers conferred on it by the Act and the rules made thereunder, the position is that after the market is established and the market-yard is declared the Committee can no doubt control over the market-yard and exercise the various powers conferred on it by the Act and the Rules. This is however, subject to the qualification that if any land or building belonging to the local authority is situated within the market-yard and which immediately before the establishment of the market was being used by the local authority for the purposes of a market, the Market Committee cannot exercise any right or control over that land or building unless and until the land or building is transferred by the local authority to the Committee under section 14 (1) or become vested in the Committee under subsection (2) of section 14 of the Act. If in the market-yard there is any land or building belonging to the local authority which was not being used by the local authority for the purposes of market immediately before the establishment of the market, then if the Committee wants that land or building for the purposes of the Act, it has to acquire that land as provided by section 13 of the Act. The procedure for the transfer or vesting of the land under section 14 is that the Market Committee has to make a requisition to the local authority for the transfer of the land or building described in section 14 (1), and the local authority is required to transfer within one month of the receipt of the requisition the land or building, as the case may be, to the Market Committee on such terms as may be agreed upon between them. If no agreement is reached within a period of thirty days from the date of receipt of the requisition by the local authority, then the land or building required by the Market Committee becomes vested in the Committee for the purposes of the Act, and the local authority is then paid compensation as may be determined by the Collector under sub-section (4) of section 14.

8. It must be noted that in the enquiry that is held by the Collector for the determination of compensation when the land or building becomes vested in the Committee under subsection (2) of section 14, there can be no dispute on the question whether the land or building requisitioned by the Committee belongs to the local authority. This is because when the Market Committee makes a requisition under section 14 (1) to the local authority for the transfer of any land or building, it accepts the fact that the land or building, of which transfer is required, belongs to the local authority, and it is on the acceptance of this fact that the Collector determines the compensation payable to the local authority in respect of the land or building vesting in the Committee under sub-section (2) because of no agreement being arrived at between the Committee and the local authority as regards the terms of transfer. In the enquiry, which the Collector holds under sub-section (4) of section 14 for determining the amount of compensation

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payable for land of the nature described in section 14(1), he cannot also clearly embark upon an enquiry whether any land or building belonging to the local authority and situated within the market-yard was or was not being used by the local authority for the purposes of a market immediately before the establishment of the market.

9. When a dispute is raised between the local authority and the Committee whether any land or building situated within the market-yard belongs to the local authority or whether it was being used by the local authority for the purposes of a market immediately before the establishment of the market, then the party aggrieved must establish its right to the land or building by filing a civil suit. Section 35 of the Act is no impediment to the filing of such a suit. That provision is as follows :

"No suit in respect of anything in good faith done or intended to be done under this Act, rules and bye-laws framed thereunder, shall lie against any market committee, or against any officer or servant of a market committee or against any person acting under and in accordance with the direction of such committee."

This provision applies only to suits for damages and compensation in respect of acts done under the Act and the rules made thereunder. It does not apply where by a suit an action taken by any authority is intended to be challenged by law and so wholly beyond its jurisdiction. In this connection, it would be sufficient to refer to Municipal Committee, Karanja v. New East India Press Co. Ltd. Bombay, ILR (1948) Nag 971 : (AIR 1949 Nag 215) and the observations of the Supreme Court in Provincial Government, Madras v. J. S. Basappa, AIR 1964 SC 1873 on the question of the applicability of section 18 of the Madras General Sales Tax Act, 1939.

10. Now, here the claim of the Municipal Council that the area for which the market has been established and which has been declared to be market-yard belongs to it has been denied by the opponent-Committee in its return, and it has been stated on the basis of Khasra entries that the land belongs to the State. In the return, it has not been denied that there has been no vesting or transfer of the land under section 14 of the Act. It has been said that if it is found that the land or building in question belongs to the Municipal Council, then the Committee will take action under section 14 of the Act. There is thus a serious dispute between the petitioner-Council and the Committee on the basic question of fact, namely, whether the lands and buildings included in the market-yard belong to the Municipal Council, and if so, whether any of those lands or buildings were being used by the local authority for the purposes of the market immediately before the establishment of the market. These questions cannot be decided in these proceedings. The petitioner's obvious remedy is to file a suit for establishing its right of ownership of the lands and buildings situated within the market-yard, and also for establishing which of those lands or buildings belonging to it and situated within the market-yard, not being used by it for the purposes of the market immediately before the establishment of the market, could not be claimed by the Market Committee under section 14, and that if the Committee desired such land or building, it should acquire it under section 13 of the Act.

11. For these reasons, our conclusion is that this petition must be, and is, dismissed with costs. Counsel's fee is fixed at Rs. 100/-. The outstanding amount for security deposit, if any after deduction of costs, shall be refunded to the petitioner.

Petition dismissed.

AIR 1965 MADHYA PRADESH 6 (Vol. 52, C. 4) "K. U. V. Mandal v. State of M. P."

MADHYA PRADESH HIGH COURT

Coram : 2 P. V. DIXIT, C.J. AND K. L. PANDEY, J. ( Division Bench )

Krishi Upaj Vyavasai Mandal, Daulatganj, Ujjain and others, Petitioners v. The State of M. P., Bhopal and another, Respondents.

Misc. Petn. No. 221 of 1963, D/- 28 -4 -1964.

(A) M.P. Agricultural Produce Markets (Validation) Act (12 of 1962), 1962 S.3 - M.P. Agricultural Produce Markets (Validation) Ordinance (2 of 1962), 1962 - AGRICULTURAL PRODUCE - CONSTITUTIONALITY OF AN ACT - LEGISLATURE - S.3 of Validating Act purporting to validate an action struck down by judgment cannot be challenged as a judicial act performed by legislative authority - Arrogation of judicial power by legislative authority, what amounts to.

Constitution of India, Art.245.

The Legislature can be regarded as exercising judicial power only when, without amending the law, it directs, contrary to the law in force, that pending cases shall be disposed of in a particular manner or that cases decided in one way shall be deemed to have been decided in another way. AIR 1962 Madh-Pra 245 and AIR 1944 FC 86, Followed. (Para 5)

Therefore, S. 3 Madhya Pradesh Agricultural Produce Markets (Validation) Act, 1962, purporting to validate an action taken under the Madhya Bharat Agricultural Produce Markets Act, 1952 and which has been struck down by judgment cannot be challenged as a judicial act performed, by the legislative authority.

The argument that mere validation of an action invalidated by a judgment amounts, in effect, to exercising judicial power cannot be accepted because it proceeds upon an unwarranted assumption that validation simpliciter is not within the ambit of the power of legislating on a particular subject. (Para 5)

(B) M.P. Agricultural Produce Markets (Validation) Act (12 of 1962), S.3 - M.P. Agricultural Produce Markets (Validation) Ordinance (2 of 1962) - AGRICULTURAL PRODUCE - LEGISLATURE - Both enactments purporting to validate executive action taken under statute are not incompetent - Legislature has plenary powers to make laws regarding matters covered by entry in legislative list of Constitution - Such validation is ancillary to legislative power.

Constitution of India, Art.245, Art.246.

Validation of an executive order or a notification made under any enactment falls within the ambit of the relevant entry in the appropriate Legislative list and the Legislature has, subject to constitutional, limitations, plenary powers to make laws with respect to matters covered by the entry. (Para 5)

Therefore, the M.P. Agricultural Produce Markets (Validation) Ordinance 1962 and the M.P. Agricultural Produce Markets (Validation) Act, 1962 cannot be challenged as incompetent on the ground that Legislature has no power to validate an action taken, without retrospective amendment of the law under which such action is taken.

None of the items in the Legislative Lists of the Constitution should be read in a narrow or restricted sense and each general word should be held to extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended in it. So, in construing any entry in a List conferring Legislative power, the, widest possible construction according to the ordinary meaning must be put upon the words therein employed : (S) AIR 1955 SC 58 and AIR 1961 SC 652, Foll.

Validation of action taken or things done should be regarded as ancillary or subsidiary to the power to legislate : AIR 1941 FC 16 and AIR 1944 FC 1 and AIR 1960 SC 1080 and AIR 1961 SC 1486, Followed. (Para 5)

(C) M.P. Agricultural Produce Markets (Validation) Act (12 of 1962), 1962 S.3 - M.P. Agricultural Produce Markets (Validation) Ordinance (2 of 1962), 1962 - AGRICULTURAL PRODUCE - LEGISLATURE - Enactments validating action which is struck down by judgment - Not open to challenge though it renders judgment to have no legal effect - Legislature competent to enact laws within limits framed by Constitution.

The Legislature is authorised only to enact laws. It may make a law operating with retrospective effect. So long as it is acting within the limits of the legislative field reserved for it by the Constitution, any law made by it will not be open to challenge on the ground that that law has, as its direct or indirect consequence, put an end to the finality of a judicial decision or re-opened past controversies settled by such decisions. AIR 1953 Nag 40 and AIR 1961 SC 1486 and AIR 1961 SC 1534 and AIR 1962 SC 945, Ref. (Para 6)

On this broad ground, no fault can be found with Sub-Sec. (2) of Sec. 3 of the impugned Act which, as a consequence of the law enacted in Sub-Section (1), makes the judgment rendered in Miscellaneous Petition No. 31 of 1958 "to be and always to have been of no legal effect whatsoever". Actually, Sub-Section (2) and appears to have been enacted by way of abundant caution because what it purports to declare must follow from Sub-Section (1) itself. AIR 1958 SC 468, Followed. (Para 6)

(D) M.P. Agricultural Produce Markets (Validation) Act (12 of 1962), S.3 - M.P. Agricultural Produce Markets (Validation) Ordinance (2 of 1962), 1962 - AGRICULTURAL PRODUCE - AMENDMENT - S.3 is sufficient to validate past acts or things done - Not essential to amend impugned, statute.

It is true that for validating an act, the law itself must be retrospectively amended. AIR 1962 Madh-pra, 342, Distinguished; AIR 1964 Madh-Pra 45 and AIR 1961 SC 1534, Ref. But such retroactive amendment is necessary only when it is desired to change the law with retrospective effect. AIR 1962 SC 1517 and (S) AIR 1957 Bom 266 (FB) and AIR 1962 SC 945, Followed.

When it is intended to validate certain past action, this can also be done, by a new enactment, and it cannot be said that such validation is insufficient because the Legislature instead of amending the law (which invalidated the actions taken), validated the actions taken by enacting the M.P.Agricultural Produce Markets (Validation) Act, 1962. (Para 7)

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(E) M.P. Agricultural Produce Markets (Validation) Act (12 of 1962), 1962 S.3 - M.P. Agricultural Produce Markets (Validation) Ordinance (2 of 1962), 1962 - AGRICULTURAL PRODUCE - FREEDOM OF TRADE - Notification prohibiting use of particular place for transacting business in agricultural commodity - Notification struck down by judgment - Enactments purporting to validate notification do not violate Art.19(1)(g) of Constitution - Restrictions are not unreasonable.

AIR 1962 SC 97 and AIR 1962 SC 1517, followed. (Paras 4, 8)

(F) M.P. Agricultural Produce Markets (Validation) Act (12 of 1962), 1962 S.3 - AGRICULTURAL PRODUCE - EQUALITY - Section does not contravene Art.14 of the Constitution.

Madhya Pradesh Legislature made a change in the place of market yard after due enquiry and after hearing the parties and prohibited use of previous place for transacting business in any agricultural commodity.

Held, that there is no contravention of Art. 14 of the Constitution. (Para 9)

Article 14 of the Constitution forbids class legislation but it does not forbid reasonable classification for the purposes of legislation. In order that the test of impermissible classification should be satisfied, two conditions have to be fulfilled, viz., (1) the classification must be founded on intelligible differentia which would distinguish persons or things grouped together from others left out of group, and (2) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. A law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him find not applicable to others, that single individual may be treated, as a class by himself. AIR 1958 SC 538 and AIR 1962 SC 945, Followed. (Para 9)

Cases Referred : Courtwise Chronological Paras

('55) (5) AIR 1955 SC 58 (V 42) : 1955-1 SCR 829, Navinchandra Mafatlal v. Commr. of Income Tax, Bombay City 5

('58) AIR 1958 SC 468 (V 45) : 1958 SCR 1422, M.P.V. Sundararamier and Co. v. State of Andhra Pradesh 6

('58) AIR 1958 SC 538 (V 45) : 1959 SCR 279, Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar 9

('60) AIR 1960 SC 1080 (V 47) : (1950) 3 SCR 887, Kavalappara Kottarathil Kochuni v. State of Madras 5

('61) AIR 1961 SC 652 (V 48) : 1961-3 SCR 242, Diamond Sugar Mills Ltd. v. State of Uttar Pradesh 6

('61) AIR 1961 SC 1486 (V 48) : (1962) 1 SCR 633, Mst. Jadao Bahuji v. Municipal Committee Khandwa 5, 6

('61) AIR 1961 SC 1534 (V 48) : (1962) 2 SCR 1, J.K. Jute Mills Co. Ltd. v. State of Uttar Pradesh 6

('62) AIR 1962 SC 97 (V 49) : (1962) 2 SCR 659, Mohd. Hussain v. State of Bombay 8

('62) AIR 1962 SC 945 (V 49) : 1962 Supp (2) SCR 380, State of Orissa v. Bhupendra Kumar Boss 6, 7, 9

('62) AIR 1962 SC 1517 (V 49) : (1962) 1 SCR 733, Muhammadbhai v. state of Gujarat 7, 8

('41) AIR 1941 FC 16 (V 28) : 1940 FCR 110, United Provinces v. Mt. Atiqa Begum 5, 6

('44) AIR 1944 FC 1 (V 31) : 1944 FCR 61, Piare Dusadh v. Emperor 5, 6

('44) AIR 1944 FC 86 (V 31) : 1944 FCR 295, Basanta Chandra v. King-Emperor 5

('57) (S) AIR 1957 Bom 266 (V 44) : ILR (1957) Bom 714 (FB), Gulabrao Keshavrao v. Pandurang Bhanji 7

('62) AIR 1962 MP 245 (V 49) : 1962 MPLJ 935, M/s. Mohanlal Hargovinddas v. State of Madhya Pradesh 5

('62) AIR 1962 MP 342 (V 49) : 1962 MPLJ 849, Firm Dayalal Meghji and Co. v. State of Madhya Pradesh 7

('64) AIR 1964 MP 45 (V 51) : 1964 MPLJ 43, Narottamdas v. State of Madhya Pradesh 7

('53) AIR 1953 Nag 40 (V 40) : ILR (1952) Nag 736, Bhaskar v. Mohammad Alimullakhan 6

('56) (S) AIR 1956 Nag 167 (V 43) : ILR (1956) Nag 83, Jadao Bahuji v. Municipal Committee Khandwa 6

K.A. Chitajey, V.S. Pandit, V.S. Dabir and Chandmal Mehta, for Petitioners; M. Adhikari Advocate General, (for No. 1). K.B. Mehta (for No. 2), for Respondents.

Judgement

ORDER : This petition under Art. 226 of the Constitution mainly calls in question the validity of the Madhya Pradesh Agricultural Produce Markets (Validation) Ordinance, 1962 (2 of 1962) and the Madhya Pradesh Agricultural Produce Markets (Validation) Act, 1962 (12 of 1962).

2. The facts giving rise to this petition, which are some what involved, may be stated as briefly as possible. Before the, formation of the United State of Madhya Bharat in the year 1948, the city of Ujjain formed part of. the erstwhile princely State of Gwalior where the Qawaid Mandi Rai Gwalior (Samvat 1986) (hereinafter called the Qawaid) was in force. By virtue of S. 4 of Act 1 of 1948, the laws in force in all the covenanting states were continued in force until duly amended or repealed. In the year 1952, the Madhya Bharat Agricultural Produce Markets Act, 1952 (hereinafter called the Madhya Bharat Act) was placed on the statute book. By S. 31 of that Act, the corresponding laws in force in various parts of the new State, Including the Qawaid, were, subject to the following proviso, repealed :

"Provided that the Mandi or Market Committees duly constituted under the said Qawaid or rules and holding office immediately prior to the date on which this Act comes into force shall continue to function as if constituted under this Act and the Chairman of any such, committee holding office prior to the commencement of the Act shall continue to be the Chairman thereof until new Market Committees are duly constituted to replace them under this Act. It shall however be open to the Government to nominate not more than 3 representatives of Agriculturists on every one of these committees and also to pass such orders as they deem fit in respect of the market areas for which each of these committees may be deemed to have been constituted and also in respect of the commodities each of them may regulate."

Without issuing any notification under Ss. 3 and 4 of the Madhya Bharat Act, fresh, elections were held and nominations

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were made in the years 1954 and 1958 with a view to constituting new market committees in accordance with the provisions of S. 6 of that Act. Also, the State of Madhya Bharat issued a number of notifications in the purported exercise of its powers under the Madhya Bharat Act and the rules made thereunder. By a notification No. 145/13 dated 9 June, 1953, it established Mandis, including the one at Ujjain, declared market areas and specified the agricultural commodities which could be vended in those Mandis. By another notification No. 497/13 dated 26 May 1954, it declared inter alia that Daulatganj would be the market yard for transacting business in grains at Ujjains. By the third notification No. 2916/13 dated 26 May 1954, it invited suggestions relating to, and objections against, its intention to regulate the purchase and sale of wheat in certain towns including Ujjain. By the fourth notification No. 3670/13 dated 12 August 1954, it declared certain Marsdis, including the one at Ujjain, to be market areas for purchase and sale of wheat. By the fifth notification No. 8188/XIV/57 dated 11 June 1957, it superseded the notification No. 497/13 dated 26 May 1954 whereby Daulatganj was declared to be the market yard at Ujjain for dealing in grains and instead declared Chimanganj to be the market yard. Finally, by an order dated 6 February 1958, the market committee (respondent 2) prohibited use of Daulatganj for transacting business in any agricultural commodity.

3. In Miscellaneous Petition No. 31 of 1958, which was mainly directed against disestablishment of the Daulatganj market yard, Razzaque, J. by his order dated 20 September 1961, declared the five notifications mentioned in the last paragraph to be void and forbade interference with the right of the petitioners to carry on. business at Daulatganj "till the various notifications are regularised and validated". Thereupon, by the Madhya Pradesh Agricultural Produce Market (Validation) Act, 1962, which re-enacted the Ordinance made earlier, the aforesaid notifications were sought to be validated. The relevant enactment, which is contained in S. 3 of the Validating Act, reads :

"3. (1) Notwithstanding any judgment, decree or order of any Court or any provision in the Act, or the rules .made thereunder

(a) the 'mandi or market areas' purported to have been declared by the notifications set out in Part A of the Schedule hereto annexed shall be and shall always be deemed to have been validly declared for the purpose of the Act and in respect of the agricultural produce specified therein and the validity of the said notifications or of the constitution or continuance of such mandi or market areas thereunder with respect to the items of agricultural produce mentioned therein shall not be called in question in any Court whatsoever;

(b) no act done or action taken (including any appointment or delegation made, notification, order instruction or direction issued, rule or byelaw framed, permit or licence granted, proceedings instituted) by the, State Government or any of its officers or a mandi or market committee under the Act in respect of a mandi or market area referred to in Cl. (a) shall be called in question on the ground that such mandi or market area was net declared 33 such in accordance with the provisions of the Act.

(2) Any order of a Court declaring any of the notifications set out in Part A of Part B of the Schedule invalid on the ground mentioned in Cl. (b) of Sub-Sec. (1) shall be deemed to be and always to have been of no legal effect whatsoever."

4. The petitioner 1 is a Society of persons dealing in agricultural produce at Ujjain. It is also registered under the Societies Registration Act, 1860. The members of the Society and 2 other persons, petitioners 2 and 3, carry on business in agricultural produce, including grains, in the Daulatganj market yard. They have challenged the Validating Ordinance and the Validating Act mainly on the following three, grounds :

(i) The enactments are incompetent because, by validating the notifications struck down by a judicial pronouncement, they merely seek to remove an impediment to their validity without establishing any market.

(ii) They impose unreasonable restrictions on the fundamental right of the petitioners to carry on their occupation, trade or business and thereby infringe the fundamental right guaranteed to them by Article 19(1)(g) of the Constitution.

(iii) They subject the petitioners to differential treatment in that, if the impugned Act be regarded as competent, it would validate the establishment of the Chimanganj market yard without any enquiry when, under the Madhya Pradesh Agricultural Produce Markets Act, 1950 (Act 19 of 1960), the provisions for 'establishing such a market contemplate, an enquiry.

5. In regard to the first ground, the precise contention is that it was not competent to the legislature be merely validate with retrospective effect the notifications which had been struck down, without

(i) retrospective amendment of the law whereunder such notifications could be issued or

(ii) taking action or doing things covered by the notifications.

The argument that mere validation of an action invalidated by a judgment amounts, in effect, to exercising judicial power cannot be accepted because it proceeds upon an-unwarranted assumption that validation simplicity is not within the ambit of the power of legislating on a particular subject. In the first place, the Legislature can be regarded as exercising judicial power only when, without amending the law, it directs, contrary to the law in force, that pending cases shall be disposed of in a particular manner or that cases decided in one way shall be deemed to have been decided in another way: M/s. Mohanlal Hargovinddas v. State of Madhya Pradesh, AIR 1962 Madh Pra 245. So, in Basanta Chandra Ghose v. King Emperor, 1944 FCR 295 : (AIR 1944 FC 86) the Federal Court struck down Cl. (a) of S. 10 of the Restriction and Detention Ordinance (III of 1944), which is reproduced below, as a direct disposal of cases by the Legislature itself and, therefore, an arrogation of judicial powers by a Legislative authority:

"(2) If at the commencement of this Ordinaries there is pending in any Court any proceeding by which the validity of order having effect by virtue of S. 6 as if it has been made tinder this Ordinance is called in question, that proceeding is hereby discharged."

It is obvious that here that is not the case and S. 3 of the Validating Act cannot be challenged as a judicial act performed by the legislating authority. Secondly, none of the items in the Legislative Lists of the Constitution should be read in a narrow or restricted sense and each general word should be held to extend to all ancillary and

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subsidiary matters which can fairly and reasonably be comprehended in it. So, it has been held that, in construing any entry in a List conferring legislative power, the widest possible construction according to the ordinary meaning roust be put upon the words therein employed : Navinchandra Mafatlal v. Commr. of income-tax, Bombay City, 1955-1 SCR 829 : (CS) AIR 1955 SC 58) and Diamond Sugar Mills, Ltd. v. State of Uttar Pradesh 1961-3 SCR 242 : (AIR 1951 SC 652). It is also row firmly established that validation of action taken or things dope should be regarded as ancillary or subsidiary to the power to legislate. Long ago, Gwyer C.J. stated in The United Provinces v. Mst. Atiqa Begum, 1940 FCR 110 : (AIR 1341 FC 16) as follows :

"It is true that 'Validation of executive orders or any entry even remotely analogous to it is not to his found in any of the three Lists; but I am clear that legislation for that purpose must necessarily be regarded as subsidiary or ancillary to the power of legislating on the particular subjects in respect of which the executive orders may have been issued."

(at p. 136 (of FCR) : (at p. 26 of AIR))

The same view was taken in Piare Dusadh v. Emperor, 1944 FCR 61 : (AIR 1944 FC 1), Kavsiappara Kotlarathil Kochuni v. State of Madras, (1960) 3 SCR 837 : (AIR I960 SC 1080) and Mst. Jadao Bahuji v. Municipal Committee, Khandwa, (1962) 1 SCR 633 : (AIR 1961 SC 1486). Since validation of an executive order or a notification made under any enactment falls within the ambit of the relevant entry in the appropriate Legislative List and the Legislature has, subject to constitutional limitations, plenary powers to make laws with respect to matters covered by the entry, the two enactments challenged in these proceedings cannot be assailed as incompetent.

6. In our opinion, the two enactments are not open to challenge also on the further ground that they were made to undo the effect of the judgment in Miscellaneous Petition' No. 31 of 1958. In Bhaskar v. Mohammed Alimullahhan, ILR (1952) Nag 736 : (AIR 1953 Nag 40) a Division Bench of this Court stated :

"...... it must be taken to be beyond question that in India the Legislature is competent to out an end to the finality of a decision of a Court and reopen a past controversy and even to pass validating Acts and that enactment of a law having such effects does not constitute exercise of judicial functions by the Legislature."

(at p. 753 (of ILR Nag) : (at p. 48 of AIR))

This passage was quoted with approval in Jadao Bahuji v. Municipal Committee, Khandwa, ILR (1956) Nag 83 : ( (S) AIR 1956 Nag 167). The decision in the case last-mentioned was affirmed by the Supreme Court in (1962) 1 SCR 633 : (AIR 1961 SC 1486). Speaking for the Court, Hidayatuilah, J. stated :

"Retrospective legislation, being thus open to the Provincial Legislatures, the Act of the Governor had the same force. Retrospective laws, it has been held, can validate an Act, which contains some defect in its enactment. Examples of Validating Acts, which rendered inoperative decrees or orders of the Court or alternatively made them valid and effective, are many. In Atiqa Begum's cast, 1940 FCR 110 : (AIR 1941 FC 16) the power of validating defective laws was held to be ancillary and subsidiary to the powers conferred by the Entries and to be included in those powers. Later, the Federal Court in 1944 FCR 61 : (AIR 1944 FC 1) considered the matter fully, and held, that the powers of the Governor-General which were conterminous with those of the Central Legislature included the power of validation. The same can be said of the Provincial Legislatures and also of the Governor acting as Legislature."

(at pp. 639-40 (of SCR) : (at p. 1490 of AIR)) :

We may also, in this connexion, refer to J.K. Jute-Mills Co., Ltd. v. State of Uttar Pradesh, (1962) 2 SCR 1 : (AIR 1961 SC 1534) and State of Orissa. v. Bhupendra Kumar, AIR 1962 SC 945. The true position, we think, is that the Legislature is authorised only to enact laws. It may make a law operating with retrospective effect. So long as it is acting within the limits of the legislative field reserved for it by the Constitution, any law made by it will not be open to challenge on the ground that that law has, as its direct or indirect consequence, put an end to the finality of a judicial decision or re-opened past controversies settled by such decisions. On this broad ground,, no fault can be found with Sub-Sec. (2) of S. 3 of the impugned Act which, as a consequence of the law enacted in-Sub-Sec. (1), makes the judgment rendered in .Miscellaneous Petition. No. 31 of 1958 "to be and always to have been of no legal effect whatsoever". Actually, Sub-Sec. (2) ibid appears to have been enacted by way of abundant caution-because what it purports to declare must follow from Sub-Sec. (1) itself. The Supreme Court took the same view when construing two clauses of S. 2 of the Sale Tax Laws-Validation Act, 1956. Venkatarama Ayer, J. stared in M.P.V. Sundararamier and Co. v. State of Andhra Pradesh, 1958 SCR 1422 : (AIR 1958 SC 468) as follows :

"It is true that on the contention of the State that the first clause has independent operation, the second clause would be unnecessary, as even without it, the result sought to be achieved by it must follow on the first clause itself. But it is to be noted that the first clause has reference to the exercise of legislative power while the second is concerned with administrative action, and it is possible that the second clause might have been enacted by way of abundant caution. It is nothing strange or unusual for a legislature to insert a provision ex abundand cautela, so as to disarm possible objection."

(at p. 1486 (of SCR) : (at p. 488 of AIR)).

7. In support of the contention that a retrospective amendment of the law was necessary because only then could the notifications issued earlier be validated, reliance is placed upon Firm Dayalal Meghji and Co. v. State of Madhya Pradesh, AIR 1962 Madh Pra 342, Our attention is also drawn to Marottamdas v. State of Madhya Pradesh, AIR 1964 Madh Pra 45 to show that, instead of validating the notifications, the Legislature could have established; the Chimanganj market. The case of Firm Dayalal Meghji and Co., AIR 1962 Madh Pra 342 (supra) is distinguishable because there the petitioners concentrated their attack on S. 31A, which was inserted in the Principal Act by the-Minimum Wages (Madhya Pradesh Amendment and Validation) Act (23 of 1961). Upon examination, the language employed in that section was not found either apt or sufficient to effectuate the result that was sought to be achieved. It is true that, for validating an Act, the law itself may as retrospectively amended, (1962) 2 SCR 1 : (AIR 1961 SC 1534). But, as pointed out by the Supreme Court in Muhammabhai v. State of Gujarat, AIR 1962 SC 151

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such, retroactive amendment is necessary only when it desired to change the law with retrospective, effect. Speaking for the Court, Wanchoo, J. stated;

"It could have been made retrospective also and in that case. Sub-Sec. (1) of S. 29-B may not have been necessary. The legislature, however, adopted the method of amending S. 5-AA prospectively and making a separate provision for validating the establishment of markets in Sub-Sec. (1) of S. 29-B. We see no; reason why it should be held that the validation, made by Sub-Sec. (1) is not sufficient because the legislature has adopted one method rather than tine other, for carrying out its purpose. We are therefore of opinion, that S. 29-B is sufficient to cure the defects pointed out; in the earlier judgment of the Court and to validate, actions taken and things done before the promulgation of the Ordinance which would otherwise have been invalid, in view of the earlier judgment of this Court."

(at p. 1524)

It is, therefore, clear that validation may be brought to about, without retrospective amendment of the law. We may add that, such validation was considered sufficient not only in the case just mentioned but also in Gulabrao Keshavrao. v. Pandurang Bhanjr, ILR (1957) Bom 714 : ((S) AIR 1957 Bom 266 (FB)) and AIR 1962 SC 945.

8. The second, ground that the impugned enactments a impose unreasonable, restrictions on the fundamental right of the petitioners to carry on their business in the Daulatganj market, yard is, in view of the decisions of the supreme Court, in Mohd. Hussain v. State of Bombay, AIR 1962 SC 99 and AIR 1962 SC 1517 clearly without substance.

9. The third and the last ground seeks, to make, out a case of violation of Art. 14 of the Constitution, in the first Place only one of the notifications, which have been validated, relates, to Ujjain alone and, therefore, it cannot

the said that like, have not been treated alike. Secondly, a law may be, constitutional even though it relates to a single, individual,, if, on account of some special circumstances or reasons, applicable to him, and not applicable so others that single, individual is treated as a class by himself Shri Ram. Krishna Dalmia v. Shri Justice S.R. Tendolkar, 1959. SCR 279 : (AIR 1958 SC 538). A some what similar, argument was advanced in AIR 1962 SC 945 and it was repelled, in this way :

"Besides, if the power to validate by promulgating an Ordinance, is conceded, to the Governor under Art. 213(1), it would not be easy to appreciate why it was not open to the Governor to issue an Ordinance dealing with the Cuttack, Municipal Elections themselves. The Cuttack Municipal Elections had been set aside by the High Court and if the Governor, thought that in the public interest having regard to the factors enumerated in the preamble to the Ordinance, it was necessary to validate the said elections it would not necessarily fellow that the Ordinance suffers from the vice of contravening Art. 14 has been the subject, matter of decisions in this Court on numerous occasions. It is now well established that what the said Article, forbids is class legislation no doubt, but it does not forbid, reasonable classification for the purposes of legislation. In order that the test of permissible classification should be satisfied two conditions have to be fulfilled, viz., (1) the classification must be founded on an intelligible differentia which would distinguish persons or things grouped together from others left out of group, and (2) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. As this Court has held in the case of 1959 SCR 279 at p. 297 : (AIR 1958 SC 538 at p. 547) a law may be constitutional even, though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself. Therefore, if the infirmity in the electoral rolls on which the decision of the High Court in the earlier writ petition was based had not been applicable to the electoral rolls in regard to other Municipalities in the State of Orissa, then it may have been open to the Governor to issue an. Ordinance only in respect of the Cuttack Municipal Elections, and if, on account of special circumstances or reasons, applicable to the Cuttack Municipal Elections, a law was passed in respect of the said elections alone, it could not have been challenged as unconstitutional untie Art. 14. Similarly, if Mr. Bose was the only litigant affected by the decision and as such formed a class by himself, it would have been open to the Legislature to make a law only in respect of his case. But as we have already pointed out, the Ordinance, does not purport to limit its operation only to the Cuttack Municipality; it purports to validate the Cuttack Municipal Elections and the electoral rolls in respect of other Municipalities as well. Therefore, we are satisfied that the High Court was in error in coming to the conclusion that S. 4 contravenes Art. 14 to the Constitution. Having regard to the fact that certain infirmities in the electoral rolls were presumably found to be common to electoral rolls in several Municipalities, the Governor thought that the decision of the High Court raised a problem of public importance affecting all Municipal elections in the State and so, acting on the considerations set out in the preamble to the Ordinance, he proceeded to promulgate it. In dealing with the challenge against S. 4 of the said Ordinance, the High Court should have considered all the provisions of the Ordinance together before coming to the conclusion that S. 4 was discriminatory and contravened Art. 14."

It is not that there was no enquiry before Chimanganj was notified to be the market yard. In paragraph 28 of his judgment, Razzaque, J. stated as follows :

"From the above history it would be clear that the action, for abolishing Daulatganj and creating Chimanganj market yard was taken on the complaint of the producers, traders and members of the public. Thus the insinuation that this was done for some 'obscure reason.' is without substance. It is also clear that enquiries were made from the various associations including the traders' association and the licence-holders' association. It is implicit in these enquiries that whatever objections were raised were given due consideration and it was after this that the Chimanganj market yard was established. In the circumstances therefore it is absolutely wrong to say that no enquiries were made and no opportunities were given to the traders and others for being heard. So, as far as this case is concerned, it is clear that enquiries were made, opportunities were given for being heard, objections were considered and then Chimanganj market yard was notified."

Having regard to this consideration, we must hold, following the law laid down by the Supreme Court in AIR 1962 SC 945 (supra) that there is no contravention of Art. 14 of the Constitution.

10. In the view we have taken of this case, the petition fails and is dismissed. The petitioners shall bear

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their own costs and pay out of the security amount those incurred by the respondents. The remaining amount of security shall be refunded. There shall be a separate set of costs for each of the two respondents. Hearing fee Rs. 100/-.

Petition dismissed.

AIR 1965 MADHYA PRADESH 27 (Vol. 52, C. 9) "State of Madh. Pra. v. Jogilal"

MADHYA PRADESH HIGH COURT

Coram : 3 V. R. NEWASKAR J. on difference of Opinion between H. R. KRISHNAN AND S. B. SEN, JJ. ( Full Bench )

The State of M. P., Appellant v. Jogilal Keshrimal, and another, Respondents.

Criminal Appeal No. 229 of 1962, D/- 19 -4 -1963.

(A) M.P. Foodgrain Dealers Licensing Order (1958), Cl.2 - ESSENTIAL COMMODITIES - LICENSE - Dealer - Who is - A dealer is one who sells and buys; but he need not be actually selling every moment. (Para 7)

(B) Essential Commodities Act (10 of 1955), S.16(1)(b) - Madhya Bharat Agricultural Produce Markets Act (17 of 1952) - ESSENTIAL COMMODITIES - AGRICULTURAL PRODUCE - LICENSE - Not covered by S.16 - License under Madhya Bharat Act does not dispense with license under Madhya Pradesh Foodgrain Dealers Licensing Order 1958.

The Madhya Bharat Agricultural Produce Markets Act of 1952 is not one that is covered by S. 16 of the Essential Commodities Act. For that, it should be one controlling or authorizing the control of the production, supply and distribution, of and trade and commerce in any essential commodity. The Madhya Bharat Agricultural Produce Markets Act has altogether nothing to do with this subject. It only provides for licenses enabling a dealer in agricultural, produce to do business in a particular market area constituted under that Act. Thus, that Act has not been repealed by S. 16 of the Essential Commodities Act, nor can license issued under that Act take place of a license under the Madhya Pradesh Foodgrains Control Order (1958) made under S. 3 of the Essential Commodities Act. Thus, the accused persons having been licensed under the said Madhya Bharat Act does not in any manner enable them, to deal in essential commodities or foodgrains without a license, under the Madhya Pradesh Foodgrain Dealers Licensing Order, 1958. (Para 8)

(C) Essential Commodities Act (10 of 1955), S.7, S.12 - ESSENTIAL COMMODITIES - LICENSE - Breach, of provisions of M.P. Foodgrain Dealers Licensing Order(1958) - Accused importing foodgrains after application, for but before receipt of license - Held conduct of accused was not bona fide - Fine to be imposed must be heavy to serve as deterrent - Offence tried by Magistrate First Class - Fine of Rs. 2000/- held should be awarded.

Per Newaskar, J. (On difference between Krishnan and Sen, JJ.) :

After the Madhya Pradesh Foodgrain Dealers Licensing Order, had been promulgated on 07-10-1958 the accused had deposited requisite licensing fee on 16-01-1959 and had applied for a license as required by the provisions of the Order on 29-1-1959 but before he received the same he imported a truck load of rice weighing one hundred and fifty five Maunds and had that quantity in stock with him on 16-02-1959 when the Naib Tehsildar visited his place. The accused on coming to know of Naib Tehsildar's visit submitted an application on the same day i.e. 16-02-1959 admitting to have brought approximately 150 maunds of rice and to have the same in his store. Under the provisions of S. 3(2) of the Order if a dealer had in his store any quantity of foograin for which license is required in excess of 100 maunds there would be presumption that he had the same for the purpose of sale.

Held that since the accused had not secured license till that date or even later upto 16-5-1959 there would be on terms of the provision aforesaid a presumption that he had stored the food-grains for the purpose of sale and consequently because of such storage he would be a dealer. As this was done by him when he was not armed with a license, which was a pre-condition, there was a clear contravention of the Order. Since the offence consisted in contravention of the provision of the Order not to carry on business as a dealer except and in accordance with the terms and conditions of the license issued in this behalf by the Licensing authority, procuring grain without having secured any such license to an extent which would lead to a presumption about a person's carrying on business as a dealer clearly ought to amount to an offence. Conduct of the accused in submitting to the Naib Tehsildar an application admitting the existence of the stock could not be construed as indicative, of his bona fides as he should be credited with the knowledge that the Naib Tehsildar had come, for checking and, would discover him as having in his store contraband, quantity. Therefore the fine to be imposed must be sufficiently heavy so as to serve, as a deterrent for any other person in going ahead with a similar act with the hope of being dealt with leniently. As the offence had been tried by the First Class Magistrate ends of justice would be served if the maximum sentence of fine impossible by the trying Magistrate was imposed. Section 12 of the Essential Commodities Act did not fix the upper limit; hence where a State Government, empowers a First Class. Magistrate specially under the Essential Commodities Act the fine which he can impose, is not limited to that under S. 32 Or P. Code. The limit, which S. 32 has now imposed by Cr. P.C. Amendment Act, 26 of 1955 (i.e. Rs. 2000/-) will be the legitimate limit, for the imposition of fine AIR 1948 Bom 358, Rel. on. (Para 31, 32)

Cases Referred : Courtwise Chronological, paras

('48) AIR 1948 Bom 358 (V 35) : 49 Cri LJ 518, Mohanlal Gokaldas v. Emperor 34

S.L. Dubey, A.G.A., for Appellant; S.N. Gupta, for Respondent.

Judgement

KRISHNAN, J. : The respondents who run a business in. foodgrains at a place called Khetia on the border of the Maharashtra State have been acquitted by the First Class Magistrate, Sendhwa, of the offence of contravening one of the provisions of the Madhya Pradesh Foodgrain Dealers Licensing Order, punishable under S. 7 of the Essential' Commodities Act of 1955. The contravention was their storing, in course of their business, 155 maunds of rice on. 16-2-1959 without a valid license. While finding the facts as alleged by the prosecution, the learned Magistrate, held that the respondents were only guilty of "hasle and ignorance" and there was no mens real elsewhere he has suggested that the offence was only of "technical nature". Accordingly he has acquitted them. In the State appeal it is pointed out that on the facts themselves these appellants were liable to punishment especially because such contravention's lead to extensive export to other States, and sales at unconscionably high prices.

2. The questions in this Court are, whether they were justified because they had already obtained a license under the Madhya Bharat Agricultural Produce Markets Act on 1952, which was valid on the date of the storage of the rice; further, whether the Court was right in acquitting simply by calling it a "technical offence", or one without mens rea.

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3. The facts are simple. Khetia is a municipal town and there is a market there constituted under the Madhya Bharat Agricultural Produce Markets Act 1952 (hereinafter called "the Act of 1952"). That Act has no thing to do with the control over the supply, distribution and sale of essential commodities; it provides for the licensing of business in agricultural produce in the declared market areas. The respondents had been licensed under that Act. Theirs seems to be a family business run by the father and son, namely, Keshrimal and Jogilal jointly; but in the relevant transactions, it was Jogilal who was playing the active part and for the purpose of the criminal prosecution it would be convenient to treat him as the only person in charge of the business.

4. The Madhya Pradesh Foodgrain Dealers Licensing Order was made under S. 3 of the Essential Commodities Act (10 of 1955) for the purpose of controlling business in foodgrain anywhere in the Madhya Pradesh. Every person who wants to do business in foodgrain should, from the date of the commencement of the order which was the 23rd October, 1958, obtain a license from the licensing authority. If anybody carries on the business of a dealer of foodgrain without a valid license he would be liable to punishment under the general penal S. 7, the maximum punishment being three years' imprisonment and a fine; imprisonment is mandatory, except where the Court records reasons why a fine alone would meet the ends of justice. Dealing in foodgrain has been defined and there is a provision that anybody who stores foodgrain in a quantity more than 100 maunds would, unless he proves the contrary, be presumed to be storing it for the purpose of sale, which straightway would make him a dealer.

5. The respondents had applied for a license on the 29th January, 1959 though they seem to have purchased the appropriate stamp sometime before. This application was under consideration, and the license was issued to them about three months later. In that application itself it was clearly stated that there was no stock of rice, but on the 16th February, the Naib Tehsildar paid a visit to Khetia because he had got information that a few days before it, the respondents had brought to their godown truckload, of 155 maunds of rice which, so the information went; was to be exported to a neighbouring State without appropriate license or sanction. The information is of course not evidence, but it was introductory to the Tehsildar's conduct. When he went and called upon the respondents to explain, respondent Jogilal appeared and gave a written statement that a few days before it, the rice had come and a quantity of 150 maunds were with him. He added :

"We have not sold them yet and we intend to do so after obtaining the license according to law when we shall inform you of the particulars of the sale".

The point to note here is that this was not a piece of information conveyed to the authorities spontaneously, but one given as an explanation when the Naib Tehsildar went for inspection and actually confronted the respondent. The stock was checked and the quantity which is given as 155 and not 150 maunds was taken over (which is only a minor difference). Since on that date there was no license under the Madhya Pradesh Foodgrains Control Order, the respondents were prosecuted under S. 3 of the Act with the results already mentioned.

6. The defence inter alia was of having been coerced to give the admission; here, however, the stand is on the statement itself. Any way, it is admitted that there was the stock on the 16th February. It was not there on the date on which the license was applied for and had come sometime before the 16th obviously it was in secrecy, because the Tehsildar has pointed out, without contradiction, that there was no reference to the arrival, of the truckload in the octroi books of the municipality. Howsoever it was brought, the stock was there certainly for the purpose of sale, which even without the respondent's statement, has to be presumed. No doubt the respondent Jogilal stated that he would sell it later on, but it was a statement made not of his own accord directly to the authorities but when he was confronted with the stock and asked to explain.

7. The first point raised here is that the respondents are not dealers at all, because a dealer is one will actually sells, and in any view of the matter they were not actually doing so at or about the time the stock was seized. This argument is fallacious; a dealer is one who sells and buys; but he need not be actually selling it every moment. Here the storage was for the purpose of selling which may be immediate or deferred.

8. The most seriously urged argument, which has been made for the first time here is that the respondents were already holding a valid license. There was a law in force in this area from before the enactment of the Essential Commodities Act (10 of 1955); that was the Madhya Bharat Agricultural Produce Markets Act of 1952. This Act, it is urged, has been repealed by the operation of S. 16 of the Essential Commodities Act; but under Sub-Sec. (2) all appointments made, licenses and permits granted under the repealed Act will continue to be in force unless and until they are superseded. Since the respondents had been licensed under that Act and that license was valid till the 31st March, 1959, it is seriously argued that they are not affected by the absence at the relevant time of a license under the new Order. This argument overlooks two important features; the first fatal to it. The Madhya Bharat Act of 1952 is not one that is covered by S. 16 of the Essential Commodities Act. For that it should be one controlling or authorizing the control of the production, supply and distribution of and trade and commerce in any essential commodity. The peculiarity of this repealing Section is it does not set cut expressly the Parliamentary or the State enactments that were sought to be repealed, but describes them as a class. This was probably because different States had different laws en that subject and it was difficult to make an exhaustive list within a short time. But that does not in the least alter the position that only the laws dealing with this subject stand repealed; if such a law stood repealed, then appointments, licenses and permits under it would continue all the same, till superseded by similar appointments, I licenses, and permits under the new Act. But the Madhya Bharat Act has altogether nothing to do with this subject.

As already mentioned in the beginning, it only provides for licenses enabling a dealer in agricultural produce to do business in a particular market area constituted under that Act. Thus, that Act has not been repealed by S. 16 of the Essential Commodities Act, nor can license issued under that Act take place of a license under the Madhya Pradesh Foodgrains Control Order made under S. 3, of the Essential Commodities Act. The second question is, whether in the event of our really dealing with an Act on the same subject, the promulgation of the said order

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in October 1958 would not supersede the older licenses. But since the old enactment is not on the same subject, it is unnecessary in the instant case to examine that question. Thus, the respondents' having been licensed under the said Madhya Bharat Act does not in any mannar enable them to deal in essential commodities or food-grains without a license under the Madhya Pradesh Food-grains Control Order, 1958.

9. This takes us to the question whether the mere act of the respondents having applied for a license does in any manner justify or extenuate their storing this quantity of foodgrain. Obviously, the mere fact of applying for a licence is not equal to obtaining a license. For one thing, the license might not be granted; for another, there may be conditions; thirdly, the vigilance that the authorities exercise on the operation under license may start after its issue, while clandestine dealing before it is given might escape. The point to remember is that the obtaining of a license is not merely a ritual, but is something of considerable practical consequence; for one thing, the general reliability of the applicant for license and his amenability to the control of the authorities concerned is always a ground for the grant. In fact, by such an application the dealer is really lulling the authorities into a feeling that he is a straightforward person, and is not likely to do anything in that regard till he obtains it. Exceptional circumstances might arise. For example, for reasons beyond his control the applicant might already have a stock. The obvious course for him is to mention it in his application. In the instant case, he recorded no stock. Another exceptional circumstance conceivable is where for unavoidable reasons the stock has come into his hands before the expected license has been issued. In that case again, he should either before or immediately after the arrival of the stock report to the licensing authorities of his own accord'.

In this case, the respondents did not do so. It was made to appear during the argument on behalf of the respondents at the bar that Jogilal had gone to the office of the licensing authority with the Setter Ex. P/5 which has already been referred to. The fact was that when the Naib Tehsildar arrived at Khetia and called upon the respondents to state if they did not have a stock of about 150 maunds of rice, then and then alone, did Jogilal who is one of them give this letter as an explanation. Certainly, a quantity like this could not be concealed; confronted with that difficult, the respondent tried to make the best of it by saying that it was for sale and he proposed to sell it after obtaining the license. But storing for sale is itself dealing in the business and therefore this letter does not give him either the benefit of a justification or of extenuation. What the respondent seems to have done is to apply for a license and then store the foodgrain for sale on the off chance of escaping detection.

10. All this is found by the Magistrate himself; but he seems to have a notion that every offence should have what he calls "mens rea", and without it even if it is apparently one covered by the definition of an offence, there could he no conviction. Without entering into any elaborate, discussion about the principle of mens rea, we need only note that unlike in England we are in the field of criminal jurisprudence governed wholly by enacted law, and have nothing similar to common law offences. Most of the enactments expressly provide for the ingredients of guilty knowledge, bad faith and the like; when we are dealing with control provisions restricting the freedom of trade for the benefit of the public in general no occasion arises for discussion of mens rea at all. These laws are enacted because of the possibility of very considerable harm to the public in general, if topic are allowed to store, distribute and sell essential commodities without the supervision and check enforced by the licensing authorities. Courts are not concerned with the propriety or ethics of this policy; but they have to note that while administering the control laws they are not called upon to discuss the mens rea, but to hold that if there is contravention, an offence has been committed. Nor is it pertinent to ascertain if the contravenor has really intended or stood to gain at the expense of the public by that particular act; he has violated the law meant to arrest tendencies which the Legislature considers most dangerous to public interest.

11. Another word which seems to be favorite with some of our Courts is "technical". In a general sense every offence is technical because it has in our country to be a breach of a statutory provision, using the word statute in a broad sense. But by that they usually seem to mean that there is nothing like motal turpitude in the breach concerned. Moral turpitude and mens rea sometime appear to be similar, but there is a basic difference. But we are not dealing with that aspect of the matter. The consider whether the offence involves moral turpitude is very easy when we are dealing with what might be called "classics offences" like theft or murder which have throughout ages been disapproved and punished. On the other hand, control laws like the present one are comparatively modern, necessitated by the extended commerce and movements of essential commodities in the organized industrial societies of today. There may be quite a number of general public or even of Courts who are not able to visualize the moral significance of these control laws. To them pick pocketing of a rupee or two might seem an enormity because throughout ages people have been disapproving of it. And the breach of some control law by which foodgrain is imparted or exported in the wrong direction and sold at unconscionably high prices seems to be "technical" though in the ultimate analysis far more harm is done to society by such breaches. So the best for Courts in such cases is to avoid hazy notions such as the "technicality" of breaches of control laws.

12. We would, therefore, allow the appeal and convict the respondent Jogilal under S. 7 of the Essential Commodities Act for the breach of the licensing provision in the Madhya Pradesh Foodgrains Control Order of 1958. At all stages connected with the storage of the rice Jogilal alone has been figuring and not his father Keshrimal. In the special circumstances, it would be proper to acquit Keshrimal. Coming to the sentence, imprisonment is mandatory unless special reasons are recorded. The purpose of selling the foodgrain has to be read in the light of the fad that Khetia is on the border of Maharashtra State and it is a notorious fact for judicial notice that at that time Maharashtra was a deficit State in this regard and Madhya Pradesh a surplus one. On the other hand, the respondent half tried to obtain a license; and in spite of this breach the authorities have given him one in the beginning of May, that is to say, two-and-a-half months after the detection of this breach. This we would consider a sufficient ground why a sentence of imprisonment need not be awarded. We would accordingly sentence the respondent Jogilal to pay a fine of

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Rs.5000 (five thousand) which is a small multiple of the ten or fifteen rupees per maund he might have made by the uncontrolled dealing. The imprisonment in default shall be rigorous for nine months. It is ordered that the stock of rice or its sale proceeds in deposit if it has already been sold is forfeited to Government.

13SEN, J. : I have the advantage of reading the judgment written by my learned brother. Though I agree with him about the conclusions he has reached in finding the respondent Jogilal guilty; I am afraid I cannot take a serious view of the offence.

14. The admitted facts are that the respondents are dealers of agricultural produce including rice for a number of years, more than 40 years according to the application Ex. P-8. They also have got license for carrying on business under the M.B. Agricultural Produce Markets Act of 1952, for selling foodgrains in the Mandi area of village Khetia. This license was valid upto 31-3-59.

15. There was no prohibition for dealers for dealing in foodgrains without license before the coming into force of the M.P. Foodgrain Dealers Licensing Order of 1958. This order came into force in 1958. The respondents deposited the necessary license fee on 16-1-59 for obtaining a license under the M.P. Foodgrain Dealers Licensing Order and obtained the same on 16-5-59. In the meantime after they had applied for license in January, the Naib Tehsildar, according to the prosecution story, on information, received by him that the respondent was in possession of certain quantity of rice without license, visited the village Khetia. Jogilal came to him and stated that he was in possession of 150 maunds of rice. He also stated that he had applied for a license already. He also gave an undertaking that he would not sell the stock of rice which he brought from Khandwa before obtaining a license.

16. On the basis of Ex. P-5 however a challan was filed against both Jogilal and Kesrimal on 23-9-59.

17. The prosecution relies on the statement of the accused Jogilal and the possession of 150 maunds of rice which was found on 16-2-59. There is no reliable evidence on record as to when the rice was brought. Reliance was placed on Ex. P-5 in order to say that "a few days before the incident, Naib Tehsildar arrived at Khetia, rice was brought from Khandwa."

18. It cannot be doubted that the possession of 150 maunds of rice without license is contrary to clause 3 of the M.P. Foodgrain Dealers Licensing Order. But the counsel for the respondents submitted that according to Ex. P-5 they had undertaken not to sell unless a license was obtained.

19. The clause which is alleged to have been contravened read as follows :-

"No person shall carry on business as a dealer except under and in accordance with the terms and conditions of the license issued in this behalf by the licensing authority."

20. Dealer has been defined in clause 2. For the purpose of this case the relevant portions are as follows :

" 'Dealer' means a person engaged in the business of .................. storage for sale, of any one or more of the foodgrains in quantity of one hundred maunds or mate.................."

21. The respondent was undoubtedly found in possession of 150 maunds of rice. Question is whether this was for sale. The prosecution relies on clause 3(2) of the Order which reads as follows :-

"For the purpose of this clause, any person who stores any foodgrains in quantity of one hundred maunos or more at one time shall, unless the contrary is proved be deemed to store the foodgrains for the purpose of sale."

22. The contention of the respondent is, he is entitled to show that it was not for the purpose of sale. He says that it was not for the purpose of sale because he did not obtain license. He would only sell it if is would get the license. Therefore so long he does not get the license, the storage cannot be called for the purpose of sale. There is no evidence that he had made any attempt to sell the foodgrains beforehand. Undoubtedly burden is on the accused to show that the storage was not for sale.

23. The prosecution does not challenge the statement of the accused that the rice would be sold only after obtaining a license. But the offence against the accused is not selling without license but storage without license and this was undoubtedly storage for the purpose of sale, as there could not be any other purpose. In fact the accused admits that.

24. There cannot therefore be any doubt that he has contravened clause 3 of the M.P. Foodgrain Dealers. Licensing Order 1958. He had no license required under Clause 3 on the date he was found to be in possession. But the circumstances indicated that this possession cannot be taken to be very seriously. There is no allegation that he was attempting to export foodgrains to another State. Simply because Khetia happens to be on the. border of Maharashtra and Madhya Pradesh an inference should not be drawn even for awarding punishment. He has been in this business for 30 to 40 years. Not only that, he has a license already for selling in that area, under the M.B. Agricultural Produce Markets Act of 1952. He has not done anything surreptitiously. In fact, before the date when foodgrains was seized he had applied for a license. If that was granted promptly as in such cases it should be, there could not have been any prosecution in spite, of his being in possession of the. foodgrains. Though it has not been pleaded by the accused it is known that rice is cheaper in February and the dealers always purchase rice in that season if they want to do business. The prosecution has given no data or data as to when rice was brought. That could have been easily available from the entry in the Octroi Naka if an attempt was made in that direction. The statement of the Naib Tehsildar that he did not see any entry between 1-2-59 to 16-2-59 is no evidence. The books, were not produced. Whatever that may be if the authorities were prompt in granting license within a fort-night there would have been no offence as the storage was reported to be on 16-2-59.

25. It is not always possible to get foodgrains immediately after the license is obtained. When the accused applied for a license he could have reasonably expected that he would get the same within a reasonable time and the reasonable time cannot be 4 months. The offence according to me is therefore nominal, if we avoid the use of the word 'technical'. From the storage of food-grains alone it cannot be suspected that it was mean

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for importing or exporting in a wrong direction after obtaining black market price, to use the common words. If really there was any evidence to that effect the matter was serious.

26. In the absence of a clear-cut evidence as to the date when rice was brought, or any evidence about his intention to export to prohibited areas, or to earn a black market price, I cannot speculate as to what his intention was. That he has been dealing in grains was known to everybody for the last 30 or 40 years. Within a short time after the Licensing Order came out he applied for license. The best season for obtaining rice is February, March and it was not improper for him to thing that he would get license before the stock arrived; but the delay in the office made the difference.

27. Therefore though I uphold the conviction of -the applicant punishable under S. 7 of the Essential Commodities Act of 1955, I sentence him to pay a nominal fine of Rs. 50/- or in default to suffer simple imprisonment for 15 days only.

(ORDER BY THE DIVISION BENCH)

28. As there is difference of opinion regarding sentence, the records of this case may be placed before my lord the Chief Justice for opinion by a third Judge.

(ORDER BY NEWASKAR, J. ON DIFFERENCE BETWEEN KRISHNAN AND SEN, JJ.)

29. In this Appeal against the order of acquittal the matter has been placed before me as difference had arisen between the learned Judges constituting the Division Bench as regards the sentence of fine to be imposed upon the accused who was found guilty of the offence punishable under Sec. 7 of the Essential Commodities Act, 1955, for the contravention of the Madhya Pradesh Food grain Dealers Licensing Order issued in pursuance of the power vested in the State Government under Sec. 3 of the Act.

30. Facts on which he was found guilty by the learned Judges constituting the Division Bench were that after the Madhya Pradesh Foodgrain Dealers Licensing Order (hereinafter called 'the Order') had been promulgated on 7-10-1958 the respondent had deposited requisite licensing fee on 16-1-1959 and had applied for a license as required by the provisions of the Order on 29-1-1959 but had not received the same when he imported a truck load of rice weighing one hundred and fifty five Maunds and had that quantity in stock with him on 16-2-1959 when the Wait Tehsildar Tappa Pansemal visited Khetia. The accused on coming to know of Naib Tehsildar's visit submitted an application on the same day i.e. 16-2-1959 admitting to have brought approximately 150 maunds of rice and to have the same in his store. Under the provisions of Sec. 3(2) of the Order if a dealer had in his store any quantity of foodgrain for which license is required in excess of 100 maunds there would be presumption that he had the same for the purpose of sale. Since the respondent had not secured license till that date or even later upto 16-5-1959 there would be on terms of the provision aforesaid a presumption that he had stored the food-grains for the purpose of sale and consequently because to such storage he would be a dealer. As this was done by him when he was not armed with a license, which was a pre-condition, there was a clear contravention of ins Order.

Both the learned Judges agree upon this. But when it cams to awarding sentence Krishna, J., was of the opinion that the mere circumstances, that he had deposited the license fee on 16-1-1959 and had submitted an application for a license on 29-1-1959 or had submitted, an application to the Naib Tehsildar on 16-2-1959 accepting the fact that he had in store about 150 Maunds of rice brought by him about four or five days before that, cannot have the effect of operating as extenuating circumstance so as to reduce the gravity of the offence. On the other band Sen, J., thought that there was no allegation that he was attempting to export food-grains to another State and that simply because Khetia happened to be on the border of Maharashtra an inference should not be drawn that he wanted to smuggle away the goods into the adjoining Maharashtra territory, while considering the question of sentence. The learned Judge was of the view that his applying for a license even before the goods came into his possession and his bringing of the goods not surreptitiously but openly were circumstances which ought to be taken into account in awarding moderate fine on the ground that the offence was nominal.

31. In my opinion since the offence consists in contravention of the provision of the Order not to carry on business as a dealer except and in accordance with the terms and conditions of the license issued in this behalf by the licensing authority, procuring grain without having secured any such license to an extent which would lead to a presumption about a person's carrying on business as a dealer clearly ought to amount to an offence. About this both of the learned Judges agree. What extenuation could there be for a person who knows that he has no license and yet secures goods. His conduct in submitting to the Naib Tehsildar an application admitting the existence of the stock cannot be construed as indicative of his bona-fides as he should be credited with the knowledge that the Naib Tehsildar had come for checking and would discover him as having in his store contraband quantity. It is therefore clear that the fine to be imposed must be sufficiently heavy so as to serve as a deterrent for any other person in going ahead with a similar act with the nope of being dealt with leniently.

32. But as the offence has been tried by the First Class Magistrate ends of justice will be served if the maximum sentence of fine impossible by the trying Magistrate, is imposed. Section 12 of the Essential Commodities, Act provides that notwithstanding anything contained in Sec. 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Magistrate of the First Class especially empowered by the State Government in this behalf to pass a sentence of fine exceeding Rs. 1000/-. This Act was passed in 1955 as No. 10 of 1955 when Sec. 32 of the Criminal Procedure Code contained a provision authorizing a First Class Magistrate to impose a fine of Rs. 1000/- only. Later the Criminal Procedure Code Amendment Act No. 26 of 1955 was passed which raised the limit of imposition of fine by him to Rs. 2000/-. Section 12 did not fix the upper limit hence where a State Government empowers a First Class Magistrate specially under the Essential Commodities Act No. 10 of 1955 the fine which he can impose is not limited to that under Section 32 Cr. P. Code. The learned Government Advocate was unable to bring to my notice any such special (sic) empowering of a First Class Magistrate. In view of this the limit which Sec. 32 has now imposed will be the legitimate limit for the imposition of fine.

33. I am led to impose maximum amount of fine because of the necessity that the sentence awarded ought

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to have a deterrent effect and should prevent others from emulating the example of the guilty person with impunity.

34. In Mohanlal Gokuldas v. Emperor, AIR 1948 Bom 158 it was observed by Chagla, Beting C.J. and Gajendragadkar, J. :-

"Usually a fine is imposed when the offence is the result of cupidity. When a person wants to make more money and to get rich and to amass a fortune at the cost vi society and of its poor and needy members, the only way to deter others from following in his footsteps is to make it clear that crime is not easy and that he should not be permitted to, enjoy his ill-gotten wealth. If the only sentence were the sentence of imprisonment and if the accused was permitted to come back after serving his sentence to enjoy the wealth which he has amassed by antisocial acts or by committing offences, then it certainly would not deter others from following in his footsteps. Therefore, not only must a fine be imposed, but the fine must be of such a character and of such an amount as to be really deterrent in its character."

35. I agree with the opinion thus expressed by the learned Chief Justice.

36. I would therefore hold that sentence of fine of Rs. 2000/- ought to be imposed upon the accused that being the maximum fine which could have been imposed by the trying Magistrate.

37. Reference is answered accordingly.

Reference answered accordingly.

AIR 1963 MADHYA PRADESH 134 (V 50 C 47) "Ramanlal v. Piparia Municipality"

MADHYA PRADESH HIGH COURT

Coram : 2 T. C. SHRIVASTAVA AND S. P. BHARGAVA, JJ. ( Division Bench )

Ramanlal Manakchand Maheshwari and others, Petitioners v. Municipal Committee, Piparia and others, Respondents.

Misc. Petn. No. 314 of 1960, D/- 18 -4 -1961.

(A) C.P. and Berar Municipalities Act (2 of 1922), S.53 - MUNICIPALITIES - Powers of Collector - Extent of - Resolution passed by Municipality - Claim as to its being in excess of its powers - Collector cannot go into this matter.

The powers of the Collector under S. 53 of the C. P. and Berar Municipalities Act, 1922, can be exercised only on the ground that the resolution passed by a Municipality is likely to cause injury or annoyance to the public or to any class of body of persons or to lead to a breach of peace. Where, however, the claim is that the resolution is in excess of the powers of the municipality and is ineffective being in conflict with the notification under the C. P. and Berar Agricultural Produce Market Act of 1935 establishing the existing market, this matter cannot be gone into by the Collector. (Para 6)

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(B) C.P. and Berar Agricultural Produce Market Act (29 of 1935), S.3 - AGRICULTURAL PRODUCE - MUNICIPALITIES - Existing market - Closure without legal power by Municipality of - Consent to such closer - Consent does not validate closure - No estoppel. (Para 7)

(C) C.P. and Berar Agricultural Produce Market Act (29 of 1935), S.16 - AGRICULTURAL PRODUCE - MUNICIPALITIES - "Person" includes Municipality.

The term 'Person' includes a municipality. Hence, the, prohibition under Sec. 16 of the C. P. and Berar Agricultural Produce Market Act of 1935 applies to the municipality also. AIR 1937 Bom 417, Rel. on. (Para 7a)

(D) M.P. Agricultural Produce Markets Act (19 of 1960), S.3(5) and S.43 - AGRICULTURAL PRODUCE - Market established under old Act of 1935 - It continues to be market established under present Act of 1960 - S.3(5) prohibits establishing of another market.

Where by a resolution passed by a Municipality a new market is proposed to be established and for establishing the new market the date for shifting the existing market is fixed by that resolution to be 15-10-1960, the provisions of the Act of 1960 are applicable to the establishment of the market which is to take effect from the same date on which the Act of 1960 comes into force. Under Sub-sec. (5) of Section 3 of this Act, the local authority has been expressly prohibited from setting up, establishing or continuing any market within the market area or within such distance therefrom as may be notified in the Gazette. Under S. 43 of this Act, it is provided that "the markets established or market areas declared under the repealed Act of 1935 shall be deemed to be markets established or market areas declared under this Act". The notification issued under the earlier Act, therefore, continues to be in force and the market which was established in 1942 continues to be the market under the Act of 1960. The Municipal Committee, therefore, cannot establish any other market within three miles of the existing market and the resolution to that effect is in excess of the powers of the Municipality. (Para 8)

(E) M.P. Agricultural Produce Markets Act (19 of 1960), S.3, Proviso - AGRICULTURAL PRODUCE - MUNICIPALITIES - Power to discontinue existing market - Municipality has no such power.

Even though a Municipality can establish a market for any of the three purposes which are mentioned in the Proviso to S. 3 of the Act of 1960, yet it does not give the Municipality any power to discontinue the existing market to the extent to which it can function as a market under the Agricultural Produce Market Act. (Para 9)

(F) C.P. and Berar Agricultural Produce Market Act (29 of 1935), S.3 - AGRICULTURAL PRODUCE - Staying operation of Act - State Government has no power to stay operation of an Act. (Para 11)

(G) C.P. and Berar Agricultural Produce Market Act (29 of 1935), S.3 - AGRICULTURAL PRODUCE - Market established by notification - Its dis-establishment.

Where a market has been established by a notification, it can be dis-established by adopting a similar process and not by an executive order. (Para 11)

(H) C.P. and Berar Municipalities Act (2 of 1922), S.179(1)(b-1) - MUNICIPALITIES - OBJECT OF AN ACT - Scope of cl.(b-1) - Establishment of market by resolution is not prohibited - No bye-laws are necessary.

The matter covered by cl. (b-1) of S. 179(1) of the Municipalities Act, 1922 does not relate to the establishment of a market but to inspection and regulation of the use of markets which question arises only after the market has been established. There is nothing in the Municipalities Act prohibiting the establishment of a market by the Municipality by a resolution; it need not be done by framing the necessary bye-laws. AIR 1959 Bom 112, Disting. (Para 13)

Cases Referred : Courtwise Chronological Paras

('37) AIR 1937 Bom 417 (V 24) : ILR (1937) Bom 782, Pallonjee Eduljee and Sons v. Lonavala City Municipality 7a

('59) AIR 1959 Bom 112 (V 46) : ILR (1959) Bom 1047, Nagpur Kshatriya Khattik Samaj v. Nagpur Corporation 14

R.S. Dabir and V.S. Dabir, for Petitioners; A.P. Sen and A.H. Saifi, for Respondent No. 1; H.L. Khaskalam Addl. Govt. Advocate, for Respondents (Nos. 2 and 3).

Judgement

SHRIVASTAVA, J. :- This order governs the disposal of Miscellaneous Petition No. 274 of 1960 also.

2. This petition under Art. 226 of the Constitution is directed against the Municipal Committee, Piparia, the Collector, Hoshangabad, and the Sub-Divisional Officer, Sohagpur. The connected petition is directed against the Municipal Committee, Piparia, only.

3. The petitioners in these two petitions are dealers in grain and they also do the business of commission agents in the town of Piparia. The Municipal Committee, Piparia, resolved on 15-9-1960 to close the existing market and shift it to another site with effect from 15-10-1960 (Annexures I and II). The Municipal Committee intimated the petitioners that they can carry on the business of selling and purchasing grain and practise as commission agents only within the limits of the new. market and threatened to cancel their licenses to practise as brokers or adhtiyas if they continue to carry on business in the old market. The petitioners have challenged the resolution of the Municipal Committee as ultra vires and ineffective inasmuch as the present grain market was established under the Central Provinces and Berar Agricultural Produce Market Act, 1935 (No XXIX of 1935) (hereinafter referred to as the 'Act of 1935') and the Municipality is not, according to the provisions of that Act, entitled to establish any market within three miles of the existing market. It has also been pleaded that the municipality has not yet acquired the site on which the new market is proposed to be shifted and the facilities for carrying on the marketing business on the new site are not reasonable within the meaning of Sec. 50 of the C. P., and Berar Municipalities Act, 1922, (hereinafter referred to as the 'Municipalities Act'). In addition to these pleas, Shri R. K. Pandey, learned counsel for the petitioners, in Misc. Petition No. 274 of 1960, raises an additional point that the establishment of a new market or the shifting of the old market could be done only by framing suitable byelaws and not by a resolution.

4. It is not disputed by Shri A. P. Sen for the respondent, Municipal Committee, that the present market was established under the Act of 1935 by a notification issued under that Act on 14-3-1942. The respondents have further stated that the municipality has power to establish a market independently of the establishment of markets under the Act of 1935. In addition, Shri Sen has raised some preliminary objections to the tenability of the petitions. He contends that as the petitioners have given notices to the Municipality and the State Government for filing a civil suit to obtain a declaration that they have a customary right to use the market site, they cannot maintain the present petitions for the same relief. It is further stated that the matter has been taken to

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the Collector, Hoshangabad, under Sec. 53 of the Municipalities Act for quashing the resolution of the Municipality and the same matter cannot, therefore, be agitated in these petitions. The third preliminary objection is that the market is being shifted to the new site at the instance of the petitioners and they are estopped from raising this point.

5. We shall first consider the preliminary objections. So far as the alternative remedy of filing a civil suit for a declaration to establish the customary right or the petitioners is concerned, it is pertinent to observe that in the petitions before us, we are not called upon to adjudge such a right in favour of the petitioners. The scope of the petitions is restricted to determining whether the resolution of the municipality directing shifting of the market is in conflict with the notification establishing the market under the Act of 1935 and whether the municipality could alter the site of the market by a mere resolution. Both these matters are independent of the customary right mentioned in the notices. Accordingly, we do not agree that relief should be refused to the petitioners on that ground.

6. It is admitted by the petitioners that the question of quashing the resolution has been taken up to the Collector under Section 53 of the Municipalities Act and is pending before him. However, the powers of the Collector under that Section can be exercised only on the ground that the resolution is likely to cause injury or annoyance to the public or to any class of body of persons or to lead to a breach of peace. It is not on these considerations that the petitioners have challenged the resolution before us. What they claim is that the resolution is in excess of the powers of the municipality and is ineffective being in conflict with the notification under the Act of 1935 establishing the existing market. This matter cannot be gone into by the Collector.

7. The third preliminary objection is equally without any merit. It is true that the grain merchants had themselves applied (Annexure 'J') for the shifting of the market. Some of the petitioners were signatories in the application. However, there can be no estoppel against law. If the closure of the existing market is without legal power, consent of the petitioners does not validate it. All the same, this is a matter which should be considered in awarding costs.

7a. Under Section 3 of the Agricultural Produce Market Act, 1935, the State Government has been given the power to declare that any place or market is a market for the sale and purchase of agricultural produce. Section 16 provides that -

"no, person shall, notwithstanding anything contained in any enactment for the time being in force, within the area of such market or within a distance thereof, to be notified in the Official Gazette in this behalf in each case by the State Government, set up, establish or continue or allow to be continued any other market for the purpose of the purchase and sale of agricultural produce".

On the other hand, Shri A. P. Sen contends that the section does not prohibit a local authority from establishing a market as the word 'person' in Section 16 should be construed to apply only to individuals. As defined in Section 3 (Cl. 42) of the General Clauses Act, 1837, 'person' includes "any company or association or body of individuals, whether incorporated or not". It has been held in Pallonjee Eduljee and Sons v. Lonavala City Municipality, ILR (1937) Bom 782 : (AIR 1937 Bom 417) that the term 'person' includes a municipality. Accordingly, we hold that the prohibition under Section 16 of the Act of 1935 applies to the municipality also.

8. There is another reason why the Municipality cannot establish a market. The C. P. and Berar Agricultural Produce Market Act, 1935, has recently been repealed by the Madhya Pradesh Agricultural Produce Markets Act, 1960, (Act No. XIX of 1960) (hereinafter referred to as the Act of 1960). This Act received the assent of the President on 3-8-1960 and came into force on 15-10-1960. The resolution of the Municipal Committee Piparia, establishing the new market was passed on 15-9-1960, but the date for shifting the market was fixed by that resolution to be 15-10-1960. Accordingly, the provisions of the Act of 1960 would be applicable to the establishment of the market which was to take effect from the date on which the Act of 1960 came into force. Under subsection (5) of Section 3 of this Act, the local authority has been expressly prohibited from setting up, establishing or continuing any market within the market area or within such distance therefrom as may be notified in the Gazette. Under Section 43 of this Act, it is provided that "the markets established or market areas declared under the said Act (i. e. repealed Act of 1935) shall be deemed to be markets established or market areas declared under this Act". The notification issued under the earlier Act, therefore, continues to be in force and the market which was established in 1942 continues to be the market under the Act of 1960. The Municipal Committee, Piparia, therefore, could not establish any other market within three miles of the existing market and the resolution to that effect is in excess of the powers of the Municipality.

9. Shri A. P. Sen has drawn our attention to the proviso to Section 3 of the Act of 1960 which is as follows :

"Provided that nothing in this sub-section shall apply to -

(i) purchase or sale of such agricultural produce where it is sold by the producer of such person to a person who purchases it for his own private consumption;

(ii) sale or purchase by head loads;

(iii) retail sale".

His contention is that although the municipality has been debarred from setting up or continuing any market under sub-section (5) of that section, it can still establish a market for any of the three purposes which are mentioned in the proviso. This is correct; but it does not give the municipality any power to discontinue the existing market to the extent to which it can function as a market under the Agricultural Produce Market Act.

10. It is then argued that even if the existing market continues, the petitioners cannot practise as commission agents or Adhatias therein. The power of the Municipality to frame bye-laws for licensing brokers, commission agents, etc., is derived from Section 179(1) (c) of the Municipalities Act which is as follows :

"179 (1) :- In addition to any power specially conferred by this Act the Committee may make bye-laws -

\* \* \* \* \* \* \*

(c) :- for licensing brokers, commission agents, measures and weighmen practising their calling in public places within the municipality. . . . . . ."

It will be noticed that the licence relates to practising of the profession in public places. A market established under the Agricultural Produce Market Act within the limits of the municipality would be a public place. The license cannot be restricted to any particular public place.

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The bye-laws framed by the municipality in this behalf will enure for the benefit of all these persons irrespective of the public place where they practise within the limits of the municipality. The petitioners have, therefore, a right to practise their profession in the existing market. This is, of course, subject to the bye-laws of the Market Committee which may be framed under Section 17 of the Act of 1960. We are told that no such byelaws have yet been framed and the market Committee has also not yet been constituted.

11. Shri A. P. Sen referred to the memorandum issued by the State Government on 25-2-1955 and contended that the operation of the Agricultural Produce Market Act has been stayed. The State Government has no power to stay the operation of an Act. However, if it is meant that the establishment of the market was cancelled by this memorandum, we may only state that as the market has been established by a notification, it could be disestablished by adopting a similar process and not by an executive order. Reading the memorandum we find that it is a reply to the Registrar of the Co-operative Societies, who had probably suggested the formation of a Market Committee. The word 'Nirwachan' used in the memorandum means 'election' and it is, therefore, clear that it was the election of the Market Committee alone which was postponed by this memorandum. There is nothing in the memorandum to show that the State Government intended to cancel the establishment of the market.

12. Lastly, Shri A. P. Sen pointed out that the State Government has recently issued Notification No. 1308/ XIV/I, dated 1-3-1960, signifying their intention to disestablish the market for sale and purchase of agricultural produce as previously declared by the Notification, dated 14-3-1942. Objections have been invited to the proposal and the matter would be decided by the State Government after hearing the objections. In view of this, he contended that the petitions should be dismissed. The action of the State Government to disestablish the market is yet in its formative stage and nothing final has so far been decided. The notification issued in 1942 would continue in force until necessary action under Section 4 (1) of the Act of 1960 has been taken. Till then the municipality of Piparia has obviously no right to stop the petitioners from carrying on their business in the existing market.

13. Shri R. S. Dabir has also supported the petitions on the ground that the provision which has been made on the new market site is not reasonable within the meaning of Section 50 (j) of the Municipalities Act. Further, the new site on which the new market is intended to be located has not yet finally vested in the Municipal Committee, as the proceedings for acquisition of the land have not yet been completed. On the first contention, the municipality has, in return, given details about the facilities on the new site. On the second contention, Shri Sen has stated that the State Government took possession of the site under Section 17 of the Land Acquisition Act and has handed it over to the Municipality which has deposited the price of Rs. 13,000/- fixed by the Collector; but the matter is pending as the High Court has set aside the award of the Collector and has directed fixation of the compensation afresh. It is not necessary for us to go into these points in view of our finding on the first contention that the municipality has no power to order the closing of the market established under the Agricultural Produce Market Act.

14. In the connected Miscellaneous Petition, Shri R. K. Pandey has advanced an additional contention that the shifting of the market could only be done by framing the necessary byelaws and not by a mere resolution. He relies upon Section 179 (1) (b-1) of the Municipalities Act and also the decision in Nagpur Kshatriya Khatik Samaj v. Nagpur Corporation, AIR 1959 Bom 112. In that case, the question of the validity of the order of the Corporation prohibiting the sale of meat in weekly markets was being considered. It appears that the counsel on both sides had conceded that the matter could be regulated only by framing bye-laws. The question whether the site of a market could be shifted by a resolution did not at all arise for consideration in that case. Clause (b-1) of Sec. 179 provides for framing, of byelaws for 'inspecting and regulating the use of markets and prohibiting the levy of unauthorized dues therein'. Obviously, the matter covered by this clause does not relate to the establishment of a market but to inspection and regulation of the use of markets which question arises only after the market has been established. We do not find anything in the Municipalities Act prohibiting the establishment of a market by the Municipality by a resolution. The contention is without any substance.

15. In the result, both the petitions are allowed. A writ of mandamus shall issue in the followings terms :-

(1) that the Municipal Committee, Piparia, shall not take any steps for the closure of the existing market so long as it continues as established under the Agricultural Produce Market Acts of 1935 and 1960; and,

(2) that the Municipal Committee aforesaid shall not restrain the petitioners from carrying on their business of grain-dealers, adhatias or dalals in the existing market and shall not cancel their licenses on account of their doing so.

Under the circumstances of the case, we direct that the parties shall bear their costs as incurred. Security amount shall be refunded.

Petitions allowed.

AIR 1996 MADRAS 29 "Raja Palyam Paruthi Panchu Sangam v. State of T. N."

MADRAS HIGH COURT

Coram : 2 K. A. SWAMI, C.J. AND SOMASUNDARAM, J. ( Division Bench )

Raja Palyam Paruthi Panchu Sangam and etc. etc., Petitioners v. State of T.N. and others etc. etc., Respondents.

Writ Petns. Nos. 2429, 2430, 2887, 18313 and 18459 etc. etc. of 1991 and 1359, 2267, 5433 and 5567 of 1992, D/- 28 -4 -1994.

(A) T.N. Agricultural Produce Marketing (Regulation) Act (27 of 1989), S.8(7) - AGRICULTURAL PRODUCE - LICENSE - Licence to trade in agricultural produce in market area - Term of Licence and Licence fee - Validity not examined in view of stand taken by Govt. that question of issuance of Zonal/regional Licences by making suitable amendments to Act was under consideration. (Para 8)

(B) T.N. Agricultural Produce Marketing (Regulation) Act (27 of 1989), S.8(4), S.8(5) - AGRICULTURAL PRODUCE - Licence to trade in agricultural produce - Refusal, suspension or cancellation - Provisions as to in sub-secs. (4), (5) of S.8 -Do not infringe Art. 19(1)(g) - Not liable to be struck down.

Constitution of India, Art.19(1)(g).

The conditions laid down in sub-sections (4) and (5) of S.8 for the refusal, cancellation and suspension of the Licence cannot be considered as unreasonable and unjustified when read in the context of the object and purpose of the Act which is regulatory in nature. The Licence is only a privilege and such Licence can be cancelled under the circumstances mentioned in the relevant provisions. The petitioners cannot claim exclusive right over a Licence once granted under all circumstances where the Licencee acts in accordance with the conditions of the licence or even when he commits breach of the conditions imposed by the Licence. As a matter of fact, several safeguards have been provided under the Act to protect the interest of the bona fide traders. Sub-section (6) of Section 8 provides for an appeal against an order of the market committee refusing to grant a Licence or cancelling or suspending a Licence. The restrictions or eligibility criteria laid down in sub-section (4) of Section 8 are only reasonable restrictions and therefore, it cannot be said that sub-section (4) of Section 8 and also sub-sec. (5) infringes the fundamental rights guaranteed under Article 19(1)(g) of the Constitution.

(1969) 1 Mad LJ 212, Foll. (Paras 9, 11)

(C) T.N. Agricultural Produce Marketing (Regulation) Act (27 of 1989), S.8(9) - T.N. Agricultural Produce Marketing (Regulation) Rules (1991), R.32, R.33 - AGRICULTURAL PRODUCE - Trader, Licencee to keep accounts - Provisions of S.8(9) are regulatory - Not liable to be struck down - No inconsistency between Rr. 32 and 33 - They deal with different matters, namely submission of returns and payment of fees. (Para 12)

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(D) T.N. Agricultural Produce Marketing (Regulation) Act (27 of 1989), S.10 - AGRICULTURAL PRODUCE - Market committee - Constitution - S.10 adopting procedure of nomination of members by Govt. instead of election of members - Provision not invalid on that ground.

AIR 1981 Andh. Pra. 395, Foll. (Para 16)

(E) T.N. Agricultural Produce Marketing (Regulation) Act (27 of 1989), S.10(a) - AGRICULTURAL PRODUCE - Market committee - Chairmanship - Reserved for growers - Not discriminatory in view of object of Act.

Constitution of India, Art.14.

The Act is intended to help and protect the interests of the producers who were subjected to exploitation and that is the reason for the majority representation being given to the producers. Section 10 of the Act says that every market committee shall consist of 16 members and it shall be constituted in such a manner that 9 out of the 16 members shall consist of traders and 4 members shall be officials. If, the Legislature in its wisdom having regard to the object sought to be achieved by the Act and also having regard to the large number of growers of agricultural produce, has given a larger representation to them on the market committee than the traders who are infinitesimally few as compared to growers and given a chance to the growers alone to become Chairman of the market committee, that legislation cannot be struck down as discriminatory. (Para 17)

(F) Constitution of India, Art.286 - AGRICULTURAL PRODUCE - Fee - Validity - Extent of quid pro quo that is necessary.

Correlation between the levy of fees and services rendered is one of general character and not of mathematical exactitude. All that is necessary is that there should be a reasonable relationship between the levy of fee and services rendered. Again, such relationship need not be direct but a mere casual relation may be enough. Further, neither the incidence of the fee nor the services rendered need be uniform. The fact that others besides those paying the fees are also benefited does not detract from the character of fee. (Para 23)

(G) T.N. Agricultural Produce Marketing (Regulation) Act (27 of 1989), S.24 - AGRICULTURAL PRODUCE - Market fee - Hike in - Validity - Maximum fee per every hundred rupees transaction fixed at 45 paise under old Act - Rate remaining unchanged from year 1962 to 1991 - Increase of fee to Rs. 1 only in 1991 - No plea that committee is not rendering any service - Increase not open to challenge since value of 45 paise in 1962 is certainly more than one rupee in 1991 -Plea of no quid pro quo not tenable. (Para 27)

(H) T.N. Agricultural Produce Marketing (Regulation) Act (27 of 1989), S.24(1), Proviso - AGRICULTURAL PRODUCE - Agricultural produce brought for processing/export in market area -Deemed to be bought or sold if not processed/exported with in 30 days - Deeming provision is only a rule of evidence - Not charging provision - S.24(1), Proviso not ultra vires the Act.

(1969) 1 Mad LJ 212, Foll. (Para 30)

(I) T.N. Agricultural Produce Marketing (Regulation) Act (27 of 1989), S.24(5) - AGRICULTURAL PRODUCE - Transportation of notified agricultural produce - Requirement of permit for -Not violative of right to trade -Permit however necessary only to traders - S.24(5) read down.

Sub-section (5) of Section 24 which provides that a notified agricultural produce taken or proposed to be taken out of a notified market area exceeding the prescribed quantity shall be accompanied by a permit issued by the Secretary of the market committed subject to the by-laws made by the market committee in this regard, does not offend Art.19(1)(g) of the Constitution. Sub-section (5) of Section 24 is made in order to safeguard the honest and bona fide traders who have already paid market fee on the agricultural produce and in order to check evasion of the market fee. Moreover the Govt. at the request of Traders, has revived the Advance Permit System so as to enable them to transport their produce freely and without any difficulty in getting permit under the Act every time. (Para 31)

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However, considering the object of the Act and on a harmonious construction of the various provision of the Act, coupled with the principle of interpretation by reading down the above provisions in the statute, sub-section (5) of Section 24 must be interpreted as a provision having limited application in the sense that the permit contemplated under the said provision is necessary only when the notified agricultural produce is taken or proposed to be taken out of a notified market area by a trader and such a permit is not necessary when agricultural produce is taken or proposed to be taken out of a market area by a producer of agricultural produce. (Para 31)

(J) T.N. Agricultural Produce Marketing (Regulation) Act (27 of 1989), S.25 - AGRICULTURAL PRODUCE - Market committee - Powers to erect barriers or check post - Object behind is to check evasion of payment of market fee - Provision regulatory - Do not violate right to trade.

Constitution of India, Art.19(1)(g). (Para 32)

(K) T.N. Agricultural Produce Marketing (Regulation) Act (27 of 1989), S.52 - T.N. Agricultural Produce Marketing (Regulation) Rules (1991), R.41(2) - AGRICULTURAL PRODUCE - Weighment of agricultural produce - Only by Licenced weighmen - Rule providing for - Not ultra vires power of Govt. under S.52. (Para 33)

(L) T.N. Agricultural Produce Marketing (Regulation) Act (27 of 1989), S.2(1), Sch.1, Item 4 - AGRICULTURAL PRODUCE - Agricultural produce - Cotton waste - Included in item 4 of schedule 1 -It is agricultural produce.

The term agricultural produce according to the definition contained in Section 2(1) of the Act means any produce of agriculture whether processed or unprocessed, specified in the Schedule. On its plain meaning of Section 2(1) of the Act, any produce as specified in the schedule shall fall within the term "agricultural produce". Admittedly cotton in all forms, namely, Kapas, lint, waste is included in the Schedule to the Act. Cotton Waste, is consequently an agricultural produce within the meaning of the act so that the various provisions of the Act with regard to agricultural produce are applicable to cotton waste also. (Para 34)

(M) T.N. Agricultural Produce Marketing (Regulation) Act (27 of 1989), S.24(1), S.67(3) - AGRICULTURAL PRODUCE - Market fee - Levy on Cotton waste - No notification issued under new Act 27 of 1989 in respect of cotton or cotton waste - Notification issued under earlier Act of 1959 notifying only 'cotton' as notified agricultural produce - 'Cotton' so notified under earlier Act would take in cotton waste - Such inclusion is made explicit by item 4 of Sch. to New Act - This notification is saved by S.67(3) of New Act - Cotton waste is notified agricultural produce under New Act - Market fee leviable.

AIR 1984 SC 1870, Foll.

(1965) 16 STC 267 (Mad), Not foll. in view of AIR 1984 SC 1870. (Para 36)

(N) T.N. Agricultural Produce Marketing (Regulation) Act (27 of 1989), S.2(1), Sch.1, Entry 15 - AGRICULTURAL PRODUCE - Agricultural produce - Entry 15 of Sch. notifying sugarcane jaggery as agricultural produce - Is valid.

AIR 1990 SC 2268, Foll. (Para 38)

(O) T.N. Agricultural Produce Marketing (Regulation) Act (27 of 1989), S.2(1), S.3 - AGRICULTURAL PRODUCE - Notified agricultural produce - Inclusion of rubber - Not invalid - Market-fee can be levied on rubber.

W. A. No.3 of 1981, D/- 25-6-1987 (Mad), Foll. (Para 39)

(P) T.N. Agricultural Produce Marketing (Regulation) Act (27 of 1989), S.2(1), Sch.1, Entry 10(8) - AGRICULTURAL PRODUCE - Agricultural produce - "Words cashew nuts in all forms" in entry 10(8) - Includes cashew kernels - Cashew kernels is therefore notified agricultural produce - Liable to market-fee - Word cashew nuts in notification issued under S.3 of old Act also included cashew kernels. (Para 40)

Cases Referred : Chronological Paras

AIR 1990 SC 556 34

AIR 1990 SC 2269 (Foll.) 38

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AIR 1989 SC 100 : 1989 Suppl (1) SCC 698 22

AIR 1988 SC 191 29

(1987) W. A. No.3 of 1981, D/-25-6-1987 (Madras) (Foll.), Kanyakumari District Rubber Dealers Association v. State of Tamil Nadu 39

1986 Tax LR 2305 : 59 STC 302 (Kant) 40

(1986) 63 STC 225 : ILR (1986) 2 Kerala 468 40

1986 Tax LR 2236 : 61 STC 1 (Mad) 40

AIR 1985 SC 679 : 1985 All LJ 226 38

AIR 1985 SC 756 : (1985) 2 SCC 112 21

AIR 1984 SC 1870 (Foll.) 36, 38

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AIR 1981 AP 395 (Foll.) 16

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AIR 1980 SC 1124 : 1980 All LJ 490 38

1980 All LJ 1137 36

AIR 1974 SC 1489 10

(1969)1 Mad LJ 212: ILR (1968) 2 Mad 449 (Foll.) 2, 9, 28, 30, 39

AIR 1968 SC 838 28, 30

(1965) 16 STC 267 (Mad) (Not Foll. in view of AIR 1984 SC 1870) 36

AIR 1963 SC 966 20

AIR 1961 SC 459 20

AIR 1961 SC 1602 16

AIR 1959 SC 300 2

AIR 1958 SC 560 28, 30

AIR 1954 SC 282 20

AIR 1954 Mad 621 : (1954) 1 Mad LJ 117 9

AIR 1953 SC 333 28, 30

AIR 1953 SC 404: 1953 Cri LJ 1621 16

AIR 1952 SC 123 : 1952 Cri LJ 805 16

G. Subramanian for M/s. K. Govindarajan and S. Kadarkarai, R. Rajasekaran, P. Selvaraj, G. Subramanian for M/s. S. Subbiah T. Mathivammal, J. Venkataraja, Poppin Fernando, Vijay Narayan S. Muthuramalingam, P. Seshadri, B. Kumar, G. Natarajan, G. Prakasam, S.V. Jayaraman, V. Sairam, P.S. Raman, D. Govinda Reddy, T. Susindran, A.S. Venkatachalamoorthy, N. Manoharan, V. Ramesh, S. Udayakumar, K.N. Basha, S. Ramakrishnan, Sriram Panchu, N. Thiagarajan, G. Jeremiah and V.N. Mohanraj, for Petitioners; K. Subramaniam, Advocate General, assisted by A.S. Venkatachalamoorthy, Govt. Pleader, for State; A.S. Venkatachalamoorthy, assisted by S.T.S. Moorthy, for Market Committees.

Judgement

SOMASUNDARAM, J.: - In all these writ petitions the petitioners are dealers engaged in purchase and sale of various agricultural produces and they challenge the various provisions of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987, and certain rules in the Tamil Nadu Agricultural Produce Marketing (Regulation) Rules, 1991 which have been brought into force with effect from 1st February, 1991. Inasmuch as the points raised and claims made in all the above writ petitions are similar, all the writ petitions were heard together and they are disposed of by this common order.

2. Marketing legislation in the State of Tamil Nadu was the subject matter of several reports of Expert Committee appointed by the Government and the Expert Committee after careful examination found that the agricultural producers were largely illiterate and economically weak and were not having the facilities to dispose of their produce to their best advantage without being exploited by middlemen and profiteers. In order to protect the interest of agricultural producers and on the recommendation of the Expert Committee, the Madras Commercial Crops Act, 1933 was enacted. In the year 1959, the said Act was repealed and the Tamil Nadu Agricultural Produce Markets Act, 1959 (Tamil Nadu Act 23 of 1959) was enacted, which included various other agricultural produces as per the requirements of the purchasers and traders. The constitutional validity of the Madras Commercial Crops Act, 1933 was upheld by the Supreme Court in Arunachala Nadar v. State of Madras, AIR 1959 SC 300. Similarly the validity of the Tamil Nadu Agricultural Produce Markets Act, 1959 (Act 23 of 1959) was upheld by a Division Bench of this Court in Kannappa Mudaliar v. State of Madras, (1969) 1 Mad LJ 212.

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In the year 1989, the Tamil Nadu Act 23 of 1959 was repealed and it was replaced by the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 (hereinafter referred to as the Act) and the same was brought into force with the issuance of the Tamil Nadu Agricultural Produce Marketing (Regulation) Rules 1991 (hereinafter referred to as the Rules), with effect from 1-12-1991.

3. The Act is aimed at better regulation of buying and selling of agricultural produces to secure a fair and reasonable price to the producers of the notified agricultural produce and this object is sought to be achieved by regulating the trade by providing a special market yard and other facilities, like storage, proper weighment transaction shed, grading of produce, etc. for better marketing and for benefit of farmers and traders. The Act has a definition section and among others the term agricultural produce is defined in S.2(1) of the Act as follows:

"(1) "agricultural produce" means any produce of agriculture, whether processed or unprocessed, specified in the schedule;"

According to S.2(10) "market" means any market established under sub-sec. (1) of S.6 and shall, except in sub-secs. (1) and (2) of that section, include a subsidiary market. Section 2(11) defines a "market committee" as any market committee established under sub-sec. (1) of S.5. Notified agricultural produce has defined in Sec.2(12) as any agricultural produce specified in the notification under S.3. According to S.2(13), "notified area" means any area notified under S.4 as altered by any notification under sub-sec. (1) of S.9. According to S.2(14) "notified market area" means any area notified under sub-sec. (2) of S.6 as altered by any notification under sub-sec. (1) of S.9. The term "processing" is defined in S.2(17) of the Act. The intention of the Government to exercise control over the purchase and sale of any specified agricultural produce has to be declared by a notification which shall also call for objections to be received within a stated period. After the expiry of the period and after considering such objections and suggestions as may be received, the Government by notification may declare the area specified therein or any portion thereof to be a notified area for the purposes of the Act in respect of any agricultural produce specified in the notification. Once a notified area comes into existence in that manner and in accordance with Ss.3 and 4, the Government is required under S.5 to establish a market committee for every notified area. It is the duty of the market committee to enforce the provisions of the Act as well as the rules and by-laws made thereunder in such notified area. Section 6 provides that every market committee shall establish in the notified area such number of markets providing such facilities, as the Government may, from time to time, direct for the purchase and sale of the notified agricultural produce. After the establishment of the market under sub-sec. (1) of S.6, the Government shall by notification, declare the area of the market and such area around the market as may be specified in the notification to be a notified market area for the purpose of the Act in respect of any notified agricultural produce. Section 8(1) states that no person shall within a notified area set up, establish or use, or continue or allow to be continued, any place for the purchase or sale, storage, weighment measurement or processing of any notified agricultural produce or operate as a broker, weighman, measurer, trader, ware-housemen or in any other capacity in relation to the buying and selling of any notified agricultural produce, except under, and in accordance with the conditions of, a Licence granted to him by the market committee. Section 8(2) deals with certain exemptions. Sub-section (4) of S.8 enumerates the circumstances under which a licencse under sub-sec.(1) may be refused to a person. Similarly, sub-sec. (5) of S.8 enumerates the circumstances under which a licencse already granted under sub-sec. (1) of Sec. 8 may be cancelled or suspended. Section 8(6) provides for an appeal against the order refusing to grant Licence or cancelling or suspending a Licence. Sub-section (7) of S.8 deals with the period during which a Licence granted under sub- sec. (1) of S.8 shall be valid. According to sub-sec. (9) of S.8, every person Licenced or liable to pay fee or any other amount under

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this Act shall keep and maintain a true and correct account and such other records showing such particulars as may be specified in the by-laws of the market committee and shall submit such periodical returns relating to his business transaction including processing as may be prescribed, to the market committee in such manner and within such period as may be prescribed, together with the fee or other amount due on the basis of the return. Section 10 deals with the constitution of a market committee and according to sub-sec. (1) of S.10 every market committee shall consist of sixteen members and shall be constituted in the manner specified in sub-sec. (2) of S.10. Section 12 deals with election of Chairman and Vice-Chairman of Market Committee. Section 24 deals with levy of fee by market committee. Sub-section (1) of S.24 reads thus:

"(1) The market committee shall levy a fee on any notified agricultural product bought or sold in the notified market area at a rate not less than one rupee but not exceeding two rupees for every hundred rupees of the aggregate amount, for which the notified agricultural produce is bought or sold whether for cash or for deferred payment or other valuable consideration:

Provided that, when any agricultural produce brought into any notified market area for the purpose of processing only, or for export is not processed or exported there from within thirty days from the date of its arrival therein, it shall until the contrary is proved, be presumed to have been brought into such notified market area for buying and selling and shall be subject to the levy of fee under this section on the value of the agricultural produce, as if it had been bought and sold therein.

Explanation I - For the purpose of this sub-section, all notified agricultural produces taken out or proposed to be taken out of a notified market area shall, unless the contrary is proved, be presumed to be bought or sold within such area.

Explanation II - In the determination of the amount of the fee payable under this Act, any fraction of ten paise less than five paise shall be disregarded and any fraction of ten paise equal to or exceeding five paise shall be regarded as ten paise."

Section 25 enables the establishment of check-post of barrier by the market committee in order to prevent or check the evasion of payment of fee or other amount due to the market committee under the provisions of the Act. Section 29 provides for market committee fund and according to that section, all moneys received by the market committee shall be paid into the market committee fund and all the expenditure incurred by the market committee under, or for the purposes of the Act shall be defrayed out of the said fund. Section 30 enumerates the various purposes for which the market committee fund may be expended. The Act also provides for the establishment of State Agricultural Marketing Board, creation of Market Board Fund, and Market Development Fund and for such other matters relating to the day-to-day regulation and administration of the market. Section 52 empowers the Government to make rules either generally or specially for any notified area or areas, rules for carrying out all or any of the purposes of the Act. It is only in exercise of the power under S.52 of the Act, the Government has made rules called the Tamil Nadu Agricultural Produce Marketing (Regulation) Rules, 1991.

4. From the reliefs claimed in these writ petitions, it is seen that the validity of Ss.2, 3, 8, 10, 12, 13, 15, 24, 25, 27, 29, 30, 35, 36, 49, 57 and 59 of the Act and Rules 27, 30, 32, 33 and 41 of the Rules are challenged. However, during the course of arguments, the attack was confined only to the following sections of the Act and the Rules, namely, Ss.8, 10, 12(a), 24 and 25 of the Act and Rules 27, 32, 33 and 41 of the Rules.

5. Let us consider the principal contentions of Mr. G. Subramaniam, learned senior counsel adopted by the counsel appearing for the other petitioners in this batch of writ petitions, challenging the constitutional validity of the sections and the Rules referred above one by one.

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6. The first contention of Mr. G. Subramaniam, learned senior counsel is that sub-secs. (4), (5), (7) and (9) of S.8 of the Act and Rules 27, 32 and 33 of the Rules are ultra vires (sic) constitute infringement of fundamental rights guaranteed under Art.19(1)(g) of the Constitution of India, invalid and are liable to be struck down on the following ground:

(i) The increase in licence fee from Rs. 25/- per year to Rs. 300/- for three years is very high and unjustified.

(ii) There is no provision under the Act for refund of Licence fee for the unexpired period of the Licence.

(iii) The criteria laid down for refusal, cancellation and suspension as per Ss.8(4) and 8(5) are unjustified and the respondents have no 'locus standi' to question or test with regard to the trading activities of the traders.

(iv) Though there is a provision for appeal against the orders of refusal, suspension and cancellation of the Licence, the conditions provided under S.8(4) and 8(5) of the said Act thereof are 'ultra vires' and constitutes infringement of fundamental rights guaranteed under Art.19(1)(g) of the Constitution.

(v) The provisions relating to the registering and collection of licencse fee for the whole 3 years without there being any provision for refund in respect of the unexpired period of the Licence has no reasonable nexus to the object sought to be achieved under the Act.

(vi) The provisions of Rr.32 and 33(4) are mutually contradictory in the sense that R.32 mandates the traders to submit their returns every succeeding month while R.33(4) mandates that fee should be paid within a week immediately after the purchase and the rule making authorities have not applied their mind to the very scope of S.8(9) of the said Act.

7. We are unable to accept the above contentions of the learned senior counsel for the petitioners. Section 8(1) of the Act imposes an obligation on a trader to obtain a licence from the market committee for carrying on any business in agricultural produce in the notified areas. Sub-section (4) of S.8 deals with the refusal of licencse under certain circumstances. Sub-section (5) of S.8 read with Rule 30 deals with the cancellation or suspension of the licence under certain circumstances. Sub-section (7) of S.8 read with Rule 27 deals with validity period of the licencse, i.e., three years for wholesalers whose annual turnover is about five lakhs and above and one year in respect of other, small and petty traders and also provides for renewal. Section 8(9) of the said Act read with Rule 32(2) obligate the licence to keep and maintain accounts and other records as may be specified by market committee, and submission of returns every month and accounts every 6 months. This section also provides for collection of licence fee at Rs. 300/- valid for 3 years from wholesalers and Rs. 75/- per year for other traders and Rs. 25/- per year from small and petty traders.

8. With regard to sub-sec. (7) of S.8 and R.27 which prescribes the Licence fees, the learned Advocate General submitted that the matter of issuance of regional or zonal licences by the market committees is being considered by the State Government and that necessary amendments to the Act will be made, so that regional or zonal licences can be issued to the traders. In para 2 of the additional counter affidavit filed on behalf of the first respondent, it is specifically averred as follows:

"2. I submit that the matter of issuance of regional or zonal licences by the market committees is being considered by the State Government. Necessary amendments to the Act will be made so that regional or zonal licences can be issued to the traders".

Further, in the letter dated 11-5-1993 addressed to the President, Pollachi Chambers of Commerce, the Special Secretary to the Government, Agricultural Department has stated as follows:

"With reference to your letter dated, I am directed to state that while moving Agriculture Demand on 22-4-1993 the Honorable Minister for Agriculture has made the following announcement: -

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1. Provision of drinking water supply, rest houses, toilets, etc. in Regulated Markets and supply of transport and refreshment subsidy and certain other concessions to the traders and agriculturists.

2. To make necessary amendments to the Tamil Nadu Agricultural Produce Marketing (Regulation) Act and Rules made thereunder regarding:

1. issue of advance permit;

2. issue of State/Regional Licence;

3. fixing of exemption limit for transport of agricultural produce without permit;

4. enhancing the period of processing from 30 days to 60 days (by amending Section 24(1) of this Act).

3. I am also to request you to take necessary action for withdrawal of Court cases immediately as agreed to at the meeting held on 3-2-93".

In view of the above stand taken by the first respondent in the additional counter affidavit referred above, and the representation of the learned Advocate General that the first respondent is examining the question of issuing regional or zonal and make necessary amendments to the Act to that effect, it is not necessary for us to examine the validity of sub-sec. (7) of S.8 and R.27 of the Rules and we are not expressing any opinion on the validity of the said provisions.

9. As already stated, sub-sec. (4) of S.8 deals with the circumstances under which a Licence may be refused to a person and the said sub-sec. (5) reads as follows:

"(4) A licence under sub-sec. (1) may be refused to a person-

(a) whose licence was cancelled, and a period of three years has not elapsed since the date of the cancellation; or

(b) who has been convicted of an offence where such offence relates to his business or his integrity as a man of business; or

(c) in regard to whom the market committee is satisfied, after such enquiry as it considers adequate, that he is a benamidar for, or a partner with, any other person to whom a licence may be refused under cl.(a) or cl.(b).

Similarly sub-sec. (5) of S.8 enumerates the circumstances under which a licence granted under sub-sec. (1) of S.8 can be cancelled or suspended. The said sub-sec. (5) reads thus:

"(5) If a market committee is satisfied, either on a reference made to it in this behalf, or otherwise, that-

(a) a licence granted under sub-sec. (1) has been obtained by misrepresentation or fraud,

or

(b ) the holder of a licence has contravened, or failed to comply with, any of the provisions of this Act or any of the conditions of the licence, then without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the market committee may, subject to such rules as may be made in this behalf, cancel or suspend the licence, after giving the holder of the Licence a reasonable opportunity of showing cause against such cancellation or suspension".

Sub-sections (1) and (4) of S.8 of the Act corresponds to sub-secs. (1) and (3) of S.6 of Act 23 of 1959. The constitutional validity of sub-secs. (1) and (3) of S.6 of Act 23 of 1959 was challenged in Kannappa Mudaliar v. State of Madras, (1969) 1 Mad LJ 212. Division Bench of this Court while upholding the constitutional validity of sub-secs. (1) and (3) of S.6 of Act 23 of 1959 observes thus:

"But it is said that S.6(1) provides for an unguided discretion in the matter of grant or refusal of licence and that the discretion might be used in such a manner as to impede or restrain trade. We do not think that that is a proper construction to be placed on S.6(1). The object of the Act is to be found in the Preamble, namely, better regulation of buying and selling of agricultural produce and the establishment and proper administration of markets for agricultural produce. This and the provisions of the Act as a whole will be a guide in the matter of granting licence. Further where a discretionary power is vested

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in a public authority, it is invariably meant for exercise in favour of individuals who seek Licence and the Licence can be denied only for proper reasons. This question was touched upon from the stand point of Art.19(1)(g) and (6) in Kutti Keya v. State of Madras, (1954) 1 Mad LJ 117, 124: (AIR 1954 Mad 621) and the Court observed:

"Section 5(4)(a) (Act XX of 1933) does confer on the Collector an unlimited and uncontrolled discretion to grant or refuse Licences as he might choose and a provision which makes the exercise of a fundamental right dependent on the absolute discretion of administrative authorities must be held to be unconstitutional. The learned Advocate- General did not dispute the correctness of this position; he merely stated that as a fact there had not even been a single instance of refusal to grant a Licence. It may be conceded that the intention of the Legislature was that all persons who apply for Licence should get them and that none should be refused though being a pre-constitution enactment, the language is undoubtedly wide. As it stands, the section must be held to be void in so far as it confers on the Collector an authority to refuse a Licence at his will. This conclusion however does not entail the consequence of the entire licensing regulation becoming void, because its only result is that all applicants are entitled to obtain Licences provided they pay the prescribed fee and comply with the other conditions. Section 5(4) of the Act 1933 Act is in pari materia with S.6(1) of the 1959 Act and those observations, with equal force, will apply to the latter provisions of sub-sec. (3) of S.6, every person who applies for a Licence under S.6(1) will be entitled to it. Sub-section (3) specified certain cases of persons to whom Licence should be declined or the circumstances in which a Licence granted may be cancelled. In our opinion, it cannot be said that because of the provisions in sub-sec. (3) of S.6, the licensing system provided by S.6(1) is invalid as placing a restraint on freedom of trade".

Sub-sections (1) and (3) of S.6 of Act 23 of 1959 are in pari materia with sub-secs. (1) and (4) of S.8 of the Act. In view of the decision in Kannappa Mudaliar v. State of Madras, (1969) 1 Mad LJ 212, we have no hesitation in holding that sub-secs. (4) and (5) of S.8 of the Act are valid and they are not liable to be struck down.

10. In Vishnu Dayal v. State of U.P., AIR 1974 SC 1489, the Apex Court while upholding the validity of S.17 of Uttar Pradesh Krishi Utpadan Mandi Adhiniyam (Act 25 of 1965), which empowers the market committee to issue or renew Licence or suspend or cancel Licence under the said Act, observes thus:

8. "We may now take up consideration of the second and the third submissions which may be dealt with together. It is submitted that the licensing of the traders should not be left in the hands of the market committee. We find it difficult to appreciate how the performance of this duty by the committee will at all prejudice the traders. To say the least it is a hypothetical objection in this case, as we understand, none of the petitioners have been refused a Licence. It is true that usually some governmental authority is charged with the duty of granting of Licences under various local Acts. That, however, does not prove that the duty cannot be properly and impartially exercised by the committee representing various interests which are vitally interested in the trade of agricultural produce. Whether in a particular case the action of the committee is mala fide or otherwise objectionable, may be a different matter and such a grievance can be properly dealt with. That would, however, not make the provision invalid nor can it be said to place an unreasonable restriction on the right of the petitioners to trade ".

11. On a careful examination of sub- secs. (4) and (5) of S.8 of the Act, we are of the view that the conditions laid down in those sub-sections for the refusal, cancellation and suspension of the Licences cannot be considered as unreasonable and unjustified when we take note of the object and purpose of the Act which is regulatory in nature. If the contention of the learned counsel for the petitioners is countenanced, it amounts to permitting any trader who commits breach of conditions of the Licence to continue to commit breaches or offences under the Act.

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Further, it must be remembered that the Licence is only a privilege and such Licence can be cancelled under the circumstances mentioned in the relevant provisions and that the petitioners cannot claim exclusive right over a Licence once granted under all circumstances where the Licencee see acts in accordance with the conditions of the Licence or even when he commits breach of the conditions imposed by the Licence. As a matter of fact, several safeguards have been provided under the Act to protect the interest of the bona fide traders. Sub-section (6) of S.8 provides for an appeal against an order of the market committee refusing to grant a Licence or cancelling or suspending a Licence. Therefore, the contention of the learned counsel for the petitioners, that the provisions of sub-secs. (4) and (5) of Sec.8 of the Act are ultra vires and infringes the fundamental rights guaranteed under Art.19(1)(g) of the Constitution cannot be countenanced. We are clearly of the view that the restrictions or eligibility criteria laid down in sub-sec. (4) of S.8 are only reasonable restrictions and therefore, it cannot be said that sub-sec. (4) of S.8 infringes the fundamental rights guaranteed under Art.19(1)(g) of the Constitution.

12. Sub-section (9) of Section 8 runs as follows:

"(9) Every person Licenced or liable to pay fee or any other amount under this Act shall keep and maintain a true and correct account and such other records showing such particulars as may be specified in the by-laws of the market committee and shall submit such periodical returns relating to his business transaction including processing as may be prescribed, to the market committee in such manner and within such period as may be prescribed, together with fee or other amount due on the basis of the return."

Rule 32 deals with submissions of periodical returns. According to sub-rule (1) of Rule 32 every Licencee shall send a monthly return under sub-sec. (9) of S.8 of the Act relating to the purchase or sale of every notified agricultural produce so as to reach the head of market on or before the 10th day of the succeeding month in Form 9. Sub-rule (2) of Rule 32 says every Licencee under sub-sec. (1) of S.8 of the Act shall produce the accounts to the market committee for verification once in six months. Rule 33 deals with levy of fee on notified agricultural produce. The fee on notified agricultural produce leviable under sub-sec. (1) of S.24 of the Act shall be Re. 1/- (rupee one only) for every hundred rupees of the aggregate amount of the notified agricultural produce which is bought or sold in notified area. Sub-rule (3) of Rule 33 deals with the mode of calculating the quantum of fee leviable. Sub-rule (4) of Rule 33 says that the fee shall be paid by trader immediately after the purchase in respect of purchases within the market and within a week in respect of other first purchases or sales effected in any other place in the notified market area except the market aforesaid. There is absolutely, no contradiction between Rule 32 and sub-rule (4) of Rule 33 as contended by the learned counsel for the petitioners. It must be pointed out that Rule 32 and sub-rule (4) of Rule 33 deals with two different matters. Rule 32 deals with submission of periodical returns whereas sub- rule (4) of Rule 33 deals with payment of market fee. As per sub-rule (4) of Rule 33, a trader has to pay the market fee immediately for the purchases made within the regulated market and for the purchases made out side the regulated market he should pay within a week. On the other hand sub rule (1) of Rule 32 imposes an obligation on the trader to submit the monthly return in respect of transactions not later than the 10th of the succeeding month to the Head of the Market. It is seen from the counter affidavit filed on behalf of the respondents, under the provisions of the Tamil Nadu Act 23 of 1959 and the rules framed thereunder, the traders were submitting their accounts once in three months for verification. In view of the representations made by the traders and in order to obviate some of the difficulties, sub-rule (2) of Rule 32 of the rules requiring them to submit their accounts once in six months was made. On a examination of Rules 32 and 33, we are satisfied that the regulatory in nature and they do not impose any unreasonable restrictions on the traders in carrying on

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their business as contended by the learned counsel for the petitioners. In these circumstances, we have no hesitation in holding that sub-sections (4), (5) and (9) of Section 8 and Rules 32 and 33 are perfectly valid and they are not liable to struck down.

13. The next contention of the learned counsel for the petitioners is that Section 10 of the Act providing for the constitution of market committee undemocratic, invalid and therefore, it is liable to be struck down. The contention of the learned counsel for the petitioners is that under the old Act 23 of 1959 the market committee shall consist of 18 members of whom 9 were elected from Licencees and 4 were nominated by Government of whom one should be the producer residing in the notified area. The Tamil Nadu Act 27 of 1989 provides for nomination of non-official and official members numbering 16 only by the Government of whom 8 shall be from the producers. The learned counsel for the petitioners would submit that the provisions of Section 10 is not in consonance with democratic set up and leave it open to the arbitrary way of nominating the representatives by the Government who would be only henchmen and thereby the market committee is made a tool to its own political influence or gain whoever may be the ruling party. It is, further contended that the constitution of the market committee as per Section 10 of the said Act is undemocratic as the purchasers and sellers have no proper and adequate representation.

14. Per contra, the learned Advocate General submitted that the practice of election for the constitution of market committee has been done away with and the procedure of nomination by the Government as is the practice in other Boards, Corporations, Local bodies etc. in Tamil Nadu and as prevalent in other States is provided for, taking into account the huge expenses involved in the conduct of elections in the constitution of market committee which is functioning only with limited resources. The learned Advocate General further submitted that the primary object of the Act is to help and benefit the producers and traders who are given adequate representation in the constitution of market committees and therefore the contention of the petitioners that the nominated members are going to be only henchmen of the party in power has no merit.

15. In para 4.4.1 of the report of the Working Group on drawing up model agricultural produce market Act, it is pointed out that the direct election of the non-official members of the market committees by the formers may be a very cumbersome and costly process. The learned Advocate general also relied on para 4.4.2 of the said report which reads thus:

"4.4.2 It is almost like a general election in which electoral rolls will have to be prepared, published and finalised after hearing objections. Elaborate arrangement will also have to be made for setting up a large number of polling booths, providing security during the election process and for counting of votes, etc. The number of voters being very large, a lot of man-power and financial resources will be required to conduct these elections."

16. In N. Sreerama Murthy v. State, AIR 1981 Andh Pra 395, a Division Bench of the Andhra Pradesh High Court while upholding the validity of a similar provision in Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 empowering the Government to nominate members of market committee held as follows:

"6. Sri Venugopala Reddy, learned Counsel for the petitioners, contends that the Division Bench, striking down S.5(1) and (2) of the principal Act, declared that it was the elected members that on best subserve the interests of the different interests represented on the market committee. The amended Act gives a go by to the system of election and is contrary to the intendment of the judgment of this Court. He argues that if the provisions were held to be violative of Art.14 because the principle of election was not observed with respect to the representatives of the growers of the agricultural produce and owners of livestock and products of livestock as well as in the case of traders the amended provision must also be held to be violative of

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Art.14 of the Constitution. We must point out that this is not the correct interpretation of the earlier judgment of this Court. The Court, in declaring the said provision to be violative of Art.14 pointed out that growers of agricultural produce and owners of livestock and products of livestock on the one hand and the traders in agricultural produce, owners of livestock and products of livestock on the other, represent two vital interests in the market committee and if one interest was represented by those elected from among themselves, and according to the Bench elected representatives are better suited to safeguard the interests of the particular section the other section also ought to have been given an opportunity to be represented by members elected from among themselves. Such a discrimination was held to be striking at the root of the validity of that provision. What would have been the provision if the legislature had made provision for nomination of both the interests, that is, growers of agricultural produce and owners of livestock and products of livestock on the one hand and the traders on the other, did not come up for consideration in that case. Whatever may be said about the system of nomination as compared to the system of election to particular body, when all the interests are to be informally represented either by elected representatives or by nominated members, none of such groups can complain of hostile discrimination. That is what the legislature in its wisdom, has now done. Now, both the traders and the growers of agricultural produce and owners of livestock and products of livestock, are to be nominated by the Government by a notification. May be, if provision was made for election of the representatives of the growers and owners of livestock and products of livestock, would have been better, but the legislature in its wisdom must have thought nomination of persons representing the two groups was in the best interests of the market committees. Whatever criticism on such a provision may be open to, cannot certainly be questioned on the ground that it is violative of Art.14 of the Constitution. May be, the Legislature, after considering the several aspects, was of the view that the interests of the traders as well as the growers of agricultural produce and owners of livestock and products of livestock are better served by nomination of the members of those categories. May be, the administrative difficulties and financial burden of conducting elections to several market committees especially when growers of agricultural produce and owners 'livestock run into several lakhs weighed with the legislature in abandoning the election process. Or may be, it though that on committees like this, persons with special knowledge or experience may not come forward to seek election and the Government preferred to secure their services by nominating them to these committees in the hope that the committee would function better. Those are matters entirely for the legislature to consider and decide. It is not the province of this Court to say that the method of election alone is to be preferred as against the method of nomination in constituting the market committees. It is a matter of opinion. So long as such nomination does not violate any provision of the Constitution, the Court cannot substitute its own view in matters such as these and strike down the legislation. It may be pointed out that the passage from the judgment of this Court relied upon by the learned counsel to the effect that interests are best protected by permitting the affected owners of those interests to elect their representatives to the market committee were made only to emphasise that the others interest was not similarly represented by the elected members but was represented only by nominated members. It was never meant that the persons to man the market committees must be chosen only by the process of election from among the members of that category. In our view, inasmuch as all the interests envisaged by the Act are represented by persons nominated by the Government, no question of hostile discrimination arises so as to hold the said amended provisions of the enactment to be violative of Art.14 of the Constitution."

The Division Bench of the Andhra Pradesh High Court in para 8 of the decision referred above, further observes thus:

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"8. It would thus be seen that this Act as a fairly comprehensive Act covering the purchase and sale of notified agricultural produce, livestock and products of livestock and intended to provide facilities for marketing of these products' and to put a check on unauthorised collections to which the growers of agricultural produce and owners of livestock and products of livestock are exposed in the process of sale of their stock. Having regard to the fact that the growers run into lakhs only an agency like the Government may be able to identify the person suitable and sufficiently qualified for being nominated to the commit- tees to represent the various interests. It is not any subordinate authority, but the Government which is the highest administrative authority, that is vested with the power to nominate persons of each category on the committee. It is well settled that if such a power is vested in the highest authority, it is assumed that it would act fairly having regard to the provisions of the Act and its intendment and to advance the purposes of the Act. The provisions made in the amended sub-sections (1) and (2) of S.5 of the Act, read with the other provisions of the Act referred to above, provide sufficient guidelines to this highest authority of the State in the matter of nominating the members to the committee; be it from the category of growers or of traders. In Jyoti Pershad v. Union Territory of Delhi, AIR 1961 SC 1602, a similar contention that the Act itself did not provide any guidelines was repelled and it was observed that "it is not essential for the legislation to comply with the rule as to equal protection, that the rules for the guidance of the designated authority, which is to exercise the power or which is vested with the discretion, should be laid down in express terms in the statutory provision itself." The Supreme Court then referred with approval to the following observations made in Kedarnath v. State of West Bengal, AIR 1953 SC 404 at p. 409: -

"The Saurashtra case would seem to lay down the principle that if the impugned legislation indicates the policy which it is to seek to attain, the mere fact that the legislation does not itself make a complete and precise classification of the persons or things to which it is to be applied, but leaves the selective application of the law to be made by the standard indicated in the underlying policy and object disclosed is not a sufficient ground for condemning it as arbitrary and therefore, obnoxious to Art.14". The Supreme Court further laid down that "such guidelines may thus be obtained from or afforded by (a) the preamble read in the light of the surrounding circumstances which necessitated the legislation, taken in conjunction with well-known facts of which the Court might take judicial notice or of which it is appraised by evidence before it in the form of affidavits, (1952) 3 SCR 435: AIR 1952 SC 123 being an instance where the guidance was gathered in the manner above indicated (b) or even from the policy and purpose of the enactment which may be gathered from other operative provisions applicable to analogous or comparable situations or generally from the object sought to be achieved by the enactment. "

We are in entire agreement with the view expressed by the Division Bench of the Andhra Pradesh High Court in N. Sree Rama Murthy v. State, AIR 1981 (Andh Pra) 395. Therefore, it has to be held that the attack on the validity of Section 10 of the Act is unsustainable.

17. The third contention of the learned counsel for the petitioners is with regard to the validity of Sec. 12(a) of the Act. The learned counsel for the petitioners challenged the Constitutional validity of Section 12(a) on the ground that it is discriminatory and violative of Art.14 of the Constitution. The contention of the learned counsel for the petitioners is that Sec. 12(a) provides that every market committee shall elect one of its members who is nominated under clause (a), clause (c) of sub-section (1) of Section 10 to be its Chairman; that by reason of Sec. 12(a) the Licencees or traders have not given any chance to become chairman of market committee by virtue of the specific exclusion provided under Section l2(a) of the Act, and therefore, the said section is discriminatory and it is liable to be struck down. There is no merit in this contention of the learned counsel for the petitioners. Section 12(a) is not a new provision,

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but only a replica of the provision of the Tamil Nadu Act 23 of 1959, wherein also the producers alone can become Chairman of the market committee. The relevant provision under the old Act had never been challenged by any trader or Licencee. Further, the act is intended to help and protect the interests of the producers who were subjected to exploitation and that is the reason for the majority representation being given to the producers. Section 10 of the Act says that every market committee shall consist of 16 members and it shall be constituted in such a manner that 9 out of the 16 members shall consist of growers, 3 out of 16 shall consist of traders and 4 members shall be officials. If, the legislature in its wisdom having regard to the object sought to be achieved by the Act and also having regard to the large number of growers of agricultural produce, has given a larger representation to them on the market committee than the traders who are infinitesimally few as compared to growers and given a chance to the growers alone to become Chairman of the market committee, that legislation cannot be struck down as discriminatory. Therefore, the challenge of the petitioners on Sec. 12(a) of the Act also fails.

18. Fourthly, the learned Counsel for the petitioners challenge the legality and validity of the levy and collection of market fee as provided in Section 24 of the Act which empowers the market committee to collect a minimum of Re. 1 and the maximum of Rs. 2 per every transaction to the value of Rs. 100/- in lieu of 45 paise authorised under the old Act. The validity of Section 24 of the Act is challenged on the following grounds:

1. Without even doing any services the increase of the fee from 45 paise to Re. 1/- has no nexus to the object of the Act, and that there is no necessity for enhancing the rate. Such increase directly or indirectly benefits the State.

2. The principles of 'quid-pro-quo' is an essential pre-requisite for the levy of fee and that such levy must conform to the provisions of Article 286(3) of the Constitution of India.

3. The levy and Collection without rendering any services constitutes an infringement into the fundamental rights of the traders to carry on the trade and affect their livelihood guaranteed under Article 21 of the Constitution.

4. There exist no correlation between the amount percent fees collected.

5. Even though the turnover is the basis for paying the Licence fee etc., the said term has not been defined under the said Act. If the person allows other persons paddy and cotton etc., to be processed, there is no provision under the said Act to guide as to how to calculate the turnover. As such, unguided powers have been given to the authorities for calculating the fee. The commodities brought for processing cannot be presumed to have been brought into such notified areas for buying and selling and therefore the provisions making them liable for levy beyond one month will be beyond the scope of the object of the said Act. On the other hand, the learned Advocate General submitted that, that the contention put forward on behalf of the petitioners that no service is rendered by the respondents, in the notified area and therefore, the levy of market fee of Re. 1/- per Rs. 100/- is unjust and unreasonable is not correct. The learned Advocate General also submitted that the fact that as on day many of the market committee are running at loss and do not have any surplus funds will only go to show that the present increase cannot at any stretch of imagination be construed as either arbitrary or unreasonable. According to the learned Advocate General, the present increase is justified keeping in view the increased facilities that are made available to the growers and the traders by each market committee in the State.

19. The backdrop of law on the question of quid-pro-quo may be briefly examined before coming into the factual details of the present case. The apex Court in various decisions has considered the question what is fee and to what extent there must be correlation between fees collected and services rendered. The Supreme Court in Delhi Municipality v. Mohd. Yasin, AIR 1983 SC 617 considered the distinction between tax and fee held as follows: -

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"9. What do we learned from these precedents? We learn that there is no generic difference between a tax and a fee, though broadly a tax is a compulsory exaction as part of a common burden, without promise of any special advantages to classes of taxpayers whereas a fee is a payment for services rendered, benefit provided or privilege conferred. Compulsion is not the hall-mark of the distinction between a tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax. Though a fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere casual relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That other besides those paying the fees is also benefited does not detract from the character of the fee. In fact the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. Nor is the Court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc. against the amount of fees collected so as to evenly balance the two.

A broad correlationship is all that is necessary. Quid pro quo in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax."

20. The Apex Court in Sreenivasa General Traders v. State of Andhra Pradesh, AIR 1983 SC 1246, while upholding the Constitutional validity of Sec. 12(1) of the Andhra Pradesh (Agricultural Produce and Live- stock) Markets Act, 1966, which enhanced the market fee from 50 paise charged in 1972 to Re. 1/- per Rs. 100/- price of notified agricultural produce in 1978, held as follows: -

"30. The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general purpose of the state predomintes the levy becomes a tax. In regard to levy is, and must always be, correlation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class; it may be of no consequence that the State may ultimately and indirectly benefited by it. The power of any legislature to levy a fee is conditioned by the fact that it must be 'by and large' a quid pro quo for the services rendered. However, correlation between the levy and the services rendered expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a 'reasonable relationship' between the levy of the fee and the services rendered. If authority is needed for the proposition, it is to be found in the several decisions of this Court having a distinction between a 'tax' and a 'fee'. See, Commr., Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Mutt, AIR 1954 SC 282 supra; H.H. Sudhindra Thirtha Swamiar v. Commr. for Hindu Religious and Charitable Endowments, Mysore, 1963 Suppl (2) SCR 302 ; AIR 1963 SC 966; Hingir Rampur Coal Co. Ltd. v. State of Orissa, (1961) 2 SCR 537: AIR 1961 SC 459; H.H. Shri Swamiji of Shri Admar Mutt v. Commr. Hindu Religious and Charitable Endowments Dept., (1980) 1 SCR 368 : AIR 1980 SC 1, Southern Pharmaceuticals and Chemicals, Trichur v. State of Kerala, (1982) 1 SCR 519: AIR 1981 SC 1863 and Municipal Corporation of Delhi v. Mohd. Yasin, AIR 1983 SC 617". ...

'Viewed from this perspective, the conclusion is inevitable that the observation made in Kewal Krishnan Puri's case, AIR 1980 SC 1008 that 'At least a good and substantial portion of the amount collected on account of fees, may be in the neighborhood of two-thirds or three-fourth must be shown with reasonable certainly as being spent for rendering services in the market to

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the payer of fee' was not intended to lay down a rule of universal application but it was a decision which must be confined to the ...... special facts of that case. Otherwise it may affect the validity of many similar marketing legislations undertaken during the past 50 years relating to the regulation of purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection therewith and the levying of a market fee in lieu thereof towards the cost of rendering such service by different States on the recommendations made in the Report of the Royal Commission on Agriculture in India, 1928 and of those of many high-powered bodies of experts constituted from time to time by the Centre and different States."

In para 34 of the judgment referred to above, the Supreme Court further observes thus:-

34. In the present case, there is no allegation anywhere by any of the petitioners nor was any contention advanced that there was any unauthorised expenditure by any of the market committees for purposes not authorised by the Act. There is only a bare assertion on their part that there are surplus funds available with the market committees and therefore, the increase in the rate of market fee from 50 paise per hundred rupees of the price to rupee one was without lawful justification. From the material on record it is quite apparent that the income from the market fee derived by some of the market committees is not sufficient to meet the expenditure incurred by them. That apart, when the petitioners concede that they do not challenge the levy of market fee @ 50 paise per hundred rupees in the year 1972, there can be no basis for challenging the increase in the rate of market fee from 50 paise to rupee one in 1978. Surely the cost of rendering services has correspondingly increased with the fall in the value of rupee. In the economic sense, 50 paise of 1972 is certainly equivalent to at least rupee one of today, if not more."

21. In City Corporation of Calicut v. Thachambalath Sadasivam, (1985) 2 SCC 112: (AIR 1985 SC 756), the Supreme Court held that it is not necessary to establish that those who pay a fee must receive direct benefit for the services rendered for which the fee is being paid. If one who is liable to pay receives generally benefit from the authority levying a fee, the element of service rendered for collecting the fee is satisfied. It is not necessary for the person liable to pay must receive some special benefit or advantage for payment of the fee.

22. The Supreme Court in Ashwathanarayaria Setty v. State of Karnataka, 1989 Suppl (1) SCC 698 : (AIR 1989 SC 100) has held that the test of co-relation is not in the context of individual contributors. The test is on the comprehensive level of the value of totality of the service set off against the totality of the receipts. If the character of the fee is thus established; the vagaries in its distribution among the classes do not detract from the concept of a fee as such though a wholly arbitrary distribution of the burden might violate other constitutional limitation.

23. Following is the sum and substance of the principles to be gleaned from the pronouncement of the highest Court of the land, correlation between the levy of fees and services rendered is one of general character and not of mathematical exactitude. All that is necessary is that there should be a reasonable relationship between the levy of fee and services rendered. Again, such relationship need not be direct but a mere casual relation may be enough. Further, neither the incidence of the fee nor the services rendered need be uniform. The fact that others besides those paying the fees are also benefited does not detract from the character of fee.

24. Bearing the aforesaid principles in mind, we shall proceed to consider the contentions of the learned counsel for the petitioners that there is no correlation between the increase in the levy of market fee and the services rendered and therefore, Sec. 24(1) is invalid. In para 20 of the counter-affidavit filed on behalf of the first respondent, the market committees' activities and services rendered by them both internal and external services, are stated in the following terms:

"(a) Establishment and setting up market

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committee, Regulated Markets with the required facilities to transact business.

(b) Providing the required weighing machines in the markets;

(c) Doing Propaganda and Publicity work through the Committee's personnel in Co- operation with the State Agricultural Marketing Board and with the help of the State and Central Government field publicity wings and about the production and marketing of agricultural produces;

(d) Licensing the dealers, weighmen, brokers and other market functionaries;"

(e) Taking preventive measure to eradicate the malpractices in the trade premises in notified areas such as underweighments, unauthorised deductions, abnormal commission, brokerage, weigh man charges, etc. by framing suitable bylaws under the Act and Rules;

(f) Disseminating of market trend and prices through ratio, news papers, bulletins, etc. for the benefit of both the producers and traders.

(g) Making provisions for settlement of disputes in the transaction;

(h) Providing grading facilities in almost all markets i.e. at Rajapalayam and Theni Regulated Markets etc. Kapas Grading centres equipped with the latest machineries to find out stable length, strength of the fibre, ginning and moisture percentage are functioning with trained personnel. These facilities are available both to agriculturists and traders free of cost.

(i) Prescribing forms for sale and purchase, contract and settlement for transactions in the notified area.

(j) Educating the farmers as well as Traders regarding the post harvest technology, for marketing of quality products.

(k) Framing a scheme for providing load from committee funds and also from nationalised or co-operative banks on pledging of agricultural produce. The small and marginal farmers are more benefited and this scheme helps to avoid distress sales."

25. Further, in paragraphs 3 to 5 and 7 and 8 of the additional counter-affidavit filed by the first respondent, the details of infrastructure built up by the Market Committees in various regulated markets, the proposal to acquire lands for locating regulated markets and the various other proposals pending with the Government are given in the following terms:

3. Along with this counter-affidavit, I crave leave to annex charts I and V which show the details of infrastructure build up by the Market Committees in various Regulated Markets.

Chart No. No./Details of works Value of works (in Lakhs Rs.)

1. 2. 3.

Chart I Abstract of Annexure filed with main adoption counter i.e. infrastructure build up.

Total 645 works. 1157.85

Chart II Works completed between 1-4-91 to 31-3-93.

Total 158 works 244.16

Chart III Works taken up during 1993-94.

Total 46 works. 190.12

Chart IV Details of rate of market fee collected in other States of India. -----------

Chart V Details of market arrivals of agricultural produce and receipt of market committee fees and expenditure -----------

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4. I submit that the Directorate of Agricultural Marketing, Madras has sent proposal for laying and improving 96 kms. of approach roads in a 8 Market Committees at a cost of about Rs. 2.57 crores to be incurred from Market Committee funds. The matter is under consideration with the Government.

5. I submit that as on date there are 128 rural godowns in all the 14 market Committee areas A Scheme, similar to the one in force in a number of States, has been introduced here in this State also which is known as pledge loan scheme for small and marginal farmers. According to this, the agriculturalists who bring the produce to the market can deposit the produce in the rural godowns and obtain loans up to the value of 10,000/- rupees. Interest is not charged for the first 30 days and thereafter for the next 5 months 12% interest is charged. This will attract the farmers to come to the market and thereby the purchasers, will have a wide choice of selecting the commodities and getting good quality products instead of purchase going round the door steps of agriculturalists in various villages, spending time, money and energy. The purchasers will have the benefit of buying the stock which they want in the market itself.

7. It is proposed to acquire lands for locating Regulated Markets in the Market Committee areas of Erode, Coimbatore, Salem, south Arcot and North Arcot market committee at a cost of Rs. 200/- lakhs for each Market Committee. Refrigeration facilities are proposed at a cost of Rs. 100/- lakhs each in Oddanchathiram and Hosur areas of Madurai and Dharmapuri Market Committees respectively at a cost of Rs. 200 lakhs. These services can be availed by the traders who may want to export fruits and vegetables and turmeric, chilies, ladies fingers, etc. from Tamil Nadu.

8. Establishment of Regulated Markets in Market Committee owned lands or improvement of existing markets, establishing special markets for valuable commodities like cotton, jaggery, oilseeds is being considered by the Government. In order to achieve this, proposals 'are pending with the Government for the following :-

1. Purchase of lands for establisment of Regulated Markets.

2. Purchase of machinery for drying, cleaning and grading of agricultural produce.

3. Purchase of electronic weighing machines.

4. Purchase of electronic spectrometer for assessing instantly the oil content of oilseeds.

5. Provision of electronic display boards for informing the agriculturists and the T raders quantity and prices of various commodities received in selected markets so that farmers would expect slightly higher prices and the traders would cover more commodities if the arrivals are diminishing.

6. Installation of STD/TSD facilities for use by traders at selected Regulated Markets.

7. Tie up with Banks for extension of short-term loan accommodation to the traders and opening up of extension counters of Nationalised banks.

8. Programme of publicity through commercial grading at villages itself.

9. Provision of water coolers and running water in regulated markets.

For achieving all the above objectives, a sum of Rs. 17 to 18 crores is proposed to be spent. All these outlays are proposed to be made in a way to help the traders and the farmers and to help promote growth of exports of agricultural products from Tami Nadu also".

26. It is relevant to point out that the provisions of the Tamil Nadu Act 23 of 1959 originally provided for levy of 45 paise at the maximum per every hundred rupees transaction and this rate had been in existence till 1974. It is only in 1991 after the introduction of the present act and Rules the levy has been increased to one rupee. Thus from 1962 to 1991 for nearly three decades there has been no increase in the mater of levy and collection of market fee, in spite of the fact that the

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market committees were rendering various services to the purchasers and traders. When the petitioners did not challenge the levy of market fee at 45 paise per every hundred rupees transaction from 1962 to 1991, there is absolutely no basis for challenging the in- crease in the rate of market fee from 45 paise to one rupee in 1991 when the value of 45 paise in 1962 is certainly more than one rupee as on today.

27. It must be pointed out that the levy of market fee under sub-section (1) of Section 24 of the Act is correlated to the purposes mentioned in Section 30 of the Act. All the monies received by the market committee from the traders as market fee had to be paid into a fund called market committee fund under Section 29 of the Act. All the expenditure incurred by the market committee under and for the purposes of the Act have to be defrayed out of the said fund and any surplus remaining after such expenditure has to be invested in the manner prescribed. Under sub-section (2) of Section 29 every market committee has to pay to the State Government out of its fund the cost of any special or additional staff employed by the Government with their consultation. The purposes for which the proceeds of the market committee fund can be expended are set........ out in Section 30 of the Act. The purposes mentioned in Section 30, namely acquisition of site for the market, establishment, maintenance and improvement of the market, construction of buildings, maintenance of standard weights and measures which are extremely beneficial to the growers and the traders. There is no material placed on record by the petitioners to show that the market committees are rendering no service. For all the reasons stated above, and in view of the factual materials available on record, we are of the view, that the contention that the increase in the market fee levied by the market committee under sub-section (1) of Section 24 from 45 paise to one rupee is illegal and invalid on the ground that there is no quid pro quo, i.e. there is no correlation between the increase in the rate of market fee and the services rendered cannot be countenanced and it must fail.

28. The learned counsel for the petitioners next challenged the validity of proviso to Section 24(1) contending that the said proviso is beyond the scope of the Act. The contention of the learned counsel for the petitioners is that what is not sale cannot be made sale by a legal fiction and the commodities brought for processing cannot be presumed to have been brought into the notified area for buying and selling and made them liable for levy of fees on the value of the sale. It is further contended that inasmuch as the proviso to Section 24(1) is beyond the scope of the Act, the said proviso is invalid and liable to be struck down. In support of the above contention Mr. G. Subramaniam, learned Senior Counsel relied on the following decisions in

(1) State of Travancore Cochin v. Shanmugha Vilas Cashewnut Factory, AIR 1953 SC 333; (2) Madras State v. G. Dunkerley and Co., AIR 1958 SC 560 and (3) Deputy Commercial Tax Officer v. Enfield India Ltd., AIR 1968 SC 838.

We are unable to accept the above contention of the learned Senior Counsel for the petitioners. Sub-section (I) of Section 24 gives an authority to the market committee to levy fee on any notified agricultural produce bought or sold in the notified market area, at the rates specified in that sanction. Proviso to Section 24(1) says that when any agricultural produce brought into any notified market area, for the purpose of processing only or for export is not processed or exported therefrom within 30 days from the date of its arrival therein, it shall until the contrary is proved be presumed to have been brought into such notified market area for buying and selling and shall be subject to levy of fee under Section 24(1) on the value of the agricultural produce as if it had been bought and sold therein. The contention of the learned counsel for the petitioner is that as a result of the proviso to Section 24(1) of the Act what are not sales are deemed to be sales and fee is sought to be levied on them and the power of legislature being only to levy fees on actual sale or purchase, and not on deemed sales, the proviso to Section 24(1) is invalid. It must be remembered that the said proviso contains only

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a rule of evidence and its effect is not impose a fee on deemed purchase or sale of notified agricultural produce. It is intended to avoid possibility of evasion of payment of market fee and to make Section 24(1) as effective as possible. Further as pointed out in para 30 of the counter affidavit, the proviso to S.24(1) is intended to serve as a safeguard against hoarding, black marketing and speculative transactions under the guise of processing. It must be also pointed out that the presumption raised in the proviso to Section 24(1) is only a rebuttal presumption and the concerned trader can always prove by the positive evidence that the commodity in question was brought into the notified market only for the purpose of processing or for export. Explanation I to Section 18 of the Tamil Nadu Act 23 of 1959 says that for the purposes of Section 18(1) all agricultural produces taken out or proposed to be taken out of a notified market area shall unless the contrary is proved, be presumed to be bought or sold within such area. The said explanation I to Section 18 of Act 23 of 1999 was challenged on identical grounds in Kannappa Mudaliar v. State of Madras, (1969) 1 Mad LJ 212. A Division Bench of this Court, in the above decision, while upholding the validity of explanation I to Section 18 of Act 23 of 1959 held as follows:

"One other contention for the petitioner is that Explanation (2) to Section 18(1) is unconstitutional. We have already noticed that sub-section (1) provides for authority to the market committee to levy a cess by way of sales tax on the purchase or sale of any notified agricultural produce in the notified market. Explanation (1) says that for the purposes of sub-section (1) all notified agricultural produce taken out or proposed to be taken out of a notified market area shall, unless the contrary is proved, be presumed to be bought or sold within such area. The contention is that as a result of the Explanation what are not sales are deemed to be sales and an impost is levied on them and the power of the Legislature being only to impose a tax on actual purchases or sales and not deemed sales which are not sales of goods in the strict sense of the law, the Explanation should be struck down. The Explanation is only a rule of evidence. We do not think that there is any substance in this contention. Its effect is not to impose or authorise imposition of a fee in the nature of sales tax on deemed purchase or sale of notified agricultural produce. The presumption is intended to make sub-section (1) as effective as possible and to avoid possibility of evasion. The presumption is rebuttable and the person concerned can always show that the notified agricultural produce taken out or proposed to be taken out of a notified market area is not the subject-matter of any purchase or sale within the notified area".

The ratio of the above decision directly applies to the facts of the present case, so far as the proviso to Section 24(1) of the Act is concerned. We must also point out that Explanation (1) to old Section 18(1) is in parimateria with explanation (1) of Section 24(1) of the present Act. The petitioners have not challenged Explanation (1) to Section 24(1) of the Act evidently, because the constitutional validity of the similar provision under the old Act has been upheld by a Division Bench of this Court in Kannappa Mudaliar v. State of Madras (1969) 1 Mad LJ 212.

29. The Apex Court in M/s. J.K. Cotton Spinning and Weaving Mills Ltd.v. Union of India, AIR 1988 SC 191 has held that it is well settled that the Legislature is quite competent to enact a deeming provision for the purpose of assuming the existence of a fact which does not really exist.

30. The principles laid down in the decisions (1) State of Travancore-Cochin v. Shanm~gha Vilas Cashewnut Factory, Quilon, AIR 1953 SC 333; (2) Madras State v. G. Dunkerley and Co., AIR 1958 SC 560 and (3) Deputy Commercial Tax Officer v. Enfield India Ltd., AIR 1968 SC 838 relied on by the learned Senior Counsel for the petitioners will have no relevance for deciding the validity of proviso to Section 24(1), which in our view contains only a rule of evidence and as pointed by a Division Bench of this Court in Kannappa Mudaliar v. State of Madras (1969) 1 Mad LJ 212, its effect is not to impose or authorize imposition of a fee on deemed purchase or sale of notified agricultural produce.

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The purpose Which proviso(1) to section 24(1) is intended to serve is stated in para 30 of the counter affidavit filed on behalf of the first respondent as follows :-

"30. In respect of goods brought from outside the district or outside the state for the purpose of only processing, they are not liable to the payment of market fee provided a period of one month is not lapsed from the date of such bringing in. The one month period has been stipulated only to ensure proper regulation in the notified area. Merely because a person brings certain produce for processing, he cannot be allowed to store them in the market for indefinite period causing prejudice to the very implementation of the other provisions of the Act and Rules. Further the time limit of one month is within the scope of the Act as contemplated under Section 2 of definition 17 and therefore, the prescription of the period of one month is based on rational and realistic principles. This provisions is mainly to safeguard against hoarding, black-marketing, speculation, artificial scarcity etc. under the guise of processing. "

In these circumstances, the attack on the proviso to Section 24(1) of the Act cannot be sustained and we have no hesitation in holding that proviso to Section 24(1) of the Act is perfectly valid and it 'is not liable to be struck down.

31. The next provision challenged in these batches of writ petitions is sub-section (5) of Section 24 providing for transport of notified agricultural produce from the notified market area with permits. Sub-section (5) of Section 24 provides that a notified agricultural produce taken or proposed to .be taken put of a notified market area exceeding the prescribed quantity shall be accompanied by a permit issued by the secretary of the market committee subject to the by-laws made by the market committee in this regard. The contention of the learned counsel for the petitioners is that if the agricultural produce passes through the different notified areas, the insistence that permit should be taken for each and every entry within the notified market area affects the very business of the petitioners due to practical difficulties and such a condition prescribed in sub-section (5) of Section 24 amounts to interference with the freedom of trade and offends Article 19(1)(g) of the constitution of India. There is no substance in this contention of the learned counsel for the petitioners. The learned counsel for the petitioners were not able to point out the actual difficulties faced by the traders in taking the permit for entering into the market area. As pointed out by the first respondent in its counter-affidavit, sub- section (5) of Section 24 is made in order to safeguard the honest and bona fide traders who have already paid market fee on the agricultural produce and in order to check evasion of the market fee. The advantages of the permit system under sub-section 5 of Section 24 are stated in paragraph 32 of the counter affidavit in the followin~ terms:

"As per rules in force an intimation slip is sent to the Check Post through which the produce passes. A duplicate copy of the permit is sent to the head of market in whose jurisdiction the said produce is taken in and triplicate copy to the Secretary of the Market Committee concerned in terms of Rule 33(5). By this, not only the evasion of duty but also the acceleration of corrupt practices is eliminated. As a matter of fact, this procedure facilitates smooth passage of goods through the various check-posts till the goods are received at the destination point. If the system is abolished there will be confusion and irregularities at the check-posts regarding the bona fides of the goods and also irregular trade practices at the receiving end. The object of the Act being regulatory in nature, if the permit system is not implemented and enforced, then it would defeat the very object of the Act, and the restriction by way of permit is saved by Article 19(6) of the Constitution of India and will not be violative of Article, 19(1)(g) as contended by the petitioners. "

Further it is also on record that during the pendency of these writ petitions, at the request of Traders, Govt. in G. O. Ms. 117 dated.22-2-1993, revived the Advance Permit system so as to enable them to transport their

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produce freely and without any difficulty in getting permit under the Act every time. In view of the above position, we are unable to hold that sub-section (5) of Section 24 imposes any unreasonable restriction upon the traders in carrying on their business offending Article 19(1)(g) of the Constitution. However considering the object of the Act and the other provisions of the Act, we are of the view that the permit contemplated under sub-section{5) of Section 24 is necessary only where the notified agricultural produce is taken or proposed to be taken out of the notified market area by a trader, and not when it is taken or proposed to be taken by a producer of agricultural produce. As already pointed out the object of the Act is to protect the interests of agricultural producers. Ac- cording to sub-section (2) of Section 24 the market fee is ordinarily payable by the purchaser of notified agricultural produce. Again sub-section (5) of Section 24 is newly added in the Act, in order to check evasion of payment of market fee. No doubt, sub-section (5) of Section 24 does not expressly say that permit is required only when notified agricultural produce is taken or proposed to be taken out of notified area by a trader and it is not necessary when it is so done by a producer. However, considering the object of the Act and on a harmonious construction of the various provisions of the Act, coupled with the principle of interpretation by reading down the above provisions in the statute, sub- section (5) of Section 24 must be interpreted as a provision having limited application in the sense that the permit contemplated under the said provision is necessary only when the notified agricultural produce is taken or pro- posed to be taken out of a notified market area by a trader and such a permit is not necessary when agricultural produce is taken or proposed to be taken out of a market area by a producer of agricultural produce. There- fore, the attack on sub-section (5) of Section 24 fails, subject to our observation referred above that the permit contemplated under Section 24(5) is not necessary where the agricultural produce is taken or proposed to be taken out of a market area by the producer of notified agricultural produce.

32. The learned counsel for the petitioners, next challenged the validity of Section 25 of the Act which provides for the establishment of check-post or barrier. Section 25(1) enables the Government to issue notification directing the setting up of check-post or the erection of barrier or both QY the market committee at such place or places as may be specified in the notification, if the Government consider it necessary to do so in order to prevent or check the evasion of payment of fee or other amount due to the market committee under the provisions of the Act. The contention of the learned counsel for the petitioners is that Section 25 which enables the Government to establish check-post or barrier, imposes an unreasonable restriction upon the freedom of the traders in carrying on their business and therefore, it is violative of Article 19(1)(g) of the constitution. This contention of the learned counsel for the petitioner, cannot be countenanced, because the check-post have been established only for the purpose of checking the evasion of payment of market fee or other amounts due to the market.-committee under the provisions of the Act. A careful examination of sub-Sections (1) to (4) of Section 25 clearly shows that the said provisions are regulatory in nature, intended to prevent the evasion of payment of market fee payable under Section 24(1) of the Act. We have no hesitation in holding that the said provisions do not impose any unreasonable restriction on the freedom of the traders in carrying on their trade. Therefore, we reject the contention of the learned counsel for the petitioners that Section 25 of the Act. is invalid on the ground that it is violative of Article 19(1)(g) of the Constitution.

33. The learned counsel for the petitioners, then challenged the validity of sub-rule 2 of Rule 41 of the rules on the ground that the Act does not empower the Government to frame the said rule making it obligatory on the part of the traders to have the services of a Licenced weigh man. Rule 41 deals with weighing of agricultural produce intended for purchase or sale in the notified area. Sub-rule (1) of Rule 41 says that the market committee shall install weighing

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machines in the market or in the notified area with suitable arrangements for their use in proper working order. According to the said sub-rule (1) any producer may have his agricultural produce weighed in the market and he shall be given free certificate of weighment duly signed by the Head of the Market. Sub-rule (2) of Rule 41 says that all weighments of agricultural produce intended for purchase\or sa:e in the notified area shall be made by the person who is Licenced to act as a weigh man, and that he should wear the badge containing the, serial number allotted to him by the market committee. Section 52 of the Act deals with the power of the Government to make rules and the said section empowers the Government to make either generally or specially for any notified area or areas, rules for carrying out all or any of the purposes of the Act. As already pointed out, the object of the Acts to provide for better regulation of building and selling of agricultural produce and the establishment and proper administration of markets for agricultural produce in this State and the said object is sought to be achieved by regulating the trade by providing facilities like storage, proper weighments, transaction shed, grading of produce etc. for better marketing and benefit of .the farmers and traders. Sub-rule (2) of Rule 41 only aims at proper weighment of agricultural produce transacted in the notified market area and only with a view to ensure proper weighment the said rule prescribes weighment of agricultural produce by Licenced weighmen. As the said rule is intended to carry out the purposes of the Act, and as it is made by the Government in exercise of power under Sec. 52, the petitioners cannot challenge the said rule on the ground that the Government has no power to make such a rule. Therefore the challenge of sub-rule (2) of Rule 42 also cannot be sustained. Cotton Waste 34. (sic) Writ Petitions Nos.3275, 4198, 5193, 5194, 6756 to 6758, 6793 and 12142 of 1991;

In these writ petitions, the petitioners challenge, the levy of market fee under Section 24(1), of the Act on cotton waste bought or sold in the notified market area and they pray for the issue of a writ of declaration declaring that item IV(1) in the schedule to the Act which enables the respondents to enforce the provisions of the Act in respect of cotton waste as ultra vires, unconstitutional and invalid. Mr. K. Govindarajan learned counsel for the petitioner in W.P. 3275/91 and Mr. Vijayanarayan, learned counsel for the petitioners in Writ Petition No. 4198/91 etc. submitted that under Tamil Nadu Act 27/89, the State has authorised all market committees to levy a fee on notified agricultural produce bought or sold in the notified market area at the rate of not less than Re. 1 and not exceeding Rs. 2/ -for every Rs. 100/- of the aggregate amount for which the notified agricultural produce are bought or sold, that cotton waste which is an industrial by-product arising out of the processing of cotton, is not an agricultural produce and hence the respondents, are not competent to levy a fee on the sale of cotton waste under the provisions of the Act. It is not at all possible to accept the contention of the learned counsel for the petitioners that cotton waste is not agricultural produce within the meaning of Section 2(1) of the Act. The term agricultural produce according to the definition contained in Section 2(1) of the Act means any produce of agricultural whether processed or unprocessed, specified in the Schedule. On its plain meaning of Section 2(1) of the Act, any produce as specified in the Schedule shall fall within the term "agricultural produce". Admittedly cotton in all forms, namely, kapas, lint, waste is included in the Schedule to the Act. Cotton Waste, is consequently an agricultural produce within the meaning of the Act so that the various provisions of the Act with regard to agricultural produce are applicable to cotton waste also. In M/s. Madanlal Manoharlal v. State of Haryana, AIR 1990 SC 556, the Supreme Court while interpreting Sec.2(a) of the Punjab Agricultural Produce Markets Act (23 of 1961) held as follows:-

"The term "agricultural produce" according to its definition contained under S. 2(a) of the Act means all produce, whether processed or not of agricultural, horticulture, animal husbandry or forest as specified in the Schedule to the Act. On its plain meaning, there- fore, only such produce as is specified in the

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Schedule to the Act shall fall within the term "agricultural produce."

34-35. As rightly contended by the learned Advocate General, cotton in all forms is included as item IV(1) in the Schedule to the Act in order to avoid evasion of payment of market fees on cotton. In this context, it is also relevant to note the stand taken by the first respondent, in the counter-affidavit filed in this batch of writ petitions stating that the intention behind the inclusion of cotton waste which is one of the forms of cotton is that the trader should be subjected to the levy of fee either at the stage of kapas, or at the stage cotton waste and on production of sufficient evidence of payment of fee at kapas stage, the question of payment of fee again at the stage of cotton waste does not arise.

36. The second contention of Mr. Vijayanaran, the learned counsel for the petitioners is that under Section 24(1) of the Act, the market committee is authorised to levy fee on any notified agricultural produce bought or sold in the notified area, that according to Section 2(12) of the Act, notified agricultural produce is any agricultural produce specified in the notification under Sec.3 that under the new Act (Act 27 of 1989) no notification has been issued under Section 3 of the Act in respect of cotton or cotton waste, that the notification issued under the old Act includes only cotton and does not include cotton waste, that cotton and cotton waste are two distinct commercial product and that in as much as the notification issued under Sec.3 of the old Act does not include cotton waste, the said item is not a notified agricultural produce and consequently the market fee under Sec.24(1) of the Act cannot be levied on cotton waste. In support of his contention, that cotton and cotton waste are two distinct commercial products, the learned counsel relied on a decision in Sapt Textile Products (India) Ltd. v. State of Madras, (1965) 16 STC 267. We are unable to agree with the above contention of the learned counsel for the petitioners. It is not in dispute that notifications were issued under Sec.3 of the old Act (1959 Act) directing the market committees to establish markets at various places for the purchase and sale of groundnut, gingelly, cotton, paddy etc. Section 67 of the Act deals with the repeal and savings. Sub- section (3) of Section 67, says that anything done or any action taken, including any appointment or delegation made notification, order instruction or direction issued, or any rule regulation or form framed, certificate granted or registration effected, under Tamil Nadu Act 23 of 1959 shall be deemed to have done or taken under the present Act and shall continue to have effect unless and until superseded by any things done or any action taken under the present Act. Therefore, by virtue of sub-section (3) of Section 67 of the Act, the notifications issued under Sec.3 of the old Act, directing the establishment or markets in various places for the purchase of cotton etc. would continue to be in force, notwithstanding the repeal of the old Act 23 of 1959. Therefore, the issue of a separate notification under Sec.3 of the present Act is not necessary. The question whether the item "cotton" mentioned in the notification under Section 3 of the old Act would comprehend cotton waste also need not detain us long in view of the decision of the Supreme Court in K.U.M. Samiti Kanpur v. M/s. Ganga Dal Mill and Co., AIR 1984 SC 1870, where in, the Supreme Court has taken a view that cotton waste is comprehended in the item "cotton". The Apex Court in para 18 of judgment referred above after referring to the decision of the Allahabad High Court in Modi Spinning and Weaving Mills Co. Ltd. Modinagar v. State of Uttar Pradesh, 1980 All LJ 1137 and while disagreeing with the view expressed by the Allahabad High Court, that the expression 'cotton' would not take in cotton waste, held as follows:,-

"After referring to these definitions, the Court held that cotton waste is not included in 'cotton ginned or unginned'. In our opinion, the Court has strained the language to reach an unsustainable conclusion, holding that cotton waste is not the processed form of cotton but it is a by-product quite different form of cotton cannot be used as ordinary cotton. As its name indicates, cotton waste appears to be droppings, stripping and other waste product while ginning cotton. It cannot be said to be a by-product of cotton but it is

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cotton nonetheless minus the removed seed. In other words it is residue of ginned cotton. We therefore, find it difficult to agree with the view of the High Court that cotton waste is not comprehended in the item 'cotton ginned and unginned;"

The decision in Sapt Textile Products (India) Ltd, v...State of Madras, (1965) 16 STC 267 is not helpful to the petitioners because, in that case a Division Bench of this Court considered the question whether cotton and cotton waste are distinct commercial products for the purpose of levy of sales-tax under the Madras General Sales Act, 1939. Again, we are not inclined to follow the above decision in Sapt Textile Products (India) Ltd. v. State of Madras, (1965) 1.6 STC 267 as we are bopnd to follow the direct decision of the Supreme Court in K.U.M. Samiti,Kanpur v, M/s. Ganga Dal Mill and Co., AIR 1984 SC 1870, wherein the Apex Court considered the question whether the item "cotton" ginned or unginned would comprehend "cotton waste" for the purpose of levy of market fee on the transaction of sale of cotton waste and answered the question in the affirmative. In these circumstances, we are of the view that the item "cotton" mentioned in the notification issued under Section 3 of the old Act would take in cotton waste also and that what was implicit in the notification issued under the old Act has been made explicit in Item IV(1) of the Schedule to the Act by mentioning "cotton"(kapas, lint, waste). Therefore, the contention of Mr. Vijayanarayan, learned counsel for the petitioners that cotton waste has not been declared to be an agricultural produce in the notification issued under the old Act and consequently Section 67(3) of the Act cannot be invoked and fresh notification under the present Act is necessary cannot be countenanced. Once when cotton is notified, under Sec.3 old Act, it would automatically include kapas, lint and cotton waste. In view of the above discussion, it has to be held that cotton waste is an notified agricultural produce within the meaning of Section 2(12) of the Act and that item IV(1) of Schedule to the Act is perfectly valid and it is not liable to be declared as ultra vires, unconstitutional and invalid. Consequently, the writ petitions challenging the item IV(1) of the Schedule to the Act are liable to be dismissed.

JAGGERY

37. Writ Petitions Nos.3734,6868,4707, 7138 of 1991:

In these writ petitions, the petitioners, apart from challenging the various provisions of the Act and Rules, also challenge Entry XV(1) in the Schedule to the Act, notifying sugarcane jaggery in all forms (Jaggery powder, brown sugar etc.) as an agricultural produce, as ultra vires and invalid........ The contention of the learned counsel for the petitioners is that sugarcane Jaggery in all forms cannot be termed as agricultural produce and therefore Item XV in the Schedule to the Act notifying Sugarcane Jaggery as an agricultural produce is ultra vires, arbitrary unconstitutional and invalid and therefore, the said entry XV is liable to be struck down. There is no merit in this contention bf the learned counsel for the petitioners. As already pointed out the term agricultural produce according to the definition contained in Sec.2(1) of the Act means any produce of agriculture, whether processed or unprocessed specified in the Schedule. Therefore, any produce specified in the Schedule shall fall within the term agricultural produce. Admittedly, Sugarcane Jaggery in all forms (Jaggery Powder, brown sugar etc.) is included as Entry XV(1) in the Schedule to the Act. From this, it follows that Sugarcane Jaggery in all forms is an agricultural produce within the meaning of Sec. 2(1) of the Act. So that the various provision of the act with regard to agricultural produce are applicable to Sugarcane Jaggery in all forms also.

38. In Kishan Lal v. State of Rajasthan, AIR 1990 SC 2269 the Supreme Court had occasion to consider the validity of inclusion of manufactured articles such as Khandsari Shakkar, Gur and Sugar as agricultural produce in the Schedule to Rajasthan Agricultural produce Marketing Act, 1961. In that decision, the Apex Court repelling the contention that inclusion of sugar as an item 2 in the Schedule to the Rajasthan Agricultural produce Marketing Act, 1961 is arbitrary, held that sugar is an agricultural produce

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within the meaning of Sec.2(1)(i) of the Rajasthan Agricultural produce Marketing Act. The Apex Court in the above decision held as follows:- .

"5. Inclusion of Sugar in the Schedule was urged to be arbitrary as it was not produced out of soil the basic ingredient of agricultural produce. Fallacy of the submission is apparent as it was in complete disregard of definition of the word "agricultural" produce in the Act which includes all produce whether agricultural, horticultural, animal husbandry or otherwise as specified in the Schedule. The legislative power to add or include and define a word even artificially, apart, the definition which is not exhaustive but inclusive neither excludes any item produced in mill or factories not in confines its width to produce from soil. If that be construction then all items of animal husbandry shall stand excluded. ]t further overlooks expanse of the expression "nor otherwise as specified in the Schedule". Nor switch over from indigenous method of producing anything to scientific or mechanical method changes its character. Khandasari Sugar, which is produced by open pan process and is not different from sugar produced by vacuum pan process except in composition, filterability and conductivity as held in Rathi Khandasari Udyog, AIR 1985 SC 679 (supra) was held to be agricultural produce in some decisions. No distinction was made on method of production, namely, by modern plant and machinery. To say, therefore, that sugar being produced in mill or factories could not be deemed to be agricultural produce is both against the statutory language and juricial interpretation of similar provisions of the Act in statutes of other states. Rice or dal produced in mills have been held to be agricultural produce in Ramchandra v. U. P. State, (1980) 3 SCR 104: AIR 1980 SC 1124 and State of U. P. v. Ganga Das Mill, 1985 SCR 87-88 (\*or Krishiutpadan Mandi Samiti Kanpur v. Ganga Dal Mill and Co., (1985) 1 SCR 787: AIR 1984 SC 1870. ..Ed). Even in Halsbury Laws of England, Vol. I the word agricultural produce for purposes of agricultural marketing schemes is understood as, 'including any product of agriculture or horticulture and any article of food o. drink wholly or partly manufactured or derived from any such product and fleeces (including all kinds of wook) and the skins of animals'. In the same volume products covered by the provisions of EEC Treaty as to agriculture (classified according to the Brussls Nomenclature of 1965) are mentioned in paragraph 1845. Sugar is one of them."

In view-of the above decision of the highest Court of the land, we have no hesitation in holding that sugarcane jaggery in all forms (Jaggery Powder, brown sugar, etc.) in Entry XV(1) of Schedule to the Act is an agricultural produce and that the said Entry XV(1) is perfectlY.valid and it is not liable to be struct down.

RUBBER

39. Writ petitions Nos.5411, 5916 and 13020 of 1991. The petitioners in these writ petitions would contend that the state is not competent to legislate on rubber, in as much as the subject rubber falls within the exclusive purview of the parliament. They further contended that the Parliament have enacted Rubber Act, 1947 (Central Act XXIV of 1947) and have also constituted the Rubber Board, All the dealings and transactions on rubber is controlled by the RubberAct, 1947 which also authorises the collection of 50 paise per kg. as cess. I thas also been constended that this cess amount is utilized for lending assistance to small growers. Therefore, according to the petitioners, the State cannot collect another amount as market fee and the notification including the rubber as notified agricultural produce is null and void. Identical contentions were raised by the petitioners in W.P. 5411 and 5916 of 1991 in the earlier round of litigation in writ appeal No.3 of 1981 (Kanyakumari District Rubber Dealers Association, Kulasekaram. Rep. by its Secretary v. State of Tamil Nadu). By a judgment dated 25-6-1987 in W.A. 3 of 1981, a Division Bench of this Court while repelling the contentions urged on behalf of the appellant similar to those raised in these I writ petitions, held as follows: -

"5. It is then contended by the learned

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counsel that the Parliament has enacted the Rubber Act, 24 of 1947, as amended by Central Act, 54 of 1954, and that trade and commerce in production, supply and distribution of produces of rubber industry shall be deemed to have been declared by Parliament by law to be expedient in the public interest within the meaning of Entry 33 of List 3 of Schedule VII of the Constitution of India and therefore, the Legislature has no jurisdiction to make enactment without the concurrence of the president. Learned counsel further contended that the Tamil Nadu Act as applicable to Rubber and its processed forms offends Art~ 19(1)(g) and Art.301 of the Constitution. We are unable to agree with these I contentions of. the learned counsel also. So far as the scope relating to Art.19(1)(g) and Art.301 is concerned, it is directly covered by an earlier decision of this Court written in Kannappa v. State of Madras, ILR (1968) 2 Mad 449. In that case also collstitutional validity of the Madras Agricultural produce Markets Act was questioned on the ground that the previous sanction of the President was not obtained as required under Art.304(b) and that therefore, the Act is violative of Arts.19(1)(g) and 301 of the Constitution. This Court held that the Tamil Nadu Act XXIII of 1959 is regulatory in substance and character and does not violate Arts.19(1)(g) and 301 of the Constitution. It was also held that there was no need to refer to Art.304(b) to save the Act from the constitutional prohibition.

6. Learned counsel is also not well founded in his contention that both the Rubber Act as also the Tamil Nadu Act 23 of 1959 cover the same field. The Rubber Act is an Act to provide for the development under the Control of the Union of the rubber industry. It provides for the constitution of a Rubber Board. Entrusting certain functions to it. The Rubber Act, of course, provides for fixation of price of rubber at which it could be sold. But, as held in the earlier Bench Judgment, the scope of the Tamil Nadu Act is entirely different. It creates a market and declares that any agricultural produce brought and sold in this market will have to be regulated in accordance with the provisions contained therein. One of the provisions related to the taking of the licence by the dealer and the other provision related to the payment of fees to the market committee when there is a purchase or sale. Having regard to the purpose of the enactments and the nature of the enactments, we are unable to agree that there is any conflict between the provisions of the two enactments."

As these petitions 5411, 5916 and 13020 of 1991 are covered by the judgment in W.A. 3 of 1981 dated 25-6-1987 referred to above, they are liable to be dismissed.

CASHEW KERNELS

40. Mr. Muthuramalingam, learned counsel for the petitioner in W.P. 4372 of 1991 submitted that cashew kernels are not covered by the notification which declared cashew nuts alone as agricultural produce and that inasmuch as cashew nuts and cashew kernels are commercially different commodities the respondents are not entitled to collect market fee on cashew kernels, on the basis of the notification issued under Sec.3 of the old Act declaring cashew nuts alone as agricultural produce. In support of his contention that cashew nuts and cashew kernels are commercially different commodities, the learned counsel for the petitioner, relied on the following three decisions (1) Dinod Cashew Corporation v. Dy. Commercial Tax Officer, 61 STC 1 : (1986 Tax LR 2236); (2) Peirceleslie India Ltd. v. State of Karnataka, (1985) 59 STC 302: (1986 Tax LR 2305) and (3) State of Kerala v. Sankaran Nair, (1986) 63 STC 225, We are unable to accept the above contention of the learned counsel for the petitioner. The market fee is leviable under Sec.24(1) of the Act on agricultural produce bought or sold in the notified market area. According to Sec.2(1) agricultural produce means any produce of agriculture whether processed or unprocessed, specified in the Schedule to the Act. Entry X(8) of the Schedule to the Act covers cashew nuts in all forms. Inasmuch as cashew kernels is derived from cashew nuts, there is no difficulty in holding that the expression "cashew nuts in all forms" found in Entry X(8) of the Schedule to the Act would take in cashew kernels also.

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Further, the notification issued under S.3 of the old Act in respect of cashew nuts would equally apply to cashew kernels also, because, it is well known in common parlance as well as in the commercial parlance that cashew is available both in shell and as kernel. Again, as pointed out in the counter affidavit filed on behalf of the first respondent, once cashewnuts are subjected to market levy, the question of cashew kernels derived from such cashewnuts being subjected to market levy does not arise, if the trader is able to prove, by producing sufficient evidence that he has already paid market fee on cashew nuts. The decision in (1) Dinon Cashew Corporation v. Dy. Commercial Tax Officer, 61 STC 1 : (1986 Tax LR 2236) (Mad); (2) Peirceleslie India Ltd. v. State of Karnataka, 59 STC 302: (1986 Tax LR 2305); and (3) State of Kerala v. Sankaran Nair, (1986) 63 STC 225, relied on by the learned counsel for the petitioner, rendered in the context of levy of sales tax, holding that cashew nuts and cashew kernels are commercially different commodities, have no relevance for deciding the question involved in this case, namely, whether cashew kernel is liable for levy of market fee under S. 24(1) of the Act, in view of the stand taken by the first respondent, in r the counter affidavit that once, cashew nuts are subjected to market levy, the question of cashew kernels derived from such cashew nuts being subjected to market levy does not arise if the trader is able to prove that he has paid the market fee on cashew nuts. Therefore, we have no hesitation in rejecting the contention of the learned counsel for the petitioner that cashew kernel is not an notified agricultural produce and not liable to for levy of market fee under S.24(1) of the Act.

41. For all the reasons stated above, we see no merit in this batch of writ petitions and therefore, all the writ petitions are liable to be dismissed. Accordingly, all the writ petitions are dismissed subject to our observation with regard to applicability of S.24(5) of the Act only to traders and not to producers of agricultural commodities. However, there will be no order as to costs.

Order accordingly.

AIR 1995 MADRAS 11 "Southern Textiles Ltd., M/s. v. State of T. N."

MADRAS HIGH COURT

Coram : 2 K. A. SWAMI, C. J. AND SOMASUNDARAM, J. ( Division Bench )

M/s. Southern Textiles Ltd. and others, Petitioners v. State of T.N. and another, Respondents.

Writ Petn. Nos. 2436 and 2438 of 1993, D/-15 -6 -1994.

(A) T.N. Agricultural Produce Markets (Regulation) Act (23 of 1959), S.24(1), Proviso - AGRICULTURAL PRODUCE - Agricultural Produce - Levy of market fee - Cotton stored by cotton mills beyond 30 days pursuant to order of Textile Commissioner - Does not come within purview of S. 24(1) - No market fee can be demanded from such Mill owners, without affording them opportunity to rebut presumption under proviso to S. 24(1).

W. P. No. 2429 of 1991 etc. D/- 28-4-1994 (Madras), Rel. on. (Para 2)

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(B) T.N. Agricultural Produce Marketing (Regulation) Act (27 of 1989), S.24(1), Proviso - AGRICULTURAL PRODUCE - Agricultural Produce - Levy of market fee - Transport of rejected cotton from purchaser to seller - Cannot be prevented or obstructed on ground that market fee is payable. (Para 2)

Cases Referred: Chronological Paras

(1994) W.P. No. 2429 of 1992 etc., D/- 28-4-1994 (Mad), Rajapalaym Parathi Panju Ganjam v. Govt. of Tamil Nadu (Rel. on) 1

Vijay Narayan, for Petitioners; A. S. Venkatachalamurthy, Govt. Pleader and S.T.S. Murthy, for Respondents.

Judgement

K. A. SWAMI, C. J. :- In these two writ petitions, the petitioners have sought for issue of a writ in the nature of mandamus directing the respondents to forbear from levying and demanding any market fee in respect of cotton, which has been stored without processing in the petitioners' mills for more than 30 days, or, in respect of the rejected cotton and returned to the Up-country cotton seller. It is contended on behalf of the petitioners that the Textiles Commissioner, under the provisions of the Cotton Control Order, 1986, has permitted the petitioners to store cotton for over a period of 30 days. Therefore, the storing of cotton beyond the period of 30 days, under the order issued by the Textiles Commissioner, does not come within the proviso to S.24(1) of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 (hereinafter referred to as the Act). We have already held in our judgment in the case in W.P. No. 2429 of 1991 etc. (Rajapalaym Paruthi Panju Sangam v. Govt. of Tamil Nadu dated 28-4-1994 that the provisions contained in S. 24(1) of the Act, as to the presumption arising out of the retention of the goods for over a period of 30 days, is a rebuttable presumption. Therefore, it is open to the petitioners to prove that the cotton was stored pursuant to the order of the Textile Commissioner beyond the period of 30 days and as such, it cannot be deemed to be a sale so as to attract the levy of market fee. That being so, the relief, as sought for, cannot be granted, except to clarifying that in such a case, the market fee cannot straightway be demanded without affording an opportunity to the persons concerned to rebut the presumption.

2. The second prayer made in the petition relates to levy of market fee on transporting the rejected cotton when it is being transported by the purchaser to the seller. As the market fee is leviable only when the sale and purchase of the notified agricultural produce takes place within the market area, it is open to the petitioners to show that what is being transported is not the agricultural produce purchased in the market area, but the one purchased outside the State and it is being returned to the seller as rejected. In such an event, the transporting of such rejected cotton to the seller cannot at all be prevented, or obstructed on the ground that market fee is payable. Accordingly, we dispose of these writ petitions in the following terms:

(1) In the case of cotton stored by the Cotton Mills pursuant to the order of the Textile Commissioner permitting the Cotton Mills to store the cotton for a period exceeding 30 days, no market fee can be demanded from such textile mill owner on such stored cotton without affording an opportunity to him to rebut the presumption, arising out of the proviso to Section 24 (1) of the Act.

(2) In the case of transport of rejected cotton to the seller outside the State, no sale takes place. Therefore, the transporting of such rejected cotton cannot be obstructed or prevented. However, the textile mill owners, who are transporting such rejected cotton have to prima facie, show to the concerned Market Committee that what is being transported is only the rejected cotton to the seller. There will, however, be no order as to costs.

Order accordingly.

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AIR 1970 MADRAS 314 (V. 57 C 86) "Dy. Commr. v. A. A. N. and Sons"

MADRAS HIGH COURT

FULL BENCH

Coram : 3 K. VEERASWAMI, C. J., NATESAN AND SOMASUNDARAM, JJ. ( Full Bench )

The Deputy Commissioner of Commercial Taxes, Madurai, Petitioner v. A. Anantharama Nadar and Sons Merchants, Teppam South, Virudhunagar, Respondent.

Tax Case No.208 of 1965, (Ref.102) D/- 18 -11 -1969, decided by Full Bench on order of reference made by Veeraswami and Ramaprasada Rao, JJ., D/- 18 -7 -1968.

Madras General Sales Tax Act (1 of 1959), S.2(r) - SALES TAX - AGRICULTURAL PRODUCE - SALE - Sales Tax - Turnover - Agricultural produce - Sale by Commission agent - When can be excluded.

When a person as an agent simplidter sells agricultural produce the sale would not be liable to charge, but when such agent has property in the goods and sells the same in his own right and is thus a dealer he would not be entitled to exclusion

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from the turnover of sale of agricultural produce, unless he had himself grown the produce on his own land or on land in which he had an interest. "Turnover" in Section 2 (r) is relatable to sales effected by a dealer and the proviso to the section is concerned with the turnover in his hands. (1965) 16 STC 760 (Mad), Approved. (Paras 1 and 3)

Cases Referred : Chronological Paras

(1965) 16 STC 760 : ILR (1965) Mad 185, State of Madras v. T. C. M. Society Ltd. 1, 3

K. Venkataswami, Asst Govt. Pleader, for Petitioner.

Judgement

VEERASWAMI, C. J.:- We are of the view that State of Madras v. T.C.M. Society Ltd., (1965) 16 STC 760 (Mad) has been correctly decided. One of us was a party to the reference, which was made on the view that if the person, who sold the agricultural produce, did so as an agent simpliciter, the proceeds of sale would not be liable to charge under the Act. That of course is true. But where the agent himself, as a Commission Agent, is also a dealer, on a strict reading of the proviso to Section 2 (r), he would not be entitled to the exclusion from the turnover of sales of agricultural produce, unless he had himself grown the produce on his own land or on land in which he had an interest.

2. There is no dispute here that the assessee for the year 1961-62 was a dealer in chillies; nor is there any dispute that the turnover in dispute, namely, Rupees 63,743-80 represented sales of agricultural produce. But the bills issued by the assessee unmistakably point to the fact that he had sold the produce in his own right, and as a commission agent, on behalf of his principal who grew the produce. The Tribunal allowed the exclusion of the turnover in the hands of the assessee on the view that since the assessee sold as an agent of the cultivator, the benefit was available to the agent also. The error committed by the Tribunal lay in the assumption that the assessee was a mere agent, who would not be within the scope of the definition of a dealer. A dealer, as defined, includes also a commission agent who, unlike an agent, has the property in the goods sold by him and effects sales in his own right, on behalf of disclosed or undisclosed principals.

3. "Turnover" as defined by Sec. 2 (r) is relatable to the sales effected by a dealer and the proviso should naturally be taken to be concerned with the turnover in his hands and this is also clear from the language of the proviso itself. The word "himself" in the proviso does refer to a dealer in the first part of the definition of the turnover. This is the reasoning in (1965) 16 STC 760 (Mad), also which commends itself to us. We also agree with the learned Judges in (1965) 16 STC 760 (Mad) that the analogy of Section 14-A will not be of any assistance interpreting the proviso to S. 2 (r).

4. The tax revision case is accordingly allowed with costs Rs. 100.

Revision allowed.

AIR 1968 MADRAS 90 (Vol. 55, C. 21) "Mahendrakumar v. Commrl. Tax Officer"

MADRAS HIGH COURT

Coram : 2 VEERASWAMI AND RAMAPRASADA RAO, JJ. ( Division Bench )

Mahendrakumar Iswarlal and Co., Tirupattur, Petitioners v. Commercial Tax Officer, North Arcot and another Respondents.

Writ Petn. No. 458 of 1964, D/- 7 -3 -1967.

(A) Central Sales Tax Act (74 of 1956), S.15 - SALES TAX - Sales Tax - Requirements under - Levy of two per cent tax at single point - It can be under two different enactments.

Though the levy may be tinder two different enactments, both should be regarded as one for purposes of S. 15 of the Central Sales Tax Act. Subject to the requirement that the levy should be at identical point at a fixed stage in the series of transactions, there is nothing in S. 15 of the Central Sales Tax Act which forbids multiple levy of rates amounting to two per cent or below in the aggregate on such identical point. If the Madras General Sales Tax Act authorises a levy of one per cent in the case of purchases of groundnuts at the stage of first purchase, it is not objectionable to Madras Act 23 of 1959 also levying at the point of first purchase a tax which, taken with the tax levied under the Madras General Sales Tax Act, does not exceed two per cent. The whole idea underlying Sec. 15 of the Central Sales Tax Act is that the declared goods should not in the aggregate suffer a tax at the rate of more than two per cent both in intra-State and inter-State trade. (Para 7)

(B) Madras Agricultural Produce Markets Act (23 of 1959), S.18 - Constitution of India, Art.286(3) - Central Sales Tax Act (74 of 1956), S.15 - sSALES TAX - AGRICULTURAL PRODUCE - FINANCIAL PROVISIONS - Sales Tax - S.18 does not fix any particular point of levy - Byelaw made by market committee - No delegation by Legislature - Collection under byelaw is unauthorised.

The scheme of S. 18 is to provide for multi-point tax; but as a result of Art. 286(3) and S. 15 of the Central Sales Tax Act, S. 18 as in the case of sale or purchase of declared goods, is limited to a rate of two per cent and to a single-point levy. But S. 15 itself beyond saying that the levy can only be at one stage, does not prescribe any particular point in the series of sales or purchases. The fixation of the point in conformity with Sec. 15 is left to the particular State Legislature. The automatic modification of S. 15 brought about by Art. 286(3) and S. 15 does not extend, therefore, to defining the single point in the series of transactions at which the levy of cess is to be made under S. 18(1). S. 18 itself is silent about the point at which the cess can be levied. In fact, Sec. 18 contemplates a multi-point tax. But when the section is modified based on Art. 286(3) and S. 15, the necessity arises for the State Legislature to fix the point, namely, whether it is the first purchase or the last purchase or any intermediate purchase that will attract the cess or provide for authority to the market committee to fix the point at which the cess will be payable. Since, following the modification effected by Art. 286(3) and S. 15, no point of levy has been fixed by the State Legislature, and no authority has been given in the alternative to the market committee to fix the point, the cess said to have been collected, under S. 18 is not authorised by law. The bye-law fixing the single point in series of sales is unauthorised. (Para 8)

Cases Referred : Chronological Paras

(1965) AIR 1965 SC 1107 V 52 : 1965 2 SCR 477, Corporation of Calcutta v. Liberty Cinema 3

(1964) 1964-15 STC 634 : ILR (1964) 3 Ker 598, Kumaran and Co. v. Secy., Malabat Market Committee 2

(1964) AIR 1964 Mad 458 V 51 : 77 Mad LW 100, Malaipettai v. State of Madras 3

(1964) WP No. 711 of 1964 (Mad), Kannappa Mudaliar v. State of Madras 2

(1962) AIR 1962 SC 97 V 49 : 1962 2 SCR 659, Mohamed Hussain v. State of Bombay 3

(1962) AIR 1962 Mys 1 V 49 : 1961-12 STC 629, Seshagiri Pai and Co. v. Dy. Commr. of S. Kanara 2

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(1961) AIR 1961 SC 459 V 48 : 1961 2 SCR 537, Hingir Rampur Coal Co., Ltd. v. State of Orissa 8

(1960) AIR 1960 Mad 160 V 47 : 1960-1 Mad LJ 298, Shanmugha Oil Mills, Erode v. Coimbatore Market Committee 3

(1954) AIR 1954 Mad 621 V 41 : 1954-1 Mad LJ 117, Kutti Keya v. State of Madras 2, 3

(1950) 1950 AC 87, Attorney General for British Columbia v. Esquimalt and Nanaina Rly. Co. 3

K. Rajah Aiyar, for Petitioner; Govt. Pleader and R. Indrasenan, for Respondents.

Judgement

VEERASWAMI, J. :- The petitioners are carrying on business in jaggery, groundnut and other articles at Vellore and Tirupattur in North Arcot District. This district has been declared under S. 4(1) of the Madras Commercial Crops Act, 1933, to be a notified area in respect of groundnut and certain other commodities. The petitioners state that on their purchases of groundnuts in the notified area in the year 1962-63, a cess of Rs. 5,298.05 by way of sales tax has been levied and collected under S. 18(1) of the Madras Agricultural Produce Markets Act, 1959, read with the relative byelaw framed by the committee under S. 30(1), but they were, however, served by the Commercial Tax Officer, North Arcot, with a notice dated 21-1-1963. provisionally proposing to levy under the Madras General Sales Tax Act, 1959, tax on a total turnover of Rs. 32,05,977.50. The notice mentioned that the petitioners had effected purchases of groundnut for the period from 1-4-1962 to 27-12-1962 to an extent of Rs. 25,64,502 which were liable to tax at 1 per cent. Another notice dated 19-3-1964 followed, in which it was said that the petitioners had effected purchases of groundnuts to a tune of Rs. 24,55,925-13 from agriculturists, and of Rs. 16,752-38 through market committees, and that they were proposed to be taxed on first purchases in the notified area. The petitioners contend that the proposed assessment will be violative of Art. 286(3) of the Constitution and S. 15 of the Central Sales Tax Act, 1956. According to them, tax having already been collected once on the turnover under S. 18 of the Madras Agricultural Produce Markets Act, 1959, a second levy on identical transactions under the Madras General Sales Tax Act will be illegal. They pray, therefore, that the proposed assessment should be forbidden. The respondents take the stand that the cess under S. 18 of the Madras Agricultural Produce Markets Act is not a tax on sale of goods, but a fee, and, therefore, no question of the proposed final assessment offending Art. 286(3) or S. 15 could arise.

2. On the view we are inclined to take, it seems to us to be unnecessary to decide the question whether what is levied under S. 18 of Madras Act 23 of 1959 is a tax or fee. There are two Bench decisions of this Court, Kutti Keya v. State of Madras, 1954-1 Mad LJ 117 : (AIR 1954 Mad 621) and Kannappa Mudaliar v. State of Madras, W.P. No. 7L1 of 1964 (Mad) and connected petitions, which have expressed different views. The former decision took the view that the levy under S. 18 was in the nature of sales tax though it went into a separate fund called the Market Committee Fund under S. 20 and was to be appropriated to certain purposes specified by the enactment as it stood then. The section has since been amended in 1955, and, as amended, it expressly provides that the market committee shall levy a cess by way of sales tax on any notified agricultural produce bought or sold in the notified market area at a rate not exceeding fifty naye paise for every hundred rupees of the aggregate amount for which the notified agricultural produce is bought or sold whether for cash or for deferred payment or other valuable consideration. The section as it stands now also says that the cess levied under the section shall be subject to the provisions of Art. 286 of the Constitution. Section 20 provides for a separate market committee fund into which the cess levied under S. 18 is to go and S. 21 directs that the market committee fund shall be expended for only the purposes specified in that section. With reference to these provisions, in the latter decision, this Court was of the view that impost under S. 18 was in the nature of a fee. Kumaran and Co. v. Secretary, Malabar Market Committee, 1964-15 STC 634 (Ker) and Seshagiri Pai and Co. v. Dy. Commissioner of S. Kanara, 1961-12 STC 629 : (AIR 1962 Mys 1), the first on the provisions of the Madras Act itself and the second on a similar enactment in the Mysore State, proceeded upon the view that the impost was in the nature of a tax.

3. The dividing line between a "tax" and a "fee" has become very much thinned as a result of judicial pronouncements over recent years. Broadly speaking, a tax is an exaction for general purposes of Government and therefore, no element of quid pro quo is to be looked for in it. A "fee" is raised for a defined purpose and is to make good the expenses incurred in rendering service to a specified class of people. A "fee" is, therefore, a return for services and is paid, normally speaking, by the recipients of the service, actually or in a notional sense. A "tax" is not identified with any purpose and is unrelated to any specified service to any defined class of persons. Though generically there may be no difference between "tax" and "fee", the different indicia just mentioned may assist to distinguish one from the other. The test which was once applied, namely, whether the particular impost when collected goes into the consolidated fund, does not appear to be a decisive test, because there are imposts in the nature of taxes which do not go into the consolidated fund. In recent cases the test has been applied to what exactly is the object of the levy or its essential purpose or whether there is any service done to the payer of the levy : Hingir Rampur Coal Co., Ltd. v. State of Orissa, AIR 1961 SC 459 and Corporation of Calcutta v. Liberty Cinema, AIR 1965 SC 1107.

The first of these cases was concerned with the Orissa Mining Areas Development Fund Act. The Act was passed for the purpose of the development of mining areas in the State. Section 4 of the Act provides for imposition and

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collection of cess which shall not, under S. 5, exceed five per cent of the valuation of the minerals in the pit' s mouth. A fund called the "Orissa Mining Areas Development Fund" was constituted under S. 5 which vested in the State Government and had to be administered by such officer or officers as may be appointed by the State Government in that behalf. The cess so levied was not to become a part of the consolidated fund of the State and was not subject to appropriation in that behalf. The Supreme Court held that as the fund was a special fund earmarked for carrying out the purposes of the Act and there was a co-relation between the cess levied under the Act and the purposes for which it was levied, the levy was in the nature of a fee and not a tax. In coming to that conclusion, the test applied by the Supreme Court was :

" In such a case it is necessary to enquire what is the primary object of the levy and the essential purpose which it is intended to achieve. Its primary object and the essential purpose must be distinguished from its ultimate or incidental results or consequences. That is the true test in determining the character of the levy."

But this test was also invoked in AIR 1965 SC 1107 which was concerned with the Calcutta Municipal Act. In that case a licence fee on a cinema house fixed in 1948 at Rs. 400 per year was increased to Rs. 6,000 in 1958. This was done by changing the basis of assessment and fixing it at Rs. 5 per show. The majority view was that though the increase was large, it was authorised by S. 548 of the Act and that it was a tax and not a fee in return for services to be rendered by the Corporation. The majority of learned fudges observed;

". . . . the Act does not provide for any services of special kind being rendered resulting in benefits to the person on whom it is imposed. The work of inspection done by the Corporation which is only to see that the terms of the licence are observes by the licensee is not a service to him."

In Mohamed Hussain v. State of Bombay, AIR 1962 SC 97 the Supreme Court had to consider the character of the-levy under the provisions of the Bombay Agricultural Produce Markets Act, which were more or less in pari materia with the provisions of the Madras Act as it was considered in 1954-1 Mad LJ 117 : (AIR 1954 Mad 621). On an examination of the entire provisions of the Act, the Supreme Court observed that the market committee which was authorised to levy fee provided by S. 11 of the Bombay Act rendered services to the licensees, particularly when the market was established and that under the circumstances it could not be said that the Fee charged for services rendered by the market committee in connection with the enforcement of the various provisions of the Act and the provisions for various facilities in the various markets established under the Act was in the nature of sales tax. In 1954-1 Mad LT 117 : (AIR 1954 Mad 621), this Court thought that the impost under S. 11 of the Madras Act as it stood then was in the nature of a tax. In taking that view it purported to follow the principle of Attorney General for British Columbia v. Esquimalt and Nanaina Ry. Co., 1950 AC 87. The Judicial Committee in that case considered the question whether a charge made under the Forest Act on the owners of timber land was a tax or a service charge imposed for protecting forests from fire and the like, and expressed the following opinion :-

"It is suggested, however, that there are two circumstances, which are sufficient to turn the levy into what is called a ' service charge' . They are, first, that the levy is on a defined class of interested individuals and secondly, that the fund raised does not fall into the general mass of the proceeds of taxation but is applicable for a special and limited purpose. Neither of these considerations appears to their Lordships to have the weight which it is desired to attach to them..... The fact that in the circumstances the persons, particularly interested, are singled out and charged with a special contribution appears to their Lordships to be a natural arrangement. Nor is the fact that the levy is applicable for a special purpose of any real significance. Imposts of that character are common methods of taxation-taxation for the road fund in this country was a well-known example." This Court accordingly held that the amounts to be collected under S. 11 of the Madras Act as it stood then were taxes notwithstanding that they were not brought into the consolidated fund of the State under Art. 266(1) but went into a separate fund constituted for the purpose and that the levy itself was only on a section of the public. In Shanmuga Oil Mills, Erode v. Coimbatore Market Committee, 1960-1 Mad LJ 298 : (AIR I960 Mad 160), Ramachandra Iyer, J., as he then was, took a similar view. Srinivasan, J. in Malaipettai v. State of Madras, AIR 1964 Mad 458, also thought that the levy under S. 18 of the Madras Agricultural Produce Markets Act, 1959, is a sales tax and not a fee.

4. While on the one hand, Mr. Rajah Aiyar for the petitioners pressed upon us that the levy under S. 18 is a sales tax, learned Government Pleader for the respondents contended that it is but a fee. Each of them placed reliance upon one or the other decision of this Court which is in his support. That being the position, had it been necessary to decide the point, we should have referred the question to a Fuller Bench.

5. In our opinion, however, - the petition is capable of disposal on a very narrow point. Art. 286 (3), as it appears after the sixth amendment of the Constitution, places certain limitations on the taxing powers of a State. It says :

"Any law of a State shall, in so far as it imposes, or authorises the imposition of a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify."

That means the Parliament may declare particular goods to be of special importance in inter-State

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trade or commerce. The Parliament may place such restrictions and conditions on a State law imposing tax on the sale or purchase of such goods. The restrictions and conditions to be prescribed by the Parliament by law should be related to the system of levy, rates and other incidents of the tax. In accordance with this provision, the Parliament has enacted Ss. 14 and 15 of the Central Sales Tax Act, 1956. Section 14 specifies certain goods as declared goods which are of special importance in interstate trade or commerce. Section 15 of the Act is in two parts, of which we are only concerned with the first. That is to the effect that every sales tax law of a State, in so far as it relates to imposition of tax on the sale or purchase of declared goods, would be subject to the two limitations, namely, the tax payable under such law in respect of sale or purchase of such goods inside the State shall not exceed two per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage. It follows, therefore, that no State law can impose more than two per cent on the sale or purchase of declared goods, and such levy should be at only one stage. In other words, the State law should be limited to (a) rate of two per cent and (b) to a single-point levy. If a State law contains provisions contrary to the limitations and provides for a rate higher than two per cent and authorises multi-point tax, the effect of Art. 286(3) read with S. 15 of the Central Sales Tax Act would be to automatically modify the State law in so far as it relates to declared goods and to bring such law in conformity with the said article and the section.

6. Sub-Section (1) of S. 18 of the Madras Agricultural Produce Markets Act, 1959, authorises the market committee to levy a cess by way of sales tax on any notified agricultural produce bought or sold in the notified market area at a rate not exceeding 50 naye paise for every hundred rupees of the aggregate amount for which the notified agricultural produce is bought or sold. The first explanation to this provision embodies a rule of presumption, namely, unless the contrary is proved, all notified agricultural produce taken out or proposed to be taken out of a notified market area shall be presumed to be bought or sold within such area. There is a second explanation which does not require to be noticed for the present purpose. Sub-Section (2) enacts that the cess' referred to in Sub-Section (1) shall be paid by the purchaser of a notified agricultural produce concerned. But if such a purchaser cannot be identified, the cess should be paid by the seller. Sub-Section (3) says that the cess levied under Sub-Section (1) shall be subject to the provisions of Art. 286 of the Constitution.

It may be seen that the levy that is contemplated under S. 18 is not a single-point levy and cess will have to be paid on every sale or purchase of goods within the notified area. The section also does not fix a particular rate at which the levy should be made. It only fixes the maximum and delegates to the market committee the authority to fix a rate subject to the maximum of fifty naye paise for every hundred rupees of the aggregate amount of sale or purchase of agricultural produce. Section 18 also applies to all kinds of goods, including declared goods. But in the case of sale or purchase of declared goods, in the notified area, by reason of Art. 286(3) of the Constitution and S. 15 of the Central Sales Tax Act, the levy under S. 18 is necessarily not to exceed two per cent and it is allowed only at a single point. In fact, as we mentioned earlier, Sub-Section (8) of S. 18 itself makes Sub-Section (1) subject to Art. 286.

7. Sri Rajah Aiyar' s contention is that as a part of the turnover in question has already been subjected to a levy under S. 18(1) at a rate of thirty naye paise for every hundred rupees of such turnover, a second levy under the provisions of the Madras General Sales Tax Act on the identical turnover is illegal. Realising that the tax levied under the provisions of the Central Sales Tax Act on sale of groundnuts at the point of first purchase is at only one per cent and that the tax under both the Acts put together will not exceed 2 per cent, he contends that whatever be the rate, whether it be two per cent or below, it should be applied only once and a multiple levy on the same transaction, though at an aggregate rate of or below two per cent, is not permissible under S. 18 of Madras Act 23 of 1959 read with S. 15 of the Central Sales Tax Act. We are unable to accept this contention. Though the levy may be under two different enactments, both should be regarded as one for purposes of S. 15 of the Central Sales Tax Act. Subject only to the requirement that the levy should be at identical point at a fixed stage in the series of transactions, there is nothing in S. 15 of the Central Sales Tax Act which forbids multiple levy of rates amounting to two per cent or below in the aggregate on such identical point. If the Madras General Sales Tax Act authorises a levy of one per cent in the case of purchases of groundnuts at the stage of first purchase in our opinion, it is not objectionable to Madras Act 23 of 1959 also levying at the point of first purchase a tax which, taken with the tax levied under the Madras General Sales Tax Act, does not exceed two per cent. The whole idea underlying Sec. 15 of the Central Sales Tax Act Is that the declared goods should not in the aggregate suffer a tax at the rate of more than two per cent both in intra-State and inter-State trade.

8. The contention for the State, however, is that if the impost under S. 18 is regarded as a sales tax, it fixes no particular point at which the levy can be made in the light of Art. 286(3) of the Constitution and Sec. 15 of the Central Sales Tax Act. As we mentioned, the scheme of S. 18 is to provide for multi-point tax; but as a result of Art. 286(3) and S. 15 of the Central Sales Tax Act, S. 18 as in the case of sale or purchase of declared goods is limited to a rate of two per cent and to a single-point levy. But S. 15 itself beyond saying that the levy can only be at one stage, does not prescribe any particular point in the series of sales or purchases. The fixation of the point in conformity with Sec. 18 is left to the particular State

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Legislature. The automatic modification of S. 18 brought about by Art. 286(3) and S. 15 does not extend, therefore, to defining the single point in the series of transactions at which the levy of cess is to be made under S. 18(1). Our attention has been invited to a byelaw made by the market committee in this case, which prescribes thirty naye paise for every hundred rupees of the aggregate amount for which groundnut is bought or sold and proceeds to say -

"The cess referred to in sub-law (1) shall not be levied more than once on agricultural produce bought or sold in the notified market area The cess due in accordance with the rates prescribed under sub-law (1) above shall, in the case of transactions occurring in the regulated markets, be collected from the buyer there. In all other cases the cess shall be payable by the last buyer before the agricultural produce is taken out of the notified market area or before it is taken for being consumed in a processing or manufacturing concern within the notified area."

It is manifest from this byelaw that the rate of levy is to be at 30 naye paise for every hundred rupees of the aggregate turnover, that the levy is to be at the stage of purchase in the regulated market and that if the transaction is outside the regulated market, the cess is payable by the last buyer before the agricultural produce is taken out of the notified market area or before it is taken for consumption in the manner mentioned in the byelaw. The contention for the petitioner is that the byelaw, therefore, prescribes a stage different from the point at which tax may be levied under the provisions of the Madras General Sales Tax Act. In the latter the first purchase of groundnut attracts tax. But under S. 18 of the Madras Agricultural Produce Markets Act, read with this bye-law, the tax is payable by the last buyer it the purchase is outside the regulated market area. The byelaw itself, in our view, appears to be without authority. In the absence of any authority to the committee to prescribe the point at which the levy could be made, we do not see how and under what authority the market committee can make a byelaw or a rule fixing the single point in the series of sales at which the cess can be levied under S. 18.

S. 18 itself is silent about the point at which the cess can be levied. In fact, Sec. 18, as we said, contemplates a multi-point tax. But when the section is modified based on Art. 286(3) and S. 15, the necessity arises for the State Legislature to fix the point, namely, whether it is the first purchase or the last purchase or any intermediate purchase that will attract the cess or provide for authority to the market committee to fix the point at which the cess will be payable. Since, following the modification effected by Art. 286(3) and S. 15, no point of levy has been fixed by the State Legislature, and no authority has been given in the alternative to the market committee to fix the point, the cess said to have been collected from the petitioners tinder S. 18 at the point of last purchase which by accident happens to be the first purchase by him is not one authorised by law.

On that view, we consider that the respondents are entitled to proceed under the provisions of Madras General Sales Tax Act in respect of the turnover in question. Before we part with this case we make it clear that we express no view as to whether any part or whole of the disputed turnover consisted of first purchase of groundnuts. This is a matter entirely for investigation by the assessing officer in the light of the particular facts present before it.

9. The petition is dismissed, but in the circumstances with no costs.

Petition dismissed.

AIR 1964 MADRAS 458 (Vol. 51, C. 148) "V. Malaipettai v. State of Madras"

MADRAS HIGH COURT

Coram : 1 SRINIVASAN, J. ( Single Bench )

Virudhunagar Malaipettai, Panju Market Sangam and another, Petitioners v. State of Madras and another, Respondents.

Writ Petn. No. 330 of 1963, D/- 5 -7 -1963.

Constitution of India, Art.19(1)(g) and Art.265 - Madras Agricultural Produce Act (23 of 1959), S.18 - FREEDOM OF TRADE - CESS - AGRICULTURAL PRODUCE - Imposition of cess under the Section - Levy is not unconstitutional.

Cess is levied under S. 18, Madras Agricultural Produce Market Act 1959, by way of sales-tax and not as a fee. Therefore the levy under the Section is not unconstitutional on the ground that it is imposed upon persons carrying on business in notified commodities within the notified area, whether they make use of the facilities provided by the Market Committee or not. AIR 1954 Mad 621 and AIR 1959 SC 300 and AIR 1961 SC 459 and AIR 1960 Mad 160, Rel. on. (Para 9)

Since the levy is by way of tax it does not amount to an unreasonable restriction, upon the right of freedom of trade guaranteed by Art. 19(1)(g) to a private market owner carrying on business within the notified area. It is well established by authority that the imposition of a tax by the State cannot be regarded as in any way amounting to an unreasonable restriction upon the fundamental right of a citizen to carry on a business or profession. (Para 10)

Cases Referred : Courtwise Chronological Paras

('59) AIR 1959 SC 300 (V 46) : (1959) Supp (1) SCR 92, Arunachala Nadar v. State of Madras 6

('61) AIR 1961 SC 459 (V 48) : (1961) 2 SCR 537, Hingir Rampur Coal Co. Ltd. v. State of Orissa 8

('54) AIR 1954 Mad 621 (V 41) : 1954-1 Mad LJ 117, Kutti Keya v. State of Madras 6, 7

('60) AIR 1960 Mad 160 (V 47) : 1960-1 Mad LJ 298, Shanmugha Oil Mills v. Coimbatore Market Committee 7

Mohan Kumaramangalam for Mohan and K. Doraiswami, for Petitioners; Advocate General for Addl. Govt. Pleader and M.M. Ismail and B. Lakshminarayana Reddi, for Respondents.

Judgement

ORDER :- The petitioners herein are two sanghams. These sanghams are registered associations and they are running two markets in Virudhunagar. They are private markets. These markets are said to afford facilities to agriculturists who grow cotton and groundnut in and about the area. The markets provide weighing sheds, yards for drying groundnuts, godowns etc. In 1952, the Government directed the constitution of a Market Committee under Madras Act XX of 1933. Certain provisions of this Act were attacked as unconstitutional, but the contentions of these petitioners that any of the provisions of that Act involved an infringement of the right on the part of the petitioners to do business failed. But their Lordships of the Supreme Court left the question open whether any rules promulgated by the Government in exercise of the powers under the Act imposed an unreasonable restriction on the petitioners' rights. That, in the opinion of their Lordships, could be decided only after a market was established at Virudhunagar pursuant to the notification issued by the Government.

2. Madras Act XX of 1933 was repealed and replaced by Act XXIII of 1959. The new Act practically adopted the provisions of the old Act. The Act was intended to provides for the better regulation, of buying and selling agricultural produce and for the establishment and proper administration of markets for agricultural produce. Pursuant to this Act a market is sought to be established at Virudhunagar. The contention of the petitioners is that the establishment of this market would constitute a serious disadvantage to them and would strike at the very root of the business which they are carrying on. It is claimed that Sec. 6 of the Act provides that no person within a notified area could engage in the sale or purchase of any notified agricultural produce except under a licence granted by the Market Committee. This, it is claimed, is a serious inroad upon the rights of the petitioners to carry on their business activities.

It is further stated that any person who buys or sells agricultural produce within the notified area will have to pay a cess to the Market Committee, whether or not he avails himself of any of the facilities afforded by the markets established under the Act. The petitioners claim that if that be the position, no person would make use of their own private markets, which would involve the payment to them of certain charges, and the result would, be that the private markets would have to cease to function, it is further contended that the levy of the cess is an arbitrary imposition being unrelated to any service. The features attendant upon the establishment of a public market amount, it is said, to an unreasonable restriction upon the constitutional guarantee of the petitioners to carry on their business.

3. In the counter-affidavit filed on behalf of the respondent, it is pointed out that the constitutional validity of the Act has been upheld. It is urged that the cess, the levy of which is provided for under Sec. 18 of the Act is a lawful levy, which is necessary for the proper maintenance of the markets and the levy would in no way affect the rights of the petitioners to carry on the business, nor operate as a restriction, upon that right. The counter-affidavit sets out many matters of detail to which it is unnecessary to refer in view of the limited question that has been argued before me.

4. Before setting out and amplifying the question for determination, some of the provisions of the Act may be referred to. The Act is intended to provide for better regulation, buying and selling of agricultural produce and the establishment and proper administration of markets for agricultural produce. All agricultural produce is not brought within the Act but only those which are declared by notification by the Government. Under Sec. 4, Government may by notification declare a notified area. Section 5 provides for the establishment of a Market Committee for every notified area. The trading in agricultural produce in the notified area is controlled by Sec. 6 and such trading in notified agricultural produce could be done in that area only under and in accordance with the conditions of a licence granted by the Market Committee. This section contains provisions for the grant of a licence

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and for an appeal against a refusal to grant a licence. The other sections deal with the constitution of the Market Committee and the powers of such committee. Section 18 provides for the levy of a cess. It states that a cess by way of sales tax on any notified agricultural produce bought or sold in the notified area at a rate not exceeding 50 nP. for every Rs. 100 is leviable. Section 19 provides for a different kind of levy, that is, subscription for collecting and disseminating among subscribers information relevant to notified agricultural produce. The moneys collected under Secs. 18 and 19 make up the market committee fund out of which all expenses under the Act are defrayed. Section 21 provides that the fund could be expended for certain purposes.

5. Mr. Mohan Kumaramangalam, learned counsel for the petitioners, in the course of his argument confined himself to the levy of the cess and its impact upon the carrying on of the business by the petitioners. The petitioners who run the private markets charge their customers a certain, sum for the facilities which they provide. The imposition of the cess under Sec. 18, according to the learned counsel, means that such customers, besides having to pay the sum charged by these petitioners for the use of the private markets, have in addition to pay the cess as well as the licence fees under the Act. No person would be willing to be doubly charged and it is in this context that the learned counsel argues that since the levy of the cess and other fees would discourage or dissuade persons from making use of the private markets, petitioners business is bound to suffer and that these provisions place an unreasonable restriction upon the petitioners' right to carry on business.

Obviously, the mere fact that a cess has been charged, which if it is necessary for the carrying out of the purposes of the Act would be constitutionally justified, would not advance the petitioners' contention. Mr. Mohan Kumaramangalam therefore claims that this is a feature which is unrelated to any service which is provided for the persons from whom the fee, is collected and that the imposition of the fee on all persons whether they make use of the facilities provided by the Markets Committee or not is an unconstitutional levy, for a fee is recognised as a quid pro quo for service rendered.

6. Section 18 of the 1959 Act provides for the levy of a cess by way of sales-tax at a specified rate. The levy is in respect of any notified agricultural produce bought or sold in the notified market area. It makes no distinction between persons who may avail themselves of the marketing facilities provided by the Market Committee and those who do not. All sales of notified agricultural produce in the notified market area are subject to the payment of the cess provided in this Section. Ex facie the levy is unrelated to any service rendered by the Market Committee and it would certainly appear to be in the nature of a tax considering that it is levied on all persons who engage in certain transactions in certain specified commodities in the notified market area. A similar question came up for consideration In Kutti Koya v. State of Madras, 1954-1 Mad LJ 117 : (AIR 1954 Mad 621). Dealing with Sec. 11 of Act 20 of 1933, which provided that the market committee shall levy fees on the notified commercial crops bought or sold in the notified area at such rates as it may determine, the learned Judges observe thus :

"The argument on behalf of the petitioners is that this levy though called a fee is in reality a tax ........

The question is whether it is a fee or a tax and to ascertain its true character, we must examine the relevant provisions thereto."

After setting out those relevant provisions, they proceed :

"It is argued for the petitioners that the true object of the levy was to raise funds from the merchants for the construction of a market and that it is in substance a tax. This contention is in our opinion well-founded. A fee is what is charged for services rendered by the person who charges it. When the State, for example, introduces licensing, it is entitled to charge for the expenses incurred in maintaining the establishment for licensing and that is properly termed a fee ........... But the levy under Sec. 11 is for no services rendered. It is really a tax levied for raising funds for constructing the market ............"

They upheld the provision as imposing a tax. In Arunachala Nadar v. State of Madras, AIR 1959 SC 300 the validity of the provisions of Madras Act XX of 1933 was again canvassed. It would suffice to say that in general the validity of this piece of legislation was upheld.

7. In Shanmugha Oil Mills v. Coimbatore Market Committee, 1960-1 Mad LJ 298 : (AIR 1960 Mad 160) it was contended that S. 18 of the Act of 1955, which replaced Sec. 11 of Act XX of 1933 and introduced the levy of a cess by way of sales-tax, was colourable legislation. Ramachandra Iyer, J. (as he then was), observed in this regard :

"It is undisputed that there is power in the State Legislature to levy a tax in the shape of sales-tax on goods. This legislation has the effect of levying an additional sales-tax in regard to a commercial crop or crops. The Legislature having the power and there being no question of its trespassing on the legislative power of another State or the Union of India, no question of colourable legislation can at all arise."

The learned Judge pointed out that in 1954-1 Mad LJ 117 : (AIR 1954 Mad 621), it was held that the fee referred to in Sec. 11 of Act XX of 1933 was realty in the nature of a tax though mistakenly termed a fee and that the intention of the legislature was really to levy a tax as its object was to utilise the amount collected for the construction of the market and for allied purposes. In the result, the learned Judge held that the levy as a tax was valid.

8. The distinction between a tax and a fee was explained by the Supreme Court in Hingir Rampur Coal Co. Ltd. v. State of Orissa, AIR 1961 SC 459. The following part of the head-note would suffice :-

"Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilised for all public purposes, whereas a cess levied by way of fee is not intended to be and does not become part of the consolidated fund. It is ear-marked and set apart for purposes of services for which it is levied. There is however an element of compulsion in the imposition of both tax and fee. When the Legislature decides to render a specific service to any area or to any class of persons, it is not open to the said area or to the said class of persons to plead that they do not want the service and therefore they should be exempted from the payment of the cess. Though there is an element of quid pro quo between the tax-payer and the public authority, there is

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no option to the tax-payer in the, matter of receiving the service determined by public authority. In regard to the fees, there is and must always be correlation between the fee collected and the services intended to be rendered. Whether or not a particular cess levied by a statute-amounts to a fee or tax would always be a question of fact to be determined in the circumstances of each case ............"

9. The main, argument of Mr. Mohan Kumaramangalam was that regarded as a fee, its imposition on all persons whether the make use of the facilities provided by the market committee or not, is unconstitutional. In the light of the decisions referred to, it seems clear that the cess levied under Sec. 18 of the Act is not a fee which is intended to be correlated to any service but is a tax which is generally leviable on all persons engaging in a particular line of activity in a specified area. If it is a tax, obviously the argument that it should not fall upon persons who do not make use of the facilities provided by the market committee must necessarily fail.

10. It is well established by authority that the imposition of a tax by the State cannot be regarded as in any way amounting to an unreasonable restriction upon the fundamental right of a citizen to carry on a business or profession.

11. I am unable to see any provision in either of the Act or of the Rules as amounting to the imposition of an unreasonable restriction on the petitioner's right to carry on business. The petition accordingly fails and is dismissed with costs of the second respondent. Counsel's fee Rs. 100.

Petition dismissed.

AIR 1960 MADRAS 160 (V 47 C 49) "Shanmugha Oil Mill v. Market Committee"

MADRAS HIGH COURT

Coram : 1 RAMACHANDRA IYER, J. ( Single Bench )

Shanmugha Oil Mill, Erode by its Partner, V. Varadappa Chettiar, Petitioner v. Coimbatore Market Committee by its Secretary at its Office at Tiruppur and another, Respondents.

Writ Petn. No. 606 of 1957, D/- 24 -4 -1959.

(A) Constitution of India, Art.246(3) and Sch.VII, List 2, Entry 54 - LEGISLATION - AGRICULTURAL PRODUCE - Colourable Legislation - S.11(1) of Madras Com. Crops Markets Act as amended in 1955 is not colourable legislation.

Madras Commercial Crops Markets Act (20 of 1933) (as amended by Madras Act 33 of 1955), S.11(1).

Article 246(3) read with Entry 54 of List 2 in the 7th Schedule to the Constitution confers plenary powers to the State Legislature to impose a tax on the sale of goods. Section 11 (1) of the Madras Commercial Crops Markets Act, 1933, as amended in 1955, has the effect of levying an additional sales tax in regard to commercial crop or crops. The Legislature having the power and there being no question of its trespassing on the legislative power of another State or the Union of India, no question of colourable legislation can at all arise. AIR 1953 SC 375. foll. (Para 9)

Anno : AIR Com. Const. of India, Art. 246, N. 15, 19; Sch. VII, List 2 Entry 54 N. 3.

(B) Constitution of India, Art.265 and Art.277 - CESS - WORDS AND PHRASES - "Cess" is tax and not fee.

Madras Commercial Crops Markets Act (20 of 1933) (as amended by Madras Act 33 of 1955), S.11(a).

Words and Phrases - "Cess".

The word "cess" has a definite legal connotation indicating tax allocated to a particular thing, not forming part of the general fund. Article 277 of the Constitution refers to "cess" as a special category of the taxes. According to its import, the word "cess" is only tax and not a mere fee. It is, therefore, not necessary for the purpose of levy of cess that there should be quid pro quo between the service actually rendered and the amount of tax levied. (Para 10)

Anno : AIR Com. Const. of India, Art.265, N. 4(c).

(C) Madras Commercial Crops Markets Act (20 of 1933) (as amended by Madras Act 33 of 1955), S.4A and S.11(1) - AGRICULTURAL PRODUCE - GENERAL CLAUSES - Market Committee is local authority - Tax levied u/S.11(1) and collected by it will be of local nature like municipal tax.

Madras General Clauses Act (1 of 1891), S.3(17).

A Market Committee constituted under S.4A, being an organisation for the purpose of regulating the trade of commercial crops so as to give benefit to the producers; will be one which will be exercising an authority entrusted to it as public duty. Its duty is not of a commercial nature, there being no profit motive. It is thus a local authority (S. 3 (17), Madras General Clauses Act), restricted in its operations to the notified area. The tax levied under S. 11 (1) and collected by such authority would be of a local nature like a Municipal tax : (1937) AC 139 and (1941) AC 170 and (1946) KB 601 (607), Rel. on. (Para 11)

(D) Constitution of India, Art.246(3), Art.265 and Art.266 - STATE LEGISLATURE - CESS - AGRICULTURAL PRODUCE - Power exists in State Legislature to enact measure to enable local authority to raise funds for its activity by taxation - Such tax does not go into Consolidated Fund of State.

Madras Commercial Crops Markets Act (20 of 1933) (as amended by Madras Act 33 of 1955), S.11(1) and S.13.

Even before the commencement of the Constitution of India, the Provincial Legislature had under the provisions of the Government of India Act of 1919 and of 1935 and after the commencement of the Constitution it still has under Arts. 246 (3) read with Art. 277 power to enact measures to enable a local authority to raise funds for its activities by taxation. The levy of taxes under S. 11 (1) for the purposes mentioned in S. 13 of the Madras Commercial Crops Markets Act is a local tax within the competence of the State Legislature. Being a local tax, it will not form part of the Consolidated Fund of the State envisaged in Art. 268 of the Constitution, the reason being that under the Statute itself the funds collected have been allocated to the local authority : 6 L.P.C.A.C. 272, Ref. (Paras 12, 13)

Anno : AIR Com. Const. of India, Art. 246, N. 19; Art. 266, N. 2; Art. 265, N. 5.

(E) Constitution of India, Art.245 - Madras Commercial Crops Markets Act (20 of 1933) (as amended by Madras Act 33 of 1955), S.11(1) - STATE LEGISLATURE - AGRICULTURAL PRODUCE - DELEGATION OF POWER - Delegated Legislation - Absence of Legislative provision regarding policy or limits of assessment for guidance of assessing authority - Provision of S.11(1) is invalid.

A taxing provision has essentially three features : (1) a declaration of liability, (2) assessment or quantification and (3) machinery for collection. Section 11 (1) of the Madras Commercial Crops Markets Act, 1933 declares a liability and provides the machinery. But the rate of tax which is an essential part of the declaration and assessment has been completely delegated to the Executive Government with no principles or basis laid down. Uncontrolled power is vested in the Executive to fix such rate as it pleases. In the absence of a legislative provision regarding any policy or limits of assessment for the guidance of the assessing authority, the provisions of the section amount to excessive delegation of legislative power, and, therefore, are invalid. Case Law Ref. (Para 17)

Anno : AIR Com. Const. of India, Art. 245, N. 9.

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(F) Madras Commercial Crops Markets (Amendment) Act (33 of 1955), S.10 - AGRICULTURAL PRODUCE - S.10 cannot validate collection of fees made before Act.

Section 10 of the amending Madras Act 33 of 1955 will only apply to the case where a fee had been levied and collected and not to a case where the market committee is only seeking to enforce a liability. Further, that section cannot validate the collection of fees made before the amending Act. (Para 19)

(G) Constitution of India, Art.14 - EQUALITY - AGRICULTURAL PRODUCE - Madras Commercial Crops Markets Act, 1933 does not infringe Art.14.

Madras Commercial Crops Markets Act (20 of 1933) (as amended by Madras Act 83 of 1955), S.1.

The object of the Madras Commercial Crops Markets Act is to give protection to the producers of commercial crops and the Government could validly apply that Act, to begin with, to the selected areas. It cannot be said that there is infringement of Art. 14 of the Constitution. (Para 21)

Anno : AIR Com. Const. of India, Art. 14, N. 15.

Cases Referred : Courtwise Chronological Paras

('51) AIR 1951 SC 332 (V 38) : 1951 SCR 747, Art. 143, Constitution of India and Delhi Laws Act (1912) etc., In re 17

('53) AIR 1953 SC 375 (V 40) : 1954 SCR 1, K. C. Gajapathi Narayan Deo v. State of Orissa 9

('54) AIR 1954 SC 314 (V 41) : 1954 SCR 1117, Syed Muhammad and Co. v. State of Andhra 17

('54) AIR 1954 SC 569 (V 41) : 1954 SCJ 661, Rajnarain Singh v. Chairman, Patna Administration Committee, Patna 17

('55) (S) AIR 1955 SC 765 (V 42) : 1955-2 SCR 483, Ram Narain Sons Ltd. v. Asst. Commr. of Sales-tax 20

('58) AIR 1958 SC 909 (V 45) : 1958-9 STC 388, Banarsi Das Bhanot v. State of Madhya Pradesh 17

('59) AIR 1959 SC 300 (V 46) : 1959 SCJ 297, Arunachala Nadar v. State of Madras 3, 5

('59) AIR 1959 SC 512 (V 46) : 1959 SCJ 399, D. S. Garewal v. State of Punjab 17

('53) AIR 1953 Mad 105 (V 40) : 1952-2 Mad LJ 598 : 1953 Cri LJ 277, Syed Mohamed and Co. v. State of Madras 17

('54) AIR 1954 Mad 621 (V 41) : 1954-1 Mad LJ 117, Kutti Koya v. State of Madras 3, 5, 6, 9, 20

('58) AIR 1958 Mad 539 (V 45) : 1958-2 Mad LJ 117, Gopalan v. State of Madras 17

(1875) 6 PC 272 : 44 LJPC 52, Dow v. Black 12

(1878) 3 AC 889, R. v. Burah 15

(1927) 72 Law Ed 624 : 276 US 394, Hampton Jr. and Co. v. United States 17

(1934) 79 Law Ed 446 : 293 US 388, Panama Refining Co. v. Ryan 17

(1937) 1937 AC 139, Paul Ltd. v. Wheat Commission 11

(1941) 1941 AC 170 : 1941-1 All ER 66, Griffiths v. Smith 11

(1946) 1946 KB 601 : 1946-2 All ER 227, Western India Match Co. Ltd. v. Lock 11

M.K. Nambiyar and K.K. Venugopal, for Petitioner; V.V. Raghavan, Advocate General and Addl. Govt. Pleader, for Respondents.

Judgement

ORDER : This is a petition under Art. 226 of the Constitution for the issue of a writ of mandamus, directing the first respondent to forbear from enforcing its notice, S. No. 610 dated 11-7-1957, calling upon the petitioner to pay cess for the groundnuts purchased from 23-11-1955 to 30-6-1957, under S. 11(1) of the Madras Commercial Crops Markets Act 1933, Rule 28(1) of the Madras Commercial Crops Market Rules, 1948, and bylaw 23 of the Coimbatore Market Committee by-laws.

2. The petitioner is a merchant carrying on business at Erode in the name of the Shanmuga Oil Mill engaged in the purchase and sale of groundnuts. He has taken a licence for dealing in groundnuts under Ss. 5(1) and 5(3) of the Madras Commercial Crops Act (Madras Act XX of 1933), which I shall refer hereafter as the Act. The first respondent is the Coimbatore Market Committee constituted under S. 4-A of the Act. Coimbatore District is a notified area under the Act in respect of groundnuts and certain other commercial crops, such as cotton, tobacco and turmeric.

As the petitioner's business place is situated within the notified area, the market committee of Coimbatore would be entitled to collect certain fees and cesses for which provision has been made under the Act, the rules and the bylaws. Under S. 11(1) of the Act the petitioner would be bound to pay a cess, provided for therein. On 11-6-1957, the first respondent issued a notice, calling upon the petitioner the render accounts for the purchase of groundnut between 23-11-1955 and 30-6-1957, and to pay cess on the quantity purchased in accordance with the rates fixed by the rules and regulations aforesaid.

The case for the petitioner is that the demand for the cess could not be held to be under the authority of law, and that, therefore, a direction of this Court is necessary to prohibit the first respondent from levying or collecting the cess.

3. The Act was passed on the 25th July 1933 with a view to provide satisfactory conditions for the growers of commercial crops to sell their produce to the best advantage. It was intended to regulate buying and selling of commercial crops by providing suitable and regulated markets, eliminating the middlemen and reducing the scope of exploitation of the producers by financiers. The historical background and the purport of the legislation have been considered in Kutti Koya v. State of Madras, 1954-1 Mad LJ 117 : (AIR 1954 Mad 621) and in Arunachala Nadar v. State of Madras, AIR 1959 SC 300.

Except in regard to one provision of the Act the legislation has been held to be valid. Under the Act a machinery is set up for controlling and regulating the sale of commercial crops. The State Government is given power to notify an area in respect of commercial crops and constitute a market committee for that area. Provisions are made for the constitution, supersession etc. of the market committee. The State Government is empowered to make rules for working the Act and the market committee could make its own by-laws for regulations of trade.

Establishment of a market for enabling the meeting of buyers and sellers and provision for its building amenities are provided for. To facilitate the object of the enactments being fulfilled certain restrictions have been imposed on traders in the notified area. In view of the contentions raised in this petition, it is necessary to consider briefly the provisions of the Act in its original form as enacted

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in 1933 and the change effected by the Amending Act, Act 33 of 1955.

4. Section 2(1)(a) of the Act defines "commercial crop" to mean "cotton, groundnut or tobacco and includes any other crop or product notified by the State Government in the Fort St. George as a commercial crop for the purposes of the Act." Section 3 enables the State Government by notification in the official Gazette to declare their intention of exercising control over the purchase and sale of such commercial crop or crops and in such area as may be specified in the notification. The notification would call for any objections or suggestions which may be offered within a period to be specified in the notification.

After the expiry of the period specified in the notification under S. 3 and after considering such objections and suggestions as may be received, the State Government may declare the area specified in the notification, or any portion thereof to be notified area for the purposes of the Act in respect of the commercial crop or crops specified in the notification. Section 4-A authorises the State Government to establish a market committee for every notified area and it is for the market committee to enforce the provisions of the Act and the rules and bylaws in such notified area.

It is also the duty of the market committee to establish such number of markets and provide for such facilities as the State Government may from time to time direct for the purchase and sale of the commercial crop or crops concerned. Section 11(1) authorised the market committee, subject to such rules as may be made in this behalf, to levy a fee on the notified commercial crop or crops bought and sold in the notified area at such rates as the State Government may determine, and till such rates are determined the rates mentioned in the specified schedule to the Act are to be adopted.

Section 12 enacts that all moneys received by a market committee shall be paid into a fund to be called "the market committee Fund'', that all expenditure incurred by the market committee under or for purposes of the Act shall be defrayed put of the said fund, and that any surplus remaining after such expenditure has been met shall be invested in such manner as may be prescribed by rules. The ether provisions in the section enable the market committee to pay the staff employed by the State Government for giving effect to the provisions of the Act. Section 13 prescribes the purposes for which the market committee fund can be expended.

They are (i) the acquisition of a site or sites for the market, (ii) the maintenance and improvement of the market, (iii) the construction and repair of buildings which are necessary for the purposes of such market and for the health, convenience and safety of the persons using it, (iv) the provision and maintenance of standard weights and measures, (v) the pay, pensions, leave allowances, gratuities, compassionate allowances and contribution towards leave etc. for the employees, (vi) the expenses of and incidental to elections etc. Section 18 confers on the State Government power to make rules for carrying out all or any of the purposes of the Act.

Section 19 enables the market committee with the previous sanction of the Director of Agriculture, Madras and subject to any rules made by the State Government under S. 18 to make by-laws for the regulation of the business and the conditions of trading therein. In pursuance of the rule making power, the State Government framed rules, styled as the Madras Commercial Crops Market Rules 1948. Rule 28 relates to levy of fees. That rule prescribes the maximum fee that can be levied on commercial crops under S. 11(1) of the Act.

The Coimbatore Market Committee have also framed by-laws for regulation and conduct of the business. By-law 23 prescribes the actual fees that can be levied on all quantities of goods bought and sold within the notified area.

5. The validity of the Act, rules and by-laws framed thereunder were the subject-matter of challenge in 1954-1 Mad LJ 117 : (AIR 1954 Mad 621). This court, by its judgment, upheld the validity of the Act except in regard to three matters. The learned Judges held that the provision in S. 5 of the Act which prescribed that a person could not sell within the notified area except under a licence and in accordance with the conditions therein granted to him by the Collector, was a valid provision and could not be held to be unreasonable restriction in carrying on the business of an individual.

But they held that the provisions of S. 5(4)(a) which vested in the Collector an unlimited and uncontrolled power to grant or refuse to grant a licence, was invalid though a regulation of trade by the grant of licence to all who apply, pay the tee and obey the conditions imposed therein was valid. They struck down R. 37 which required buyers and sellers to register their names with the market committee and execute agreements in such form the committee may prescribe as invalid in so far as it prohibited persons whose names had not been registered as buyers and sellers from carrying on the business in the notified area.

They also held that the provisions of the Act under Ss. 11 and 11-A and R. 28 (1) and (3) providing for the levy of fees on the notified commercial crops bought and sold in the notified area at such rates as it might determine, were not repugnant to Art. 286(2) of the Constitution, but that the amounts collected were taxes and not mere licence fees, they being in the nature of a sales-tax. The levy under R. 28(3) and S. 11-A being for service rendered, it was held to be valid. In so far as the decision upheld the validity of the enactment, an appeal was filed to the Supreme Court.

The judgment of the Supreme Court was reported in AIR 1959 SC 300, where it was held that the impugned provisions of the Act constituted only reasonable restrictions on the citizens' right to do business, and that therefore, they were valid.

6. After the decision in 1954-1 Mad LJ 117 : (AIR 1954 Mad 621), the State Government passed Act 33 of 1955 to amend the Act in certain particulars. I shall refer to the sections which are material for the purpose of the present case. Section 11(1) was repealed and re-enacted thus :

"Notwithstanding anything contained in the Madras General Sales-tax Act, 1939 (Madras Act IX of 1939), the market committee shall, subject to such rules as may be made in this behalf, levy a cess by way of sales-tax on any commercial crop bought and sold in the notified area at such rates as the State Government may, by notification, determine. Explanation : For the purposes of this sub-section, all commercial crops leaving a notified area shall, unless the contrary is proved, be presumed to be bought and sold within such area. In the other sub-sections the word "cess" was substituted for the word "fee". Rule 28 (2) (iv) relates to the maximum annual fees which may be levied by the market committee in respect of licence granted

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under S. 5. The words "and on the commercial crop or crops bought and sold in the notified area'' are omitted with the result a rule can be framed only in regard to fee which is leviable under S. 5 and not under S. 11. Rule 28 which enables fixation of maximum fee on the commercial crop or crops still remains with the alteration of the term "fee" into "cess".

There is also similar alteration in R. 9 where the word "fee" in Cl. 1 was converted into "cess". It may, however, be noticed that under S. 11(1), as amended, the market committee is authorised to levy such fees by way of sales-tax at such rates as the State Government may determine. After the amendment of the Act in 1955, the market committee also amended its bylaw 23 by substituting the word "cess" for the word "fee". It is however difficult to understand how this bylaw can be modified in the way in which it was done.

Under S. 11(1) of the Act it is for the State Government to fix the cess by way of sales-tax. There is no power in the market committee to fix the fee under any bylaw as it could only adopt the fee prescribed by the Government.

7. In pursuance of the authority vested under S. 11(1) the Government issued a notification on 28-8-1958, fixing the rates of levy of cess on goods bought and sold within the notified area. That notification could not, however, govern the present ease, as the demand was for a period anterior thereto, that is from 23-11-1955 to 30-6-1957. The demand was purported to be made under R. 28 and bylaw 23, in their unamended form. As I stated at the beginning the notice of demand was on 11-7-1957, sometime prior to the notification by the Government fixing the rates. It will be seen that for that period there had been no determination of the fee by the Government and no notification was made in regard to the same.

8. The validity of the demand has been contested on behalf of the petitioner. Mr. M. K. Nambiar, the learned counsel for the petitioner, urged substantially three contentions. (1) The amendment of S. 11 (1) under which what was originally levied and sought to be collected as a fee was made a tax, was a colourable piece of legislation intended to circumvent the decision of this Court which declared the invalidity of the levy as a fee. (2) The levy under S. 11(1) would be invalid even as a tax as such a tax would not be included in the Consolidated Fund of the State to which all taxes levied by its Legislature should go under Art. 266. (3) The delegation of the power to fix the rate of tax to the executive was illegal and therefore the entire provision was illegal.

9. It was urged that Act 33 of 1955 was a piece of colourable legislation intended merely as a cloak or guise for continuing the retention of the levy of a fee when the fee was found to be not permissible under the old Act. According to the argument the amending Act 33 of 1955 only introduced verbal change, and in the essence the levy should be deemed to be fee, and, as the lew of fee by way of tax or cess is unauthorised by the Constitution. S. 11(1) in its present form, should be held to be void. The learned counsel also criticised the use of the legislative phrase, "cess" by way of "sales tax" as a thing unknown to legislative phraseology.

I cannot, however, agree with this contention. No question of colourable legislation or of motive can at all arise in this rase. It is undisputed that there is power in the State Legislature to levy a tax in the shape of sales tax on goods. This legislation has the effect of levying an additional sales tax in regard to commercial crop or crops. The Legislature having the power and there being no question of its trespassing on the legislative power of another state or the Union of India, no question of colourable legislation can at all arise. In K. C. Gajapathi Narayan Deo v. State of Orissa, 1954 S.C.R. 1 at p 10 : (AIR 1953 S.C. 375 at p. 379) Mukerjea J. observed;

"It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular Legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the Legislature lacks competency the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power. A distinction, however, exists between a legislature which is legally omnipotent like the British Parliament and the laws promulgated by which could not be challenged on the ground of incompetency, and a Legislature which enjoys only a limited or a qualified jurisdiction. If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the Legislature in a particular case has or has not, in respect to the subjectmatter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression 'colourable legislation' has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although apparently a Legislature in passing a statute purported to act within the limits of its powers yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise.''

It cannot be said that in repealing the old S. 11(1) of the Act and re-enacting it in its present form the State Legislature has transgressed the limits of its enumerated powers. Art. 246(3) read with Entry 54 of List 2 in the 7th Schedule to the Constitution confers plenary powers to the State Legislature to impose a tax on the sale of goods. S. 11(1) which levies only a cess by way of sales tax cannot be impugned as a colourable legislation and as such invalid. Secondly it was held in 1954-1-Mad. L.J. 117 : (AIR 1954 Mad 621), that the fee sought to be levied was really in the nature of tax, though, mistakenly termed as fee.

Therefore, the intention of the Legislature even originally was really to levy a tax, as its object was to utilise the amounts collected, for construction of the market and for allied purposes. The amendment has proceeded only to effectuate the real intention of the original enactment by substituting in its place the word "cess" by way of sales tax in the place of "fee". This would only amount to carrying out of the original intention and not colourable device for collecting fee when such fee was not authorised. The contention, that notwithstanding the amendments referred to above S. 11(1) in its present form continues to levy only a fee, cannot therefore be accepted

10. It was next contended that the words "cess by way of sales tax" were intended to camouflage

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what was really a fee and would rather indicate that it was not levied as a sales tax and that the levy being more than what was required for the services rendered by the market committee should be held to be invalid. The word "cess" has a definite legal connotation, indicating tax allocated to a particular thing, not forming part of the general fund. Instances may be found among Central Acts, Cotton Cess Act, 14 of 1923, the Indian Lac Cess Act, 24 of 1930, Agricultural Produce Cess Act, 27 of 1940, the Coffee Market Expansion Act, 7 of 1942, Coconut Committee Act, 10 of 1944, Salt Cess Act, 49 of 1953, the Central Tea Board Act 13 of 1949 (a) and Tea Cess Act, 9 of 1903 (b). All these enactments authorise levy of a cess. Amongst local Acts mention may be made of the Madras Sugar Factories Control Act (Act 20 of 1949) which authorises the State Government to levy cess. Art. 277 of the Constitution refers to "cess" as a special category of the taxes. According to its import the word "cess" is only tax and not a mere fee. It is, therefore, not necessary for the purpose of levy of cess there should he quid pro quo between the service actually rendered and the amount of tax levied, as it is not a fee but a tax.

(a) Now repealed by the Tea Act, 1953 (29 of 1953), S. 51- Ed.

(b) Repealed by Act 13 of 1949, S. 20-Ed.

11. The next contention of the learned counsel for the petitioner was that the levy as a tax was invalid, as admittedly it would not be brought into the States' consolidated fund. It may be noticed that the cess is levied for the purposes mentioned in S. 13 of the Act. Sec. 13 provides that the market committee fund shall be expended for the purposes mentioned therein only. The tax was, therefore, intended solely for the purpose of enabling the market committee, providing it with a suitable building and for other expenses in connection therewith. A market committee if, as I shall presently show, it is to be local authority, the tax levied for its purposes would not augment the general revenues of the State. The tax collected being solely for the benefit of the local authority it is but appropriate that it should be termed a cess. It is, therefore, relevant to consider as to what a market committee is. S. 4-A of the Act authorises the State Government to establish a market committee for every notified area.

The committee has the duty of enforcing the provisions of the Act and the rules and by-laws made thereunder in such notified area. The committee has also power to establish a number of markets and providing facilities therefor. S. 6(2) enacts that the District Agricultural Officer shall ex officio be a member of the market committee. S. 7 enacts that the market committee shall be a body corporate. S. 9(3) enacts that the chairman, vice-chairman and every officer or servant of the market committee shall be deemed to be public servants within the meaning of S. 21 of the I.P.C. Licence under S. 5(1) is granted by the Collector. I have already stated the purposes for which the market committee has been constituted. Thus a market committee is local authority for the purposes of the notified area charged with the duties prescribed under the Act. S. 3 (17) of the Madras General Clauses Act defines local authority thus :

"Local Authority shall mean a municipal committee, District Board, Body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of municipal or local fund."

The market Committee fund being a fund to be expended only in connection with the purposes of the market would be a local fund. In Paul Ltd. v. Wheat Commission, 1937 A.C. 139, it was held that the Wheat Commission constituted under the Wheat Act of 1932 (22 and 23 Geo. 5, C. 24) was a public authority. In Griffiths v. Smith, 1941 A.C. 170 it was held that the managers of non-provided public elementary school, a statutory body created by the Education Acts, were public authority within the protection of the Public Authorities Protection Act of 1893. A similar protection was also given to the officers of minister of War Transport under the Crown. Vide Western India Match Co. Ltd. v. Lock, 1946 K.B. 601 at p. 607.

It was held in that case that the minister, by his officers, was exercising the powers conferred upon him for the benefit of the public or for what he considered to be for the benefit of the public and so was exercising a public duty, although no member of the public could complain or take proceedings against him if he did not act as he did. Similarly a market Committee being an organisation for the purpose of regulating the trade of commercial crops so as to give benefit to the producers, will be one which will be exercising an authority entrusted to it as public duty. Its duty is not of a commercial nature, there being no profit motive. It is thus a local authority restricted in its operations to the notified area. The tax levied under S. 11(1) and collected by such authority would be of a local nature like a Municipal tax.

12. The question then arises whether such taxes are valid and should be brought under the consolidated fund. Although to start with the various presidencies in India were independent of each other, the Regulating Act of 1773 made the Governor of Bengal as Governor General and the Supreme Head of all the provinces. The Charter Act of 1853 gave legislative power to the Governor General and deprived the local Governments of the power of independent legislation. After the passing of the Indian Councils Act, the local Legislatures had gradually acquired power. But the Government of India's control over revenues and expenditure was derived from the Acts of 1853 and 1858, which treated the revenues of India as one and applied them to the purposes of the Government of India as a whole.

This denied to Provincial Governments the right to use revenues which they raised, and they had to look to the Central Government for expenses. But gradually that system was changed. Later on, each local Government was given a fixed grant for the upkeep of definite services, and a classification of revenue heads into Indian, and provincial was made. Section 80-A of the Government of India Act, 1919 invested the local Legislature of a province to make laws for the peace and good Government of its territories. Section 80-A(3) enacted that the local Legislature of any province might not, without the previous sanction of the Governor General, make any law imposing any new tax unless the tax is a tax scheduled as exempted from this provision by rules made thereunder.

Section 45-A of the Act enabled provision being made by rules under the Act for the classification of subjects, in relation to the function of Government, as central and provincial subjects, for the purpose of distinguishing the functions of local Governments and local Legislatures from the functions of the Governor General in Council and the Indian Legislature and for the devolution of authority in respect of provincial subjects to local Governments. Rules were framed under S. 45(1) of the Government of India Act, 1919.

These were called the Devolution Rules. Subjects were classified as central and provincial, and provincial legislatures were given powers to legislate

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on provincial subjects without overriding the power of Imperial Legislature to legislate on all subjects for all provinces. Under that system, distribution of legislative power was only a matter of administrative convenience. The Provincial Legislatures were able to enact laws under the Devolution Rules for taxation in regard to certain specified matters, one of them being for the benefit of the local authorities. Section 143 (2) of the Government of India Act, 1935, recognised this power in the provinces. It stated,

"Any taxes, duties, cesses or fees which, immediately before the commencement of Part III of this Act, were being lawfully levied by any provincial Government, Municipality or other local authority or body for the purposes of the province, Municipality, District or other local area under a law in force on the first day of January nineteen hundred and thirty five, may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Federal list, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature."

Article 277 of the Constitution saves all taxes, duties, and cesses or fees of the kind mentioned above till provision to the contrary is made by the Parliament by law. It follows, therefore, that the taxation for the purposes of a local authority could be made by the Provincial Legislatures under the Government of India Act, 1919, and that right was preserved by the Government of India Act, 1935, and the Constitution. Under the Constitution the levy of taxes for the benefit of local authority is within the competence of State Legislature.

Article 246 (3) specifically vests the State Legislature with exclusive power to make laws for such state or any part thereof with respect to any of the matters enumerated in List II in the 7th Schedule. Thus both before and after the Constitution the Provincial or State Legislature had or has power to enact measures to enable a local authority to raise funds for its activities by taxation. In Dow v. Black, (1875) 6 PC 272, a question arose as to whether the Provincial Legislature New Brunswick had power to make law so as to impose taxes in connection with the construction of railway line in the State.

Under Art. 2 of S. 92 of the British North America Act, 1867, the Provincial Legislature was enabled to impose direct taxation for a local purpose upon a particular locality within the province. It was held by the Privy Council that the Act in question related to "a matter of a merely local or private nature in the province" and it did not relate to the railway, or any local work within the excepted subjects mentioned in Art. 10.

13. The levy of taxes under S. 11(1) for the purposes mentioned in S. 13 of the Act would, therefore, be a local tax within the competence of the State Legislature. Being a local tax, it will not form part of the consolidated fund envisaged in Art. 266 of the Constitution. That Article only prescribes that all public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State.

By reason of the fact that under the Statute itself the funds collected have been allocated to the local authority, it could not be deemed to be one received by the State and that therefore, such taxes need not and indeed could not go into the consolidated fund of the State under Art. 266 of the Constitution. It cannot therefore be held that the levy under S. 11(1) of the Act would be invalid on that ground.

14. Mr. Nambiar next contended that the provisions of amended S. 11(1) amounted to excessive delegation of legislative powers to the State Government, and that therefore, it should be struck down as invalid. Section 11(1) imposes a tax and such a tax is levied for the benefit of a local authority. A power to tax is exclusively legislative one. But it is not uncommon to find that such power being vested in Municipalities and local boards etc., which are also representative institutions. But the power to tax in those cases cannot be justified for the reason that they are representative institutions but depend on the conferment of the same by the appropriate Legislature.

To take an example the power to tax by a municipality in the Madras State is derived from an Act of a Legislature namely, the Madras District Municipalities Act, Under Art. 265 of the Constitution a tax can be imposed by the authority of the law, that is, by an express legislative provision. Under the Constitution power to legislate is vested only in the Union and State Legislatures. Vide Art. 246. There could therefore be no power to levy a tax either in the executive government or local authority except perhaps under a valid delegation by the appropriate legislature. It is therefore necessary to ascertain as to how far a Legislature can delegate its own function to other authorities.

15. In England there are no constitutional restrictions, as Parliament is supreme. In matters other than taxation the Crown had certain prerogatives. A delegation by the appropriate authority would appear to have no constitutional invalidity. But from the 18th Century the powers of the State were shared between the King, Parliament and the Courts. The Donoughmore Committee stated that it was not so much the theory of separation of powers but the fact that officials and bodies had a large measure of autonomy that enabled them to develop under the exigencies of the duties entrusted to them. (Report of the Committee on Member's Powers, page 9).

In R. v. Burah, 1878-3 AC 889 at p. 906, it was stated "legislation conditional on the use of particular powers or the exercise of a limited discretion entrusted by the Legislature to persons in whom it places confidence is no uncommon thing and in many circumstances may be highly convenient." The necessity for such delegation was held to be (1) that the Parliament had no time for discussion of details or no ability to decide technical details and (2) there may be necessity for speedy action as in cases of emergency. The safeguards adopted in England against abuse of delegated powers has been laid down in Craies on Statute taw at page 271 :

"The safeguards against abuse of delegated powers lie in the following : (i) the delegation must be to some trustworthy authority e. g. a public department, (ii) the limits of the delegated powers should be strictly defined by the statute, (iii) if the interests of any particular section of the community are likely to be affected it should be consulted by the delegated authority before the regulations are made, (iv) publicity. This is extremely important and judges have from rime to time pointed out the difficulty of discovering the relevant rules and regulations affecting any particular line of conduct or branch of industry, (v) there should be machinery provided for revoking or amending the delegated legislation, c. f., the Interpretation Act, 1889 S. 32 (3). The provisions for laying the rules before Parliament afford, or should afford, a valuable safeguard.''

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16. But under the American law where, as in India, legislative power is vested exclusively in the Legislature, and there is a separation of powers between the Legislature, Judiciary and the Executive, the propriety of a delegation is a constitutional issue. The general rule is that the Legislature cannot surrender or abdicate its powers. A power not legislative in character could be delegated. The Legislature can also delegate to the executive or other bodies the authority to promulgate rules and regulations.

But before doing so, they should declare the policy of the law and fix the legal principles, that is, a policy and a standard should be laid down. It should be a case of exercising an authority under the law not one to make the law. In Statutory Construction by Crawford, at page 26, it is observed :

"So far, however, as the delegation of any power to an executive official or administrative board is concerned, the Legislature must declare the policy of law and fix the legal principles which are to control in given cases and must provide a standard to guide the official or the board empowered to execute the law. The standard must not be too indefinite or general. It may be laid down in broad general terms. It is sufficient if the Legislature will lay down an intelligible principle to guide the executive or administrative official . . . . .......... or if the rule laid down was "reasonable and in the interests of the public interest".

From these typical criterions, it is apparent that the courts exercise considerable liberality toward upholding legislative delegations, if a Standard is established. Such delegations are not subject to the objection that legislative power has been unlawfully delegated. The filling in or mere matters of detail within the policy of, and according to the legal principles and standards established by the legislature, is essentially ministerial rather than legislative in character, even if considerable discretion is conferred upon the delegated authority. In fact, the method and manner of enforcing a law must be left to the reasonable discretion of administrative officers, under legislative standards. It should be noted, however, that the standard established in Criminal statutes must be more exacting and precise, if the statute is to avoid being fatally defective for vagueness and uncertainty, since criminal statutes are strictly construed by the courts."

17. Mr. Nambiar contended that in enacting Sec. 11(1) the Legislature completely abdicated its functions, as it did not determine or lay down any policy to be followed by the State Government in determining the tax payable by the traders to the market committee. In support of his contention, the learned counsel has referred to Panama Refining Co. v. Ryan, (1934) 79 Law Ed 446. At page 459 it was held that the question whether such a delegation of legislative power was permitted by the Constitution was not answered by the argument that it should be assumed that the President had acted, and would act, for what he believed to be the public good, and that the point was not one of motives but of constitutional authority. At page 459, Chief Justice Evans observed,

"The Congress manifestly is not permitted to abdicate, or to transfer to others, the essential legislative functions with which it is thus vested. Undoubtedly, legislation must often be adapted to complex conditions involving a host of details with which the national legislature cannot deal directly. The constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits, and the determination of facts to which the policy as declared by the Legislature is to apply. Without capacity to give authorisations of that sort we should have the anomaly of a legislative power which in many circumstances calling for its exertion would be but a futility. But the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained."

This principle has been fully considered in re, Art. 143 Constitution of India and Delhi Laws Act (1912) etc., 1951 SCR 747 : (AIR 1951 SC 332), where majority of the Supreme Court Judges held that it was competent for the Legislature to delegate to other authorities power to frame rules for carrying out the purposes of the law made by it. At page 792 (of SCR) : (at p 345 of AIR), Kania C. J. observed,

"It was contended by the learned Attorney General that under the power of delegation the legislative body cannot abdicate or efface itself........

The true test in respect of 'abdication' or 'effacement' appears to be whether in conferring the power to the delegate the legislature, in the words used to confer the power retained its control. Does the decision of the delegate derive sanction from the act of the delegate or has it got the sanction from what the legislature has enacted and decided? Every power given to a delegate can be normally called back. There can hardly be a case where this cannot be done because the legislative body which confers power on the delegate has always the power to revoke that authority and it appears difficult to visualise a situation in which such power can be irrevocably lost............In my opinion, therefore, the question whether there is 'abdication' and 'effacement' or not has to be decided on the meaning of the words used in the instrument by which the power is conferred on the authority. Abdication according to the Oxford Dictionary, means abandonment, either formal or virtual, of sovereignty. Abdication by a legislative body need not necessarily amount to a complete effacement of it. Abdication may be partial or complete. When in respect of a subject in the legislative list the legislature says that it shall not legislate on that subject but would leave it to somebody else to legislate on it, why does it not amount to abdication or effacement? If full powers to do anything and everything which the legislature can do are conferred on the subordinate authority, although the legislature has power to control the action of the subordinate authority, by recalling such power or repealing the Acts passed by the subordinate Authority, the power conferred by the instrument, in my opinion, amounts to an abdication or effacement of the legislature conferring such power."

In Hampton Jr. and Co. v. United States, (1927) 72 Law Ed 624, Taft C. J. held that if Congress shall lay down by legislative act an intelligent principle to which the person or body authorised to fix the rate of customs duties on imported merchandise is directed to conform, such legislative action is not a forbidden delegation of legislative power. Referring to the division of the Government's power into three branches, namely, legislative, executive and judicial,

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the learned Chief Justice observed that it was not to say that the three branches were not co-ordinate parts of one Government, that each in the field of its duties might not invoke the action of the two other branches in so far as the action invoked should not be an assumption of the constitutional field of action of another branch, and that the Congress had found it frequently necessary to use officers of the executive branch within defined limits, to secure the exact effect intended by its acts of legislation, by vesting discretion in such officers to make public regulations interpreting a statute and directing the details of its execution, even to the extent of providing for penalising a breach of such regulations. The learned Judge approved of the statement of Judge Ranney in the following words :

"The true distinction, therefore, is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority to or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made."

In Rajnarain Singh v. Chairman, Patna Administration Committee, Patna, 1954 SCJ 661 : (AIR 1954 SC 569), the decision in the Delhi Laws case, 1951 SCR 747 : (AIR 1951 SC 332) was considered. It was held in that case that a valid delegation could go to the extent of authorising an executive authority to modify the law made but not in any essential feature. Such a modification could not include a change of policy, as essentially the legislative function consisted in the determination of legislative policy and its formation as binding the rule of conduct.

In a recent case D. S. Garewal v. State of Punjab, 1959 SCJ 399, C. A. No. 426 of 1958 : (AIR 1959 SC 512), the Supreme Court again considered the question of propriety of delegation of legislative power. In that case disciplinary proceedings were started against the appellant who was a member of the Indian Police Service under R. 5 of the All India Services (Discipline and Appeal) Rules, 1955, framed under S. 3 of the All-India Services Act, 1951. The propriety of the proceedings initiated against him was the subject-matter of an application under Art. 226 of the Constitution.

It was contended that Art. 312 laid down a mandate on Parliament to make the law itself regulating the recruitment and the conditions of service of all India services, and therefore, it was not open to Parliament to delegate any part of the work relating to such regulation to the Central Government for framing rules for the purposes. Section 4 of the All-India Services Act enacts :

"All rules in force immediately before the commencement of this Act and applicable to an all India service shall continue to be in force and shall be deemed to be rules made under this Act." The Supreme Court held that it was in effect a statutory provision adopting all the rules which were in force at the commencement of the Act, governing the recruitment and the conditions of service of the two all India Services and that it was valid. A reference was made to the following observations of Mukherjea J. (as he then was) in 1951 SCR 747 at p. 982 : (AIR 1951 SC 332 at p. 400).

"The essential legislative function consists in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. It is open to the legislature to formulate the policy as broadly and with as little or as much details as it thinks proper and it may delegate the rest of the legislative work to a subordinate authority who will work out the details within the frame-work of that policy. So long as a policy is laid down and a standard established by statute no constitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the legislation is to apply."

In Syed Mohamed and Co. v. State of Madras, 1952-2 Mad LJ 598 : (AIR 1953 Mad 105), the question as to how far the Legislature was competent to delegate its powers to other bodies was considered in detail. In that case it was held that what the Legislature had done was merely to authorise the rule-making authorities to carry out the policies enunciated in the statute and to fill up the details. The rules themselves were to come into operation only after they were approved by a resolution of the House.

Far from effecting self-effacement, the Legislature had retained complete control over the legislation. This decision was approved by the Supreme Court in Syed Muhammad and Co. v. State of Andhra, 1954 SCR 1117 : (AIR 1954 SC 314). In Gopalan v. State of Madras, 1958-2 Mad LJ 117 : (AIR 1958 Mad 539), it was held that it was open to the Legislature to delegate its powers to the subordinate authorities, but in that case the assessment was placed before the Legislature annually under Art. 203 of the Constitution and was subject to its control and was therefore held to be a valid delegation.

The learned Advocate General relied upon a recent decision of the Supreme Court in Banarsi Das Bhanot v. State of Madhya Pradesh, 1958-9 STC 388 : (AIR 1958 SC 909). In that case the power conferred on the State Government by S. 6(2) of the C. P. and Berar Sales-tax Act, 1947, to amend the schedule relating to exemption was held to be in consonance with the accepted legislative practice relating to the topic and was not unconstitutional. At page 394 (of STC) : (at p. 913 of AIR), it is observed as follows :

"On these observations, the point for determination is whether the impugned notification relates to what may be said to be an essential feature of the law, and whether it involves any change of policy. Now, the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like."

It may be seen that in the instant case before the amendment by Act 33 of 1955, there was maximum fee fixed in regard to rate of levy under the rules, but under the amended S. 11(1) there was no maximum or minimum fixed. There is no indication in the enactment by way of guidance to the assessing authority. Being a local tax which will not come under the consolidated fund, the Legislature would have no voice to question its propriety.

There is thus no power to control the assessment that may be levied by the executive Government by the authority granted to it under S. 11. I have referred to the authorities which establish that the existence of a mere power to repeal would not be sufficient to say that the legislature has control over the assessment. It has been held that a taxing provision has essentially three features (1) a declaration of liability, (2) assessment or quantification and (3) machinery for collection. Section 11(1),

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no doubt, declares a liability and provides the machinery.

But the rate of tax which is an essential part of the declaration and assessment has been completely delegated to the executive Government with no principles or basis laid down. Uncontrolled power is vested in the Executive to fix such rate as it pleases. In the absence of a legislative provision regarding any policy or limits of assessment for the guidance of the assessing authority, it must be held that the provisions of the section amount to excessive delegation of legislative power, and, therefore, invalid.

18. The learned Advocate General contended that prior to the passing of Act 33 of 1955, there bad been assessment and levies by the various Market committees and the Legislature should be deemed to have been aware of such levies, and when, therefore, they entrusted the power of assessment to the executive Government, they should be deemed to have been satisfied with the propriety of such assessment. Reference was made to S. 10 of the amending Act which validated all fees levied and collected, as affording an indication that the Legislature has applied its mind to the levy and approved of the same.

I cannot, however, accept this contention. Section 11(1) does not purport to limit the power of the executive Government to levy cess by way of sales-tax at the rates already fixed or to any particular amount but instead it gives uncontrolled powers in the matter of fixation of rate of tax. That is illegal.

19. The learned Advocate for the petitioner then contended that the demand was invalid for the reason that the notification fixing the rate of tax under S. 11(1) was made only on 11-7-1957 and as liability to pay the tax does not arise till the rates were fixed, the market committee would have no right to levy a tax or fee for any anterior period. Section 11(1) does not have any retrospective effect. The demand for the anterior period however is sought to be justified under the provisions of S. 10 of the Amending Act 33 of 1955. That provision runs :

"10 (1) Notwithstanding anything contained in any law or in any judgment, decree or order of any court, all fees levied and collected or purporting to have been levied and collected by market committees under S. 11 of the principal Act before it was amended by this Act shall be deemed always to have been levied under the principal Act as amended by this Act as if this Act was in force at all relevant times.

(2) No suit or other proceeding shall be maintained or continued in any court for the refund of any fee so paid; and no court shall enforce any decree or order directing the refund of any fee so paid."

That section would only apply to the case where a fee had been levied and collected and not to a case like the present one where the market committee is only seeking to enforce a liability I am of opinion that the provisions of S. 10 cannot apply for another reason as well. Section 10 says that the levy made and collected shall be deemed always to have been levied under the principal Act as amended by the Amending Act as if latter had been in force at all relevant times.

That could only mean that the levy was made by the executive Government as envisaged in S. 11(1) of the Act and not that fee levied and collected as if it were determined by or approved by the Legislature, that is to say, the levy had been made by fhe executive Government as if it acted under S. 11 (1). I have already held that determination of the tax by the executive Government under S. 11(1) was invalid, the power not having been validly delegated by the Legislature. It, therefore, follows that S. 10 could not validate the collection of fees made before the amending Act.

20. The learned Advocate General then contended that although the decision in 1954-1 Mad LJ 117 : (AIR 1954 Mad 621), held that the licence fee for the purpose of S. 13 was invalid as in reality it was only a tax, the decision did not consider the propriety of the levy as a licence fee, whether it bore a legitimate relationship to the services rendered by the committee. In support of his contention, the learned Advocate General placed before me a statement of the receipts of the Coimbatore Market Committee from 1952 to 1956, demonstrating that the receipts were just sufficient to cover the expenses incurred.

But this contention could not be accepted, because under S. 11, as it originally stood, levy was made for various purposes and not merely in connection with the services rendered by the market committee. Having regard to the purposes mentioned in S. 13, it should be held that what was levied was a tax though called a fee. The provisions of the old S. 11(1) having been found to be invalid, the levy thereunder could not be justified as licence fee.

Further, in view of the fact that S. 13 confers benefits which could be secured by raising a tax as well as a fee, it will be difficult in such a case to apportion between that which could validly represent licence fee and that which could be considered as a tax. In Ram Narain Sons Ltd. v. Asst. Commr. of Sales-tax, 1955-2 SCR 483 : ((S) AIR 1955 SC 765), the Supreme Court held that where an assessment consisted of a single undivided sum in respect of the totality of the property treated as assessable, the wrongful inclusion in it of certain items of property which by virtue of a provision of law were expressly exempted from taxation, rendered the assessment invalid in toto.

In the present case it will not be possible to disassociate the portion of the fee collected for the purpose of services rendered with the portion which was outside those purposes, that is, those that could be achieved only by collecting a tax. It, therefore, follows that the entire assessment is bad.

21. The learned Advocate for the petitioner next contended that S. 11(1) should be held to be invalid, as it would be hit by Art. 14 of the Constitution. It is urged that the provisions of S. 11 are not general in their scope and are not applicable to all dealers within the State, but that only a few districts are picked out by the State Government. It is further contended that while under the Madras General Sales-tax, a dealer has right of appeal to the departmental authority and to an independent Tribunal with a power of revision by the High Court, there is no such right in a case of levy under S. 11(1) of the Act.

I am satisfied, that there is no substance in this contention. The object of the Act is to give protection to the producers of commercial crops and the Government could validly apply that Act, to begin with, to the selected areas. It cannot be said that there is infringement of Art. 14 of the Constitution. Marketing legislation of this type is for the welfare of the general public. As regards the procedural right, it is enough to point out that it is not an uncommon

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feature in enactments dealing with local bodies not to provide a right of appeal.

In such a case the assessee has got right of resort to the civil court if the assessing authority exceeded its jurisdiction. The levy of cess could also be challenged if prosecution is initiated to enforce it in a criminal court. There is, therefore, no substance in the contention that the provisions of the Act offend the equal protection of law guaranteed by Art. 14 of the Constitution.

22. In the result, I am of opinion that the Market Committee cannot properly call upon the petitioner to pay the cess for groundnut purchased from 23-11-1955 to 30-6-57 under S. 11(1) of the Madras Crops Markets Act, as S. 11(1) is invalid. A writ will issue. No order as to costs.

Writ issued.

AIR 1971 MYSORE 316 (V. 58 C 86) "H. Siddappa v. Dy Commr., Hassan"

MYSORE HIGH COURT

Coram : 2 A. NARAYANA PAI, C.J. AND D. NORONHA, J. ( Division Bench )

H. Siddappa, Petitioner v. The Deputy Commissioner, Hassan District, Hassan and others, Respondents.

Writ Petn. No. 3348 of 1970, D/- 3 -12 -1970.

(A) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.39(2) and S.41 - AGRICULTURAL PRODUCE - ELECTION - There is no legal bar to a Marketing Committee to elect Chairman and Vice-Chairman when not less than 2/3 of representatives of agriculturists and not less than 2/3 of total number of members are available that election need not be postponed until all constituencies have actually returned their candidates.

Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.41. (Paras 5, 8)

(B) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.39(2) - AGRICULTURAL PRODUCE - ELECTION - S.39(2) was intended to enable Committee to function and exercise all powers - Election of Chairman and Vice-Chairman is one of those functions and powers because by undertaking that activity the Committee fulfils its purpose. (Para 10)

S.K. Venkataranga Iyengar, for Petitioner; S.G. Doddakalagowda. High Court Government Pleader, (for Nos. 1 and 2) and C. Srinivasa Vakil (for Nos. 4 and 6), for Respondents.

Judgement

A. NARAYANA PAI, C. J. :- The Petitioner, who has been elected to the Agricultural Produce Market Committee, Arsikere, from the Agriculturists' Constituency and is a candidate for election as Chairman of the Committee, prays for the issue of a writ directing that the holding of election to the offices of Chairman and Vice-Chairman be postponed till the Committee is fully constituted under Section 11 of the Mysore Agricultural Produce Marketing (Regulation) Act, 1966.

2. Section 11 of the Act, dealing with the constitution of the second and subsequent Marketing Committees states that the Committee shall consists of the following members :-

1. Seven members elected by the Agriculturists;

2. Two members elected by traders;

3. One member elected by Commission Agents holding licences; and

4. One representative each of the Taluk Marketing Co-operative Society, Producers' Society, Taluk Development Board Local Authority, and one official member who is subordinate to the Chief Marketing Officer.

In the case of the Arsikere Market Committee with which we are concerned the first three constituencies have already returned their representatives. The Taluk Marketing Co-operative Society also has sent its representative. There had been some writ petitions relating to the representation of the Producer's Society, Taluk Board and the Local Authority, which have since been disposed of.

3. Section 41 dealing with the election of Chairman and Vice-Chairman provides in its first sub-section that :-

"Every market committee shall choose two members representing the agriculturists' constituencies of the market committee to be respectively the Chairman and Vice-Chairman thereof............''

and further provides in its second sub-section :-

"On the constitution of a market committee under Section 11 or on its reconstitution a meeting shall be called within four weeks from the date of commencement of the term of office of the members of the market committee by the prescribed officer who shall himself preside over the meeting, but shall have no right to vote........................"

4. Commencement of the term of office is dealt with in Section 39 of the Act which reads as follows :-

"(1) The term of office of the members of a market committee shall commence on the date immediately after the expiry of the term of office of the outgoing members of the market committee or on the date of the publication of the names of the elected members under, Section 27, whichever is later.

(2) When not less than two-thirds of the representatives of agriculturists, and not less than two-thirds of the total number of members of a market committee are available to function as members after a general election, the market Committee shall, notwithstanding anything contained in this Act be deemed to be duly constituted, and the market committee so constituted shall be competent

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to exercise the powers and perform the functions of the market committee."

5. Now on the facts stated above, if the provisions of sub-section (2) of S. 39 are applicable to the situation or may be availed of, then there is no legal bar to the committee proceeding to elect the Chairman and the Vice Chairman because not less than two-thirds of the representatives of agriculturists and not less than two-thirds of the total number of members of the market committee, are available. If however, as contended on behalf of the petitioner, the Committee referred to in Section 41, particularly sub-sections (1) and (2), - is the Committee to which all the constituencies mentioned in Section 11 have actually returned their representatives, then of course, it may be necessary to wait till such constituencies, elections from which have not yet been completed, return their candidates. We use the word "constituency" as inclusive of the institutions mentioned in various clauses of Section 11 as those entitled to send their representatives.

6. The matter therefore turns exclusively upon the interpretation of Sections 39(2) and 41(1) and (2).

7. One guidance for ascertaining the intention of the Legislature is that Section 41 calls upon the 'Market Committee' to elect a Chairman and a Vice-Chairman and not its members to choose one among themselves to function as Chairman or Vice-Chairman. Another guidance is that the election of Chairman and Vice-Chairman is required to be held within four weeks from the date of commencement of the term of office of the members of the Market Committee. The date of commencement is the publication of the names of the elected members under Section 27. Section 27 reads :-

"The Deputy Commissioner shall publish the names of all the elected members by a notification in the official Gazette."

Ordinarily, therefore one would expect the representatives of all the constituencies to be present and available upon such a publication but there may be circumstances or events which prevent the publication of the names of all such as some defect in the action taken in respect of the election from one or other of the contituencies or an order by a competent Court staying the election or postponing the election from one or other of the constituencies.

8. It is apparently to deal with such situations and to enable the committee to function and carry on all its activities, that provision is made in sub-section (2) of Section 39 enabling the committee to function and exercise all its powers when not less than two-thirds of the representatives of agriculturists and two-thirds of the total number of members of the committee are available to function as members. The express provision of sub-s. (2) of Sec. 39 is that when such a number of members is available, the committee shall be deemed to be duly constituted and that the Committee so constituted shall be competent to exercise the powers and perform the functions of the committee, notwithstanding anything contained in the Act.

9. The argument is, firstly, that what may be described as the deemed constitution under sub-section (2) of S. 39 is intended only to enable the committee to exercise its powers and perform its functions, but that it is unnecessary in the context to understand the said expression as comprehending or including the election of Chairman and Vice-Chairman also and, secondly, that the non-obstante clause should, in the context be so interpreted as not to whittle down the effect of what is described as the mandatory provisions of Section 41.

10. On the first suggestion, viz., that the election of a Chairman and a Vice-Chairman should not be ragarded as either a power or a function of the committee, the emphasis is on the fact that the powers and duties of Chairman and Vice-Chairman and the powers and duties of the committee as such are dealt with in separate sections and the election of a Chairman and a Vice-Chairman is not one of the matters set out in the list of duties and powers of the committee set out in Section 63. But Section 39(2) uses the word 'function' which, in its normal accepted sense, means activity proper to anything or a mode of action by which it fulfils its purpose. The manner in which the Committee exercises its powers and performs or discharges its duties is in our opinion, fully expressed by describing it as the functioning of the committee. In other words, the committee functions or undertakes activity appropriate to it or acts in such a way as to fulfill its purpose when the committee in accordance with the provisions of the statute exercises its powers and performs its duties. Section 46 enumerates the powers and duties of Chairman. Apart from presiding over the meetings of the Committee, the Chairman is required to watch over the financial and executive administration of the committee and to exercise supervision and control over its officers and servants. The Vice-Chairman exercises the powers of the Chairman in his absence and, even in the presence of the Chairman, he exercises such powers and performs such duties of the Chairman, as the Chairman may, from time to time, delegate to him. Hence the entire functioning

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of what may be called the totality of the function of the committee is an activivity which comprises or comprehends the functioning of the Chairman, also, because it is the Chairman who provides the necessary guidance, supervision and control over the general administration.

11. Viewed in this light, there can be little doubt that when sub-section (2) of Section 39 refers to a committee as one deemed to have been duly constituted and competent to exercise the powers and perform the functions of the market committee, it does mean a committee which has the power or duty of electing the Chairman and the Vice-Chairman for the purpose of the effective functioning of the committee.

12. The same line of reasoning is also, in our opinion, sufficient to hold that the non-obstante clause in sub-section (2) of Section 39 is not a clause which is independent of Section 41 or one which permits Section 41 to operate independently, but a clause which permits or requires the provisions of sub-section (2) of Section 39 to operate even though the language of Section 41 may indicate a different operation. In other words, what the argument describes as the mandatory provision of Section 41 should give way and not obstruct the operation of sub-section (2) of Section 39; that is to say, when the 41st Section refers to a committee constituted or reconstituted under Section 11, it means and includes, if the occasion so requires, a Committee which under sub-section (2) of Section 39 is deemed to be a committee duly constituted with competence to exercise all the powers and perform all the functions of the committee.

13. In view of this clear opinion of ours as to the effect of Section 39(2), it is unnecessary to discuss the other arguments relating to elections from other constituencies set out in the affidavit in support of the petition.

14. We do no find, therefore, sufficient ground to grant the prayer in the writ petition.

15. The writ petition is dismissed.

Writ petition dismissed.

AIR 1970 MYSORE 114 (V. 57 C 30) "K. N. Marularadhya v. State"

MYSORE HIGH COURT

Coram : 2 A. R. SOMNATH IYER AND AHMED ALI KHAN, JJ. ( Division Bench )

K. N. Marularadhya, Petitioner v. The Mysore State, Respondent.

Writ Petitions Nos. 2472, 2471, 2212, 1577, 1578, 1621, 1622, 1625, 1563, 1682, 1728, 1986, 2087, 2700, 2848, 3062, 2970, 3032, 3120 to 3153, 1623, 1624, 1626, 3022, 3024, 3812 to 3824, 3173, 4075, 4076, 3827, 3501 to 3515, 3833, 3834, 4208, 4209, 4213, 4244, 4218, 4219, 4207, 3270, 3325, 3095 to 3098, 2715 to 2717 and 3851 of 1968, D/- 3 -2 -1969.

(A) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.65, S.3, S.4 and S.6 - AGRICULTURAL PRODUCE - Levy of market-fee - Conditions precedent - There should be Market area, Market and Market Yard. (Para 6)

(B) Mysore Agricultural Produce Markets Act (16 of 1939) now repealed by Act 27 of 1966), S.3(b), S.3(d) and S.4 - AGRICULTURAL PRODUCE - PREAMBLE - INTERPRETATION OF STATUTES - Notified area and Market - They do not have reference to same area - Notified area is Market area of new Act 27 of 1966 and Market is Market of new Act.

Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.4 and S.6.

Civil P.C. (5 of 1908), Pre..

Interpretation of Statutes.

The market and the notified area are defined separately by clauses (b) and (d) of Section 3. It is clear from Section 4 that market is a place within well-defined boundaries which have to be set out in the notification under sub-section (2). Similarly, a notified area is another place which is distinct from the area which constitutes the market, and so, the 'market' and the 'notified area' cannot have reference to the same area. The notified area is the market area of the new Act 27 of 1966 and the market must necessarily be the market of the new Act. (Para 12)

It is, however, clear from paragraph 2 to Section 5 of the repealed Mysore Act, 16 of 1939, that the provisions of the Act and the other statutory provisions which will be made under it shall be applied by the market committee in the notified area, and the clear meaning of that paragraph is that the notified area is the bigger area and that the market is the smaller area, else, neither the Act nor the bye-laws and the rules would operate in the market and a construction resulting in such consequence cannot be sound. (Para 13)

(C) Mysore Agricultural Produce Markets Act (16 of 1939) now repealed by Act 27 of 1966), S.17 and S.6 and Pre. - AGRICULTURAL PRODUCE - Market Yard - Clear intendment of Act is that there should be Market Yard to which R.4 refers - R.4 is within rule-making power.

Mysore Agricultural Produce Markets Rules (1939), R.4.

Although the Act did not speak in clear language about a market yard, the clear intendment of the Act was that there should be one.

It is abundantly clear that the premises set apart by the market committee "for purposes of purchase and sale of agricultural produce" to which explanation to S. 17 refers is no other than the premises which can be declared as a market yard.

Since the functioning of a market committee under the provisions of the repealed Mysore Act for purposes set out in that Act could not be performed satisfactorily or in accordance with the purposes of the scheme and the Act unless there was a market-yard in which the market committee could make available facilities such as godowns, warehouses, canteens and the like. It is not possible to say that the constitution of a market-yard to which Rule 4 refers was not authorised by the Act and that therefore that rule is without competence. (Paras 15, 16)

(D) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.4, S.6 and S.154(1), Proviso (a) - AGRICULTURAL PRODUCE - Markets and Market areas - Effect of S.154(1), Proviso (a) - Though called by different names under repealed Acts they should be deemed to be Markets and Market areas under Act of 1966. (Paras 19, 22)

(E) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.65, S.4, S.6 and S.154(1), Proviso (a) - AGRICULTURAL PRODUCE - Levy of market-fee - Conditions precedent - There should be market yard - Non-existence of market yards under repealed enactments - Whether fee could be recovered under Act of 1966.

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The imposition or recovery of a fee under S. 65 must be preceded by the bringing into existence of a market yard in which some of the services to which the Act refers have to be rendered by the market committee. If, therefore, there was no market-yard in existence when the market committees demanded the fee, the fee was not exigible. (Para 24)

In those cases in which there were no market yards under the repealed enactments, the market fee could be demanded only from the date on which it became due after the establishment of the market yards, and not for any antecedent period under the new Act. The market fee which could be demanded with respect to those areas is the market fee which was exigible under the old Act the operation of which with respect to that matter was saved by clause (a) of the proviso to S. 154(1) of the new Act. Unless the market fee under the old Act is superseded by the imposition of a market fee or by anything done under the new Act, that fee could be recovered only if its exigibility is not inconsistent with the provisions of the new Act. (Para 28)

(F) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.65 - AGRICULTURAL PRODUCE - CONSTITUTIONALITY OF AN ACT - INTERPRETATION OF STATUTES - Market fee - Levy is on first sale by producer inside yard or outside market - Character of impost is that of fee and not that of tax - S.65 is not unconstitutional.

Constitution of India, Art.14 and Art.265.

Civil P.C. (5 of 1908), Pre..

Interpretation of Statutes.

Madras Commercial Crops Markets Act (20 of 1933), S.11(1).

Bombay Agricultural Produce Markets Act (22 of 1939), S.11.

Under S. 65 the levy of the market fee is on the first sale by the producer inside the yard or outside the market as the case may be to a trader or any other person and that once the agricultural produce has been sold in that manner no market fee could be recovered from a buyer who buys the agricultural produce subsequently. AIR 1967 SC 973, Foll. (Para 38)

If the fee is payable only once and on the first purchase such as referred to above the character of the impost is that of a fee and not that of a tax. If the impost is a fee and the levy is on the first purchase of the agricultural produce, it cannot be contended that Section 65 is for any reason unconstitutional. It is not an acceptable postulate that Section 65 authorises a levy of a fee from the buyer for services rendered to the buyer and others in circumstances in which that fee is recoverable only from the persons to whom services are rendered. It is only in a case in which the statutory provision empowers an illegal levy that the Court can strike it down. But if it does not, the Court should not by stretching and straining its language so interpret it that it bestows power to do something illegal and declare the provision to be invalid on that ground. (Paras 39, 41)

Section 65 does not authorise the recovery of a fee from every buyer in the areas to which it refers but empowers the levy of the fee and its collection "from the buyer in respect of agricultural produce". It is clear that the words "at such times as may be specified in the bye-laws" do not authorise a plurality of the levy but only speak of the intervals or the points of time at which the fee which is properly recoverable could be collected. Under that part of the subsection, the market committee has no more power than to state at what intervals or at what points of time the fee which is properly recoverable could be collected. (Para 34)

The purchase in respect of which the fee could be levied or collected is the earliest purchase of the agricultural produce belonging to the producer. It will be seen from the provisions of the Act that the producer who brings his agricultural produce into the market could sell it only inside the yard and it is this sale which he must needs make inside the yard when he brings his produce inside the market. That is the topic of the impost to which Section 65 refers. It would be unreasonable to place upon statutory provision like Section 65 which provides for the levy of a fee, the construction that every buyer who purchases agricultural produce either inside the yard or outside the market could be made liable to pay the fee, in the absence of words in that section which justify that construction. In the absence of express provision that the fee would be recovered again and again Courts must lean to the construction that it could be recovered only once, and, if that construction is correct, it must necessarily follow that the occasion on which the fee could be collected is the occasion when there is a sale by the producer inside the yard or outside the market. The power to levy the fee gets exhausted when the agricultural produce has been sold by the producer to a trader or other person and when the fee has been levied on the purchase so made, there is no more poer in the market committee to demand the fee repeatedly from each purchaser thereafter. (Para 35)

When there is striking resemblance of the language of S. 65 of the new Act and that of Section 11(1) of the Madras Act and Section 11 of the Bombay Act in the sense that none of these three sections in express language authorises a plurality of the market fee with respect to the

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same agricultural produce and if in the administration of the Madras and Bombay Acts and corresponding provisions were understood to mean that the market fee could be recovered only once and the legislature employed similar phraseology in enacting S. 65, it would be reasonable to say that the legislative intent in enacting S. 65 of the new Act was to create an impost which was similar to the impost created by the relevant sections of the Madras and Bombay Acts. (Para 36)

(G) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.65 and Pre. - AGRICULTURAL PRODUCE - STATE - LEGISLATION - LEGISLATIVE COMPETENCE - Levy of Market fee - Validity - Pith and substance of subject-matter of Act falls within entries 26 and 28 of State List - Entry 65 in State List authorises Legislation in respect of fees regarding all matters in State List - Imposition of fee with respect to sales made in course of inter-State trade and commerce is only incidental to main legislation and hence within competence of State Legislature.

AIR 1967 SC 973 Foll.

Constitution of India, Art.246 and Sch.7, List 1, Entry 92A and Entry 96 and Sch.7, List 2, Entry 26, Entry 28 and Entry 65. (Para 43)

(H) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.65 - AGRICULTURAL PRODUCE - LEGISLATURE - DELEGATION OF POWER - Delegation of power to fix market fee - Legislature fixing only maximum fee recoverable - Held there was no delegation of power with respect to any essential legislative function and hence provision was valid.

Constitution of India, Art.245. (Para 44)

(I) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.2(1)(iii) - AGRICULTURAL PRODUCE - WORDS AND PHRASES - EQUALITY - Agricultural Produce - Definition of - Authority to State Government to declare produce not enumerated in definition as agricultural produce - Delegation is not beyond bounds of permissive delegation.Constitution of India, Art.245. (Para 46)

(J) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.10 and Pre. - AGRICULTURAL PRODUCE - EQUALITY - CONSTITUTIONALITY OF AN ACT - Validity - Representation of agriculturists on first market committee - Having regard to purpose of Act provision is valid.

Constitution of India, Art.14. (Para 48)

(K) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.11, Proviso 4 - AGRICULTURAL PRODUCE - CONSTITUTIONALITY OF AN ACT - Validity - Composition of market committee - Provision that if persons belonging to any of categories specified in clauses (ii) to (vii) are not available, committee shall consist of persons of categories available - Provision is not void. (Para 49)

(L) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.16(1)(a) - AGRICULTURAL PRODUCE - Representation of agriculturists - Disqualification - Purpose of - Provision is valid.

The purpose of disqualification mentioned in S. 16 (1) (a) is to prevent the betrayal of the interests of agriculturists by a person who although he is himself an agriculturist has also an interest in the activity of the traders, commission agents or brokers. Moreover, a provision creating a disqualification to function on a statutory body like the market committee is fully within the competence of the Legislature and the restriction such as the one which S. 16(1)(a) incorporates is unexceptionable. (Para 49)

(M) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.41 and Pre. - AGRICULTURAL PRODUCE - Validity - Object of provision - Provision is valid.

Section 41 which provides that every Chairman and Vice-Chairman of the market committee shall be an agriculturist, does not, invite any reproach since its purpose is that the two important offices of the market committee should be filled only by agriculturists the protection of whose interests is the primary and dominant purpose of the Act. (Para 50)

(N) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.66 and S.67 - AGRICULTURAL PRODUCE - LEGISLATURE - Validity - Purpose of sections is enforcement of Act - Power is confided to nominee of State Government and can be exercised only in proper case - There is no entrustment of unguided and uncanalised power without prescription of any standard - Provisions are valid.

Constitution of India, Art.245. (Paras 51, 53)

(O) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.76 - AGRICULTURAL PRODUCE - SALE - OBJECT OF AN ACT - Purpose and validity - Purpose of provision is to stop undercover sales - Provision is valid.

The enforcement of the provisions of the new Act is possible only if the manner of the sale of agricultural produce is also regulated in manner provided by this section. The sales by tender system or by public auction or by open agreement or by the other methods specified in that section are the methods by which the sales generally take place, and when they take place in that way the parties will have the opportunity to offer their bids freely and in that event the producer could always expect to secure for his agricultural produce a reasonable price. It is clear that the principal purpose of this section is to stop sales which are ordinarily described as undercover sales so that a sale conducted in a clandestine and secret manner which operates to the prejudice of the agriculturists, is made impossible. Since the purpose of the new Act is to regulate the sales of agricultural produce throughout the area over which the market committee exercises its control, the regulation of even subsequent sales is what can

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prevent circumvention or evasion of the provisions of the new Act so that sale which is really a sale between the producer and the buyer does not masquerade as a sale between a trader and a trader. (Paras 55, 57)

(P) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.78, S.2(8), S.85 and Pre. - AGRICULTURAL PRODUCE - OBJECT OF AN ACT - CONTRACT - FREEDOM OF TRADE - Validity - Purpose of Act is to avoid exploitation of producer through middlemen - Provisions of S.78 cannot be said to be unreasonable even though commission includes storage and insurance charges - Commission agent is only del credere agent - He does not incur any risk by being del credere agent.

Constitution of India, Art.19(6) and Art.19(1)(g).

Contract Act (9 of 1872), S.182.

The primary purpose of the Act is to regulate the activity of the marketing of the agricultural produce in such a way that there should be no exploitation of the producer through the instrumentality of middlemen such as commission agents and others. (Para 60)

Those services which are rendered by a commission agent are the usual services rendered by one like him, and while the nature of the services rendered by a commission agent are of the same quality and have the attributes as those which used to be rendered quite a long time ago when the price of agricultural produce was exceedingly low, it is in the knowledge of every one that during recent times there has been a remarkable rise in the price of agricultural commodities and it is that phenomenon which now earns for a commission agent for the same services which he used to render when the market with respect to agricultural produce was in an extremely depressed condition, a correspondingly large commission which is attributable exclusively to the rapid and enormous increase in the price of agricultural produce. It is that condition of the market concerning agricultural produce which makes it possible for the commission agent to secure for himself a large commission than he could have hoped to get at antecedent periods of time, and in that situation a commission of one and a half per cent which is what Section 78 fixes cannot be said to be unreasonable notwithstanding the fact that such commission includes storage and insurance charges. (Paras 61, 67)

When the provisions of Section 78 are judged by the standards laid down by the Supreme Court by which the reasonableness of these provisions should be assessed, they cannot be said to be unreasonable. AIR 1959 SC 300 and AIR 1960 SC 430, Foll. (Para 66)

Section 78 does no more than to constitute a commission agent a del credere agent, and that he is one is clear from the definition contained in Section 2 (8). It will also be seen from the provisions of Section 85 that the commission agent does not really incur any risk by being fastened with the attributes of a del credere agent. (Para 69)

(Q) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.85 and S.86 - AGRICULTURAL PRODUCE - EQUALITY - FREEDOM OF TRADE - Validity - Classification made by S.85 is reasonable - Provisions as to deposit are reasonable - Provisions are valid.

Constitution of India, Art.14, Art.19(6) and Art.19(1)(g). (Paras 72, 74)

(R) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.89(1), S.89(2) - AGRICULTURAL PRODUCE - APPEAL - Validity - Powers of market-committee to impose penalties - Appeal lies under sub-section (2) to Chief Marketing Officer - Provisions are valid. (Para 75)

(S) Mysore Agricultural Produce Marketing Rules (1968), R.76 - AGRICULTURAL PRODUCE - REPUGNANCY BETWEEN STATUTES - Validity - Rule is repugnant to provisions of Proviso (ii) (b) to S.8(1)(b) of 1966 Act - Rule is invalid to that extent.

Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.8(1)(b), Proviso (ii)(b).

The effect of Proviso (ii)(b) to S. 8 (l)(b) is that no licence is necessary in the case of a person who purchases agricultural produce in the market outside the yard, from a trader for retail sale. But Rule 76 (1) forgets this exemption created in favour of a retail trader and enjoins even that retail trader to obtain a licence even in respect of his activity in respect of which an exemption is created. It is hardly necessary to make that rule since the licencing of the activity in the market area stands fully regulated by Section 8. So Rule 76(1) which is repugnant to the provisions of Section 8 has to be struck down and declared to be invalid to the extent of such repugnancy. (Para 77)

(T) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.8(1)(b), Proviso (ii)(b) - AGRICULTURAL PRODUCE - SALE - Purchase for retail sale - If trader makes purchase to which sub-clause refers, no license is necessary - License is not necessary even to make retail sale of goods so purchased. (Para 80)

(U) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.148, S.149, S.154(1), Proviso (c), S.10, S.11 and S.2(2) - AGRICULTURAL PRODUCE - ELECTION - Bye-laws made by old market-committees after coming into operation of 1966 Act - Validity - Under proviso (c) to S.154(1) old market-committee has power to make bye-laws u/S.148 although no first bye-laws have been made u/S.149 - Old market committee acquires status of market-committee under Act of 1966 within meaning of S.2(2) - Election of market committee u/S.11 must be preceded

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by composition of nominated market committee u/S.10 - Such bye-laws made by old market-committees are valid.

Section 10(1) prescribes the composition of the first market committee and states that first market committee shall consist of the various categories of persons nominated by Government. So, the words "the first market committee" occurring in S. 149 have reference to the first nominated market committee to which Section 10 refers, and the necessity for the preparation of the first bye-laws by the Chief Marketing Officer of the first market committee arises only when that first market committee comes into being by the process of nomination to which Section 10 refers. (Para 84)

A first market committee conforming to that description stands constituted in that way only if an old market committee does not have the authority or the power to continue to function as the market committee even under Act of 1966. But if under proviso (c) to Section 154 of the 1966 Act it is the duty of the old market committee to 'exercise the powers conferred, perform the functions, and be subject to the liabilities imposed by the provisions' of the 1966 Act and the rules made thereunder until market committees are constituted under the provisions of the 1966 Act, the old market committee became thus charged with the duty to exercise powers and perform functions under the 1966 Act. And one of the powers that could be exercised and the functions that could be performed is the power to make a bye-law under Section 148. (Para 85)

It is of importance to observe in this context that Section 148 which bestows power to make bye-laws does not bestow it only on the second and subsequent market committees to which Section 11 refers. The repository of that power is the market committee which is defined by Section 2 (2) as a market committee constituted for a market area under the Act. If proviso (c) to Section 154 (1) says that an old market committee could exercise power and perform functions under the 1966 Act, that market committee acquires the status of a market committee established under the 1966 Act; if it does not, it cannot exercise the powers created by the 1966 Act or perform functions under it. That would be the true position notwithstanding the fact that unlike proviso (a) to Section 154 (1) which creates a legal fiction that certain things done under the old repealed Act 27 of 1966 must be deemed to have been done under the 1966 Act, proviso (c) to that sub-section only says that an old market committee shall exercise power and perform functions under the 1966 Act, and so the old market committee acquires the power to make bye-laws under S. 148, although no first bye-laws have been made under Section 149. The words "and be subject to the liabilities imposed by the provisions of this Act" occurring in clause (c) of the proviso to Section 154 (1) cannot be understood as divesting the old market committee of the power to make bye-laws under Section 148 until first bye-laws are made under Section 149. (Para 86)

Section 154 is a purely transitional provision as its language clearly discloses. The old market committee is of the nature of a care-taker committee which can function only for a temporary period until a new market committee comes into being in accordance with the provisions of the new Act. The only process by which a new market committee can so come into being is by the observance of the procedure prescribed by Sections 10 and 11 and under their provisions, the first step to be taken for the establishment of a new market committee is to bring into existence a nominated market committee under S. 10 which Government could, in the exercise of the power conferred by it And, when the first market committee so comes into being, it produces two consequences: it displaces the old market committee, and it becomes necessary for the Chief Marketing Officer of the first new market committee to make the first bye-laws under Section 149, and there can be supersession of those first bye-laws only when the second market committee comes into existence under Section 11 and makes bye-laws under S. 148. (Para 89)

The new Act contemplates the establishment of a market committee in a particular way. It is of significance to observe that Section 11 speaks of a second and subsequent market committee. Although that is what the marginal note says, Courts should not altogether overlook the description which that marginal note gives, and what is clear from the language of Section 11 is that the elected market committee which comes into being under it is the second market committee and the first market committee which is its predecessor is not other than the nominated market committee to which Section 10 refers. (Para 90)

So what is clear is that the election of a market committee under Section 11 must necessarily be preceded by the composition of a nominated market committee under Section 10, and it is only by that process that an old market committee which continues to function under the proviso (c) to Section 154(1) can vacate office. (Para 91)

That such is the scheme of the new Act is destructive of the contention that

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the bye-laws made by the old market committee after the new Act came into force have no validity. The competence to make those bye-laws clearly flows from proviso (c) to Section 154(1) of the new Act although they perish when bye-laws are made by the first market committee under Section 149. (Para 92)

(V) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.3 and S.154(1)(a) - AGRICULTURAL PRODUCE - OBJECT OF AN ACT - Scope - Notification u/S.5 of Madras Act must be deemed to be notification u/S.3 of 1966 Act as per S.154(1)(a) - That agricultural produce under 1966 Act is called commercial crop under Madras notification is of no effect - Held that items 3 to 16 enumerated in bye-law 12(1) of Bye-laws made by Bellary market-committee were already declared as commercial crops under Madras Act and, therefore, Bye-law 12(1) was valid.

Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.148.

Madras Commercial Crops Markets Act (20 of 1933), S.4.

Notification under. (Para 95)

(W) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.148, Bye-laws under, Bye-laws made by Bellary market committee, Bye-law 12(2) - AGRICULTURAL PRODUCE - Validity - Bye-law 12(2) is authorised by Ss.65 and 82 of 1966 Act and, therefore, within competence of market-committee.

Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.65 and S.82. (Para 96)

(X) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.2(2) - AGRICULTURAL PRODUCE - Agricultural produce - Meaning of - Jaggery is 'agricultural produce' within definition.

AIR 1962 SC 97, Foll. (Para. 101)

(Y) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.148, Bye-laws under, Bye-laws made by Bellary Market-committee, Bye-law 22(14) and S.63(2), S.148, S.131 - AGRICULTURAL PRODUCE - Validity - Market committee is not empowered to delimit number of functionaries who may work as assistants under traders etc., S.148 or S.131 does not confer such power - Bye-law 22(14) is invalid. (Para 105)

(Z) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.148, Bye-laws under, Bye-laws made by Bellary Market Committee, Bye-law 23(11)(b) (i), S.2(37) and Pre. - AGRICULTURAL PRODUCE - Validity - Act does not empower market-committee to restrict purchases made by retailers - Bye-law is invalid.

There is no provision in the Act which creates power in the market committee to restrict the purchase made by the retailer. (Para 106)

Section 2 (37) which defines 'retail sale' empowers the market committee to specify the quantity which could be sold at a retail sale to a consumer for domestic consumption. But neither the definition nor any other provision in the Act precludes a retailer from purchasing as much of agricultural produce as he desires to purchase subject, however, to the provisions of Section 85 which enjoins the obtaining of a licence of the appropriate classification. So bye-law 22 (11) (b) (i) of the Bellary Agricultural Produce Marketing Committee is invalid. (Para 107)

(Za) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.148, Bye-laws under, Bye-laws made by Bellary Market Committee, Bye-law 35 and S.49(2) - AGRICULTURAL PRODUCE - Validity - Power to regulate proceedings of market-committee clearly emanates from S.49(2) - Bye-law 35 is valid. (Para 108)

(Zb) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.148, Bye-laws under, Bye-laws made by Mysore Market Committee, Bye-law 23(10)(b)(ii) and S.85(1)(iv) - AGRICULTURAL PRODUCE - Validity - S.85(1)(iv) does not restrict turnover of trader to fifteen thousand rupees - Bye-law is invalid.

Bye-law 23 (10) (b) (ii) which says that the total quantity sold by a retail seller during the year shall not exceed fifteen thousand rupees is invalid. The Act does not confer any power on the market committee to impose that restriction upon the retailer. It is obvious that the market committee which made this bye-law has entirely misunderstood the provisions of Section 85 (1) (iv) which says that a trader whose purchase turnover of agricultural produce which he purchases for sale to consumers for domestic consumption exceed fifteen thousand rupees shall not be classified as a 'D' class trader. But that does not mean that the turnover of a trader could not exceed fifteen thousand rupees. All that it says is that if that happens, he gets into the higher class. Bye-law No. 23 (10) (b) (ii) must, therefore, be struck down.

(Zc) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.148, Bye-laws under, Bye-laws made by Mysore Market Committee, Bye-law 23(10)(b) (i) - AGRICULTURAL PRODUCE - Validity - It should be understood to prescribe upper limit - It does not prohibit retailer from making sales of larger quantities so long as he does not claim for that transaction status of retail sale - Bye-law is valid. (Paras 111, 112)

(Zd) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.148, Bye-laws under, Bye-laws made by Mysore Market Committee, Bye-law 23(15) and S.76 - AGRICULTURAL PRODUCE - Validity -

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Bye-law is authorised by S.76 - It is valid.

Bye-law 23 (15) does no more than to incorporate a condition which is usually to be found in all auction sales and the power to make this bye-law is to be found in Section 76 of the Act. This bye-law is, therefore, valid. (Para 113)

(Ze) Mysore Agricultural Produce Marketing (Regulation) Act (27 of 1966), S.148 - AGRICULTURAL PRODUCE - Bye-laws under Bye-laws made by Mysore Market Committee, Bye-laws 23(10)(1) and 23(2)(3) - Validity - Bye-laws are valid. (Para 114)

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(1959) AIR 1959 SC 300 (V 46) : (1959) Supp. (1) SCR 92, Arunachala Nadar v. State of Madras 65

Shri K. Srinivasan in W.P. Nos. 2471 and 2472/68; 3095 to 3098/68; Shri Kadidal Manjappa in W.P. Nos. 2212 and 3062/68; Shri M. Rama Jois in W.P. Nos. 1577, 1578, 1621 to 1626/68; Shri V. Krishna Murthy in W.P. No. 1863/68; Shri V.S. Gunjal in W.P. No. 1682/68; Shri V.K. Goindarajulu in W.P. No. 1728/68; Shri B.S. Keshava Iyengar in W.P. No. 1986/68; Shri H.B. Datar in W.P. Nos. 2087, 3022, 3812 to 3824, 4218, 4207, 4919, 3851, 3270/68; Shri T. Venkanna in W.P. Nos. 2700, 2970, 3032, 3120 to 3153/68; Shri S. Gundappa and Shri C.R.V. Swamy in W.P. Nos. 2828/68, 3501 to 3515/68; Shri G.R. Doreswamy and Shri Rangaswamy in W.P. No. 3173/68; Shri S. L. Benadikar in W.P. Nos. 4075, 4076/68; Shri S. Raghuramachar and Shri Vedavyasachar in W.P. No. 3827/68; Shri K. Jagannath Shetty in W.P. Nos. 3833, 3834, 4208, 4209 and 4219/68; Shri Manohar Rao Jagirdar in W.P. No. 4214/68; Shri K.R. Subbannachar in W.P. No. 3325/68; Shri S.G. Bhat in W.P. Nos. 2715 to 2717/68, for Petitioners.

Shri V.S. Malimath, Advocate Genedal for Respondents 2 and 3 in W.P. Nos. 2471 and 2472/68; for Respondent 1 in W.P. Nos. 2212 and 3062/68; 1577, 1578, 1621 to 1626, 1986, 2087, 3022, 3024, 3812 to 3824/68, 3175, 4075, 4076, 3827, 3501 to 3515, 3833, 3834, 4208, 4209, 4219, 4214, 4218, 4207, 4919, 3851, 3270, 2715 to 2717/68; for Respondents Nos. 1 and 2 in W.P. Nos. 1682/68; 1728, 2828, 3501 to 3515, 3325; for Respondents Nos. 1 and 3 in W.P. Nos. 1563/68, 2700, 2970, 3032, 3120 to 3153/68; for Respondents Nos. 2 and 3 in W.P. Nos. 3095 to 3098/68; Shri K.S. Puttaswamy for Respondent No. 1 in W.P. Nos. 2471 and 2472/68 and for Respondent No. 2 in W.P. No. 1986/68; Shri B.G. Sridharan for Respondent No. 2 in W.P. No. 2212/68; for Respondent No. 3 in W.P. No. 2828/68; for Respondent No. 2 in W.P. No. 3022/68; for Respondent No. 2 in W.P. 3173/68; Shri M.R. Achar for Respondent No. 2 in W.P. No. 3062/68; for Respondent No. 2 in W.P. No. 2700, 2970, 3032, 3120 to 3153/68; 3024/68; 3270, 3325/68; Shri T.S. Ramachandra for Respondent No. 2 in W.P. Nos. 1577, 1578, 1623 to 1625/68; Shri H.B. Datar for Respondent No. 2 in W.P. Nos. 1621, 1622 and 1625/68; Shri B.V. Krishnaswamy Rao for Respondent No. 2 in W.P. Nos. 1626/68, 1563/68; Shri B.K. Ramachandra Rao for Respondent No. 3 in W.P. No. 1728/68; for Respondent No. 2 in W.P. No. 3827/68; for Respondent No. 3 in W.P. Nos. 3501 to 3515/68; for Respondent No. 2 in W.P. Nos. 3833, 3834, 4208, 4209, 4219/68; for Respondent No. 1 in W.P. Nos. 3095 to 3098/68; Shri K.A. Swamy for Respondent No. 2 in W.P. No. 2087/68; Shri Murlidhar Rao for Respondent No. 2 in W.P. Nos. 3812 to 3824/68, 4214/68, 4218, 4207, 4919, 3851/68; Shri N.A. Mandgi for Respondent No. 2 in W.P. Nos. 4075, 4076/68; Shri S.G. Bhat for Respondent No. 2 in W.P. Nos. 3095 to 3098/68; Shri K. Jagannath Shetty for Respondent No. 2 in W.P. Nos. 2715 to 2717/68, for Respondents.

Judgement

SOMNATH IYER, J. :- In these writ petitions, many common questions of law arise for decision. Those questions pertain either to the constitutionality or to the interpretation of the provisions of the Mysore Agricultural Produce Marketing (Regulation) Act, 1966 which came into force on May 1, 1968.

2. In the new State of Mysore which came into being under the provisions of the States Reorganisation Act on November 1, 1956, there were six laws operating with respect to the regulation of the marketing of Agricultural produce either on one species or of the other. They were: The Madras Commercial Crops Markets Act, 1933 (Madras Act XX of 1933) as in force in Bellary District; the Madras Commercial Crops Markets Act, 1933 (Madras Act XX of 1933) as in force in the district of South Kanara and the taluk of Kollegal; the Bombay Agricultural Produce Markets Act, 1939 (Bombay Act XXII of 1939) as in force in the districts of Dharwar,

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Belgaum, Bijapur and North Kanara which were originally in the State of Bombay and which became part of the new State of Mysore; the Hyderabad Agricultural Market Act, 1339-F (Hyderabad Act II of 1339 Fasli) which was in force in the districts of Bidar, Gulbarga and Raichur; the Mysore Agricultural Produce Markets Act, 1939 (Mysore Act XVI of 1939) which was in force in the area of what is generally known as the former State of Mysore; and, the Coorg Agricultural Produce Markets Act, 1956 (Coorg Act VII of 1956) which was in force in the district of Coorg.

3. The Mysore Agricultural Produce Marketing (Regulation) Act, 1966, which will be referred to in the course of this judgment as the new Act, repealed all the six laws which were operating variously in the different areas to which we have already referred.

4. In these writ petitions, the constitutionality of quite a few provisions in the new Act is questioned. Those provisions are: Sections 2(1)(iii), 10, 11, 16(1) (a), 41, 65, 66, 67, 72, 75, 76, 78, 85 and 86. Among the rules made under the new Act in the exercise of the rule making power created by Section 146 of that Act, the only rule, the constitutionality of which was assailed, in the argument is Rule 76(1). In some cases, the validity of all the bye-laws made by some of the market committees was questioned, and in other cases, only some of the bye-laws made by those committees. It is not necessary to make an enumeration of those bye-laws in this part of the judgment since, to the arguments concerning those bye-laws we shall advert at the appropriate stage. In addition, the argument was maintained that quite apart from the constitutionality of Section 65 which authorises the levy of market fee by the market committee, the market committees could not, in the case of the petitioners before us, demand any market fee which could be imposed under the new Act since the stage at which such market fee could be demanded had not come into being under the provisions of the new Act.

5. Before proceeding to discuss the constitutionality of the various provisions to which we have referred or the validity or otherwise of the bye-laws and Rule 76(1), it would be convenient to discuss the argument maintained before us that none of the market committees which are parties to these writ petitions could demand from the petitioners before us any market fee under the new Act. It is indisputable that if the market fee authorised by Section 65 of the new Act cannot be demanded, what could be demanded is the market fee payable under the repealed enactment since, the operation to that extent of the repealed enactments is preserved by Section 154 of the new Act which is the saving section.

6. The main ground on which it was contended before us that no market fee under the new Act could be demanded was that the condition precedent to the demand of that market fee, the existence of which is made indispensable by Sections 3, 4 and 6, does not exist in the cases before us although a contention was raised to the contrary by some of the Advocates before us. Those sections read:

"3. Notification of intention of regulating the marketing of specified agricultural produce in specified area:

(1) The State Government may, by notification declare its intention of regulating the marketing of such agricultural produce in such area, as may be specified in the notification. The notification may also be published in Kannada in a newspaper circulating in such area.

(2) The notification shall state that any objections or suggestions which may be received by the State Government within such period as shall be specified in the notification, not being less than thirty days will be considered by the State Government.

4. Declaration of market area and of regulation of marketing of specified agricultural produce therein:

After the expiry of the period specified in the notification issued under Section 3, and after considering such objections and suggestions as may be received before such expiry, the State Government may, by another notification, declare the area specified in the notification issued under Section 3 or any portion thereof to be a market area and that the marketing of all or any of the kinds of agricultural produce specified in the notification issued under Section 3 shall be regulated under this Act in such market area. A notification under this section may also be published in Kannada in a newspaper circulating in such area.

6. Markets, market yards, market sub-yards, sub-markets, and sub-market yards:

(1) (a) For every market area:-

(i) there shall be a market and

(ii) there may be one or more sub-markets;

(b) For every market:-

(i) there shall be a market yard, and

(ii) there may be one or more market sub-yards.

(c) For every sub-market there shall be a sub-market yard.

(2) (a) The Chief Marketing Officer shall, as soon as possible after the issue of a notification

under Section 4, by a notification, declare any specified area in the market area to be a

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market. He may also by the same notification or by any subsequent notification declare any other specified area in the market area to be a sub-market.

(b) The Chief Marketing Officer shall by a notification under clause (a) also declare a specified place (including any structure, enclosure, open place or locality) in the market to be a market yard for the regulated marketing of the notified agricultural produce specified in the notification. He may also by the same notification or by any subsequent notification or notifications declare any other specified area or areas, as the case may be, (including any structures, enclosures, open place or locality) in the market to be a market sub-yard or sub-yards for the regulated marketing of the notified agricultural produce specified in the notification."

Section 65 reads:

"65. Levy of market fees

(1) The market committee shall levy and collect market fees from the buyer in respect of agricultural produce brought by,- (i) any trader or other person in the yard; and (ii) any trader outside the market or sub-market in the market area.

At such rate as may be specified in the bye-laws (which shall not be more than thirty paise per one hundred rupees of the price of the agricultural produce) in such manner and at such times as may be specified in the bye-laws.

(2) For purposes of sub-section (1), all notified agricultural produce leaving a yard shall, unless the contrary is proved, be presumed to have been brought within such yard by the person in possession of such produce."

The scheme of these four sections which we have set out makes it clear that before it could be said that the market committee could levy or collect the market fee under the 65th Section, there should at least be a market area, a market and a market-yard. Among these areas, the market area is the biggest, the market is the next biggest and the market-yard is the smallest. Section 6 makes it clear that for every market area, there shall be a market, and that, for every market, there shall be a market-yard. So, that for the purpose of Section 65, there should be a market area, a market and a market-yard whether or not there are sub-markets or market sub-yards or sub-market yards, is plain, and, that that is so was not disputed by Mr. Advocate General appearing for the State and by the Advocates appearing for the fifteen marketing committees which are before us. In the pleadings before us, no one disputes that there is no market area or the market. The limited ground on which an argument is constructed that no market fee could be demanded under Section 65 is that there was and has been no market-yard such as the one to which Section 6 refers. This is the state in which we find the pleadings in the cases before us although at one stage during the argument of Mr. Srinivasan appearing for the petitioners in Writ Petition Nos. 2471/68 and 2472/68 did make an endeavour to raise a contention that there was no valid notification under which any market was established under the provisions of the repealed Mysore Act. But, it was pointed out to him that he was precluded by raising any such contention since there was an admission in the affidavits produced along with the writ petitions that the markets such as what had to be established under the repealed Mysore Act had been established.

7. The importance of the absence of an allegation or a plea that there was no market area or a market under the repealed enactments consists of the fact that if the provisions of proviso (a) to Section 154(1) of the new Act are applicable, the establishment of a market area and a market or even a market yard, as the case may be, which came into being under the repealed enactments should be deemed to be the market area, market and market yard which may be established or declared or notified under the new Act. They could be so deemed to have been established only if the legal fiction which is created by that proviso is not inconsistent with the provisions of the new Act.

8. We should mention here that it is not controverted that the repealed Hyderabad Act, the Bombay Act and the Mysore Act did contain provisions for the establishment of areas corresponding to the market area, the market and the market-yards to which Section 6 of the new Act refers. It is equally clear that the repealed Madras Act contained provisions for the establishment of areas corresponding to the market area and the market of the new Act although it contained no provisions for the establishment of a market-yard such as the one to which the new Act refers.

9. The notified area of which Ss. 3 and 4 of the repealed Madras Act speak corresponds to the market area of the new Act, and, the market to which Section 4-A (2) refers corresponds to the market of the new Act. Similarly, the market of which Section 3 of the Hyderabad Act speaks is the market are a of the new Act, and, the rules made under that Act contain provisions for the establishment

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of the areas corresponding to the market and the market-yard of the new Act; Rule 2(c) referred to the market to which Section 3 of that Act referred which is the same as the market area of the new Act; Rule 2(d) authorised market-yards for the sale and purchase of cotton, and, Rule 2(e) for the sale and purchase of grain; and Rule 2(f) authorised the establishment of a market proper which corresponds to the market of the new Act.

10. There were similar provisions in the repealed Bombay Act as it stood at the relevant point of time and they are Sections 4 and 4-A. It is undisputed that the market area to which Section 4 refers is the market area of the new Act, and that, the market and the market-yard to which Section 4-A refers correspond respectively market and the market-yard of the new Act.

11. The corresponding provision in the repealed Mysore Act is Section 4. The notified area to which the definition in Section 3(d) refers is, it is undisputed, what corresponds to the market area of the new Act, and that the notified area is what had to be notified by a notification under Section 4(2) of that Act Section 4(1) also refers to a market the limits of which had to be defined under sub-section (2), and, again it is clear that the market to which those parts of S. 4 refer is what corresponds to the market of the new Act.

12. We do not accept the argument advanced by Mr. Srinivasan that the market to which Section 4(1) of the repealed Mysore Act refers, is the same as the notified area to which sub-sec. (2) refers and the reasons why we say so are firstly that the market and the notified area are defined separately by Section 3. Clause (b) of Section 3 says that a market means a market established under Sec. 4 and clause (d) which defines the notified area reads:

"(d) "Notified area" means an area notified under Section 4."

Section 4 reads:

"4(1) The State Government may, after consulting the district board and such other local authorities as they deem necessary or upon a representation made by such local authorities, by notification in the official gazette, declare that any place shall be a market established under this Act for any agricultural produce.

(2) Every such notification shall define the limits of the markets so established, and may, for the purposes of this Act, include within such limits such local area as the State Government may prescribe."

One thing which is clear from Section 4 is that market is a place within well-defined boundaries which have to be set out in the notification under sub-sec. (2). Similarly, a notified area is another place which is distinct from the area which constitutes the market, and so, the argument that the 'market' and the notified area' have reference to the same area, cannot be sound. If they are two different areas, one should be the area which corresponds to the market area of the new Act and the other is obviously what corresponds to the area of the market of that Act and so, the question arises whether the notified area is the market area, or, the market to which Section 4(1) refers is the market, and, since Mr. Srinivasan does not dispute that the notified area is the market area, the market must necessarily be the market of the new Act. That we can reach that conclusion by that process is what resolves a complication created by the somewhat inartistic language in which sub-section (2) of Section 4 of the repealed Mysore Act is worded. If that sub-section is literally understood, it may prima facie mean that the market is the bigger area and that the notified area is the smaller area, especially for the reason that that subsection says that the notified area "may include" within the limits of the market area.

13. It is, however, not necessary for us to discuss the import of the word "include" occurring in sub-section (2) of Section 4 of the repealed Mysore Act since both Mr. Advocate General and Mr. Srinivasan asked us to say that the notified area is the market area. That they are right in making that submission is clear from paragraph 2 to Section 5 of the repealed Mysore Act which says that the provisions of the Act and the other statutory provisions which will be made under it shall be applied by the market committee in the notified area, and the clear meaning of that paragraph is that the notified area is the bigger area and that the market is the smaller area, else, neither the Act nor the bye-laws and the rules would operate in the market and a construction resulting in such consequence cannot be sound.

14. But, considerable argument was expended over the question whether the Mysore Act contains a provision for the establishment of a market-yard. Mr. Srinivasan pointed out to us that the expression "market-yard" did not occur in any part of the Act and that it occurred for the first time only in Rule 4 and his submission was that Rule 4 of the rules made under the repealed Mysore Act was beyond the competence of the State Government which under Section 6 of that Act was the repository of the power to make rules for purposes set out in that Section. Rule 4 as it stood amended defined a market-yard as an area which was part of the market declared

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by notification under Section 4. And, it was maintained by Mr. Srinivasan that Section 6 did not authorise the rule by which a market yard could thus be brought into being.

15. But, it seems to us that although the Act did not speak in clear language about a market-yard, the clear intendment of the Act was that there should be one. Section 17 of the Act contained a provision that there should be no private market inside the limits of a declared market or within such distance from the market as may be notified in official gazette, and the explanation to that Section which was in the nature of an exception to Section 17 stated that a person who sold his own agricultural produce "outside the premises" set apart by the Market Committee for purposes of purchase and sale of agricultural produce shall not be deemed to establish a private market in contravention of the provisions of Section 17. It is abundantly clear that the premises set apart by the market committee "for purposes of purchase and sale of agricultural produce" to which that explanation refers is no other than the premises which can be declared as a market yard.

16. Section 6 authorises Government to make rules for purposes of management and regulation of markets under the Act and Sections 5, 6 and 7 contain provisions for the management of the market, the issue of licences to many classes of persons including warehousemen and the specification of place at which the agricultural produce shall be weighed and measured and the like. Since the functioning of a market committee under the provisions of the repealed Mysore Act for purposes set out in that Act could not be performed satisfactorily or in accordance with the purposes of the scheme and the Act unless there was a market-yard in which the market committee could make available facilities such as godowns, warehouses, canteens and the like, it is not possible for Mr. Srinivasan to ask us to say that the constitution of a market-yard to which Rule 4 refers was not authorised by the Act and that therefore we should denounce that rule as one made without competence.

17. It will be seen from the discussion so far made that except under the repealed Madras Act which provided only for the establishment of areas corresponding to the market area and the market of the new Act, the remaining four laws contained provisions under which, areas which correspond to the market area, the market and the market-yard of the new Act could be established.

18. It will be recalled that in the affidavits produced in these writ petitions, there is no pleading that areas corresponding to the market area and the market had not been established under the repealed enactments. The only controversy which the pleadings before us raise is one which pertains to the question whether market yards had also been established under the repealed enactments. So, the two questions which we should proceed to consider are firstly whether the areas established under the repealed enactments which correspond to the market area and the market of the new Act, could, under the proviso (a) to Section 154(1) of the new Act, be deemed to have been established under the corresponding provisions of the new Act, and secondly whether market-yards had also been established under any of the repealed enactments and whether those market yards could also be regarded as market yards established under the new Act.

19. We are of the opinion that the market areas and the markets established under the repealed enactments, although they were called by different names by those enactments, should be deemed to be market areas and the markets established under the new Act. Such, in our opinion, is the clear effect of clause (a) of the proviso to Section 154(1) of the new Act.

20. We do not accede to the argument that there is any element of inconsistency in the provisions of the new Act which can preclude the conclusion which we have reached. The only submission made to us in support of the argument that an element of inconsistency existed was that while the market of the new Act could be declared only by the Chief Marketing Officer under Section 6 of that Act, the market under the repealed Madras Act could be established only by the marketing committee, and under the other repealed laws, only under a notification by the State Government, and that, that is the inconsistent feature of the new Act which does not save the old markets.

21. We can say that the provisions of the new Act are inconsistent with the legal fiction which is enjoined by clause (a) only if we find it possible to say that what was done under the old Act was not possible under the new Act by reason of the provisions of the one being inconsistent with the provisions of the other. But, if on the contrary a notification which could be made under the new Act declaring an area to be a market could also be made under the repealed enactments whoever may be the repository of the power to make that notification, and mere fact that the two designated authorities who could make the notifications are not identical, does not introduce the element of inconsistency. The element of inconsistency would exist only if there are provisions in the new Act which

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make the notification similar to a notification under the repealed enactment impossible under its provisions. But, if on the contrary the notification under the repealed enactments whoever could make it, is also possible under the new Act the provisions of Clause (a) become manifestly applicable there being no inconsistency such as the one to which it refers.

22. That being the true position, we should, in our opinion, say that the market areas and the markets which came into being under the repealed enactments should be deemed to have been declared under Sections 4 and 6 of the new Act respectively and that they are the market areas and the markets for the purposes of the new Act.

23. But, the market committees functioning under the new Act could demand the market fee to which Section 65 refers only if in addition to the market area and the market there was also a market-yard the establishment of which is made imperative by Sec. 6 of the new Act. The fee which could be imposed and collected under that Section is a fee for services rendered by the market committee to the person from whom it could be claimed, and that that is so is also the case of the State Government and the market committees which are before us. It is also not controverted that the services in respect of which that fee could be demanded are rendered not only in the market area and the market but also in the market yard although for the petitioners the contention is that no service is rendered in the area outside the market.

24. However that may be, the imposition or recovery of a fee under Section 65 must be preceded by the bringing into existence of a market yard in which some of the services to which the Act refers have to be rendered by the market committee. If, therefore, there was no market-yard in existence when the market committees demanded the fee, the liability to pay which is repudiated by the petitioners before us, it is obvious that the fee was not exigible.

25. Mr. Advocate General and the Advocates appearing for the market committees did not controvert the correctness of this position. So, it becomes material to enquire whether market-yards were also in existence at the relevant point of time. They would be in existence if they had been created or established under the repealed enactments, for, in that event, they should be deemed to be market-yards established under the new Act as provided by S. 154.

26. But, it is admitted by the Advocate General on behalf of the State and by the Advocates appearing for the market committees before us that among the areas with which we are concerned, market-yards had been established under the repealed enactments only in eight areas which were under the control of the agricultural market committees of Nippani in the district of Belgaum, the city of Mysore in the district of Mysore, Kumta and Sirsi in the district of North Kanara, Yadgir in the district of Raichur and Raichur and Dharwar. It is also admitted that by the decision rendered by this Court in Nagaiah Shetty v. Market Committee, (1965) 1 Mys LJ 766 the notification by which a market yard was established in Raichur was struck down and that the notification relating to Yadgir was similarly declared invalid in Bindraj Surajmal v. State of Mysore, (1968) 2 Mys LJ 57. It is also not disputed that in writ petitions Nos. 634 and 635 of 1965, this court made the pronouncement that the market-yard in Belgaum had not been properly established. The validity of the notification relating to the market-yard in Nippani is under impeachment in this court in writ petition No. 699 of 1966 and also in a second appeal. The resultant position, therefore, is that when the new Act came into force, there were no market-yards in Raichur, Yadgir and Belgaum since the notifications under which they were established were declared invalid. The question whether there was a market-yard in Nippani would depend upon the pronouncement of this Court in the writ petition and in the second appeal to which we have referred.

27. So, the market-yards which were established in the city of Mysore, in Kumta, Dharwar and Sirsi must be deemed to be market-yards established under the provisions of the new Act, and so, the challenge made with respect to the market fee demanded in these four areas cannot succeed on the ground that there was no market yard in those areas such as the one to which Section 6 of the new Act refers.

28. It is stated before us by Mr. Advocate General who has produced before us the relevant notifications that in the areas in which there were no market-yards under the repealed enactments, market-yards have been since established during the pendency of these writ petitions under Section 6 of the new Act on December 7, 1968 except in the area of Hospet in which the relevant notification is dated December 16/19, 1968. So, in those cases in which there were no market yards under the repealed enactments the market fee could be demanded only from the date on which it became due after the establishment of the market yards, and not for any antecedent period under the new Act. The market fee which could be demanded with respect to those areas

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is the market fee which was exigible under the old Act the operation of which with respect to that matter was saved by clause (a) of the proviso to Section 154 (1) of the new Act. That proviso says that the fee levied under the old Act must be deemed to be the fee levied under the new Act unless and until superseded by anything done under the new Act and unless it is inconsistent with the provisions of the new Act. So unless the market fee under the old Act is superseded by the imposition of a market fee or by anything done under the new Act, that fee could be recovered only if its exigibility is not inconsistent with the provisions of the new Act, and, on the question whether there is any inconsistency such as the one to which clause (a) of the proviso refers, we abstain from making any pronouncement in these cases. The areas in which that situation obtains are: (a) the whole of the Bellary district, (b) the areas under the control of the Marketing Committee of Raichur and Yadgir, (c) the areas under the control of the Marketing Committee of Belgaum, and (d) the areas under the control of the Marketing Committees in Shimoga, Sagar, Bangalore, Nanjangud, Mulbagal and Madhugiri.

29. But, with respect to the areas under the control of the Marketing Committees of the City of Mysore, Kumta, Dharwar and Sirsi, the demand for the payment of the market fee cannot fail on the unavailable ground that no market-yards had been established in those areas under the repealed enactments. Since with respect to those areas, the only argument presented before us is that there were no market yards in those areas and there is no challenge to the bye-laws made by the concerned market committees under which the imposition of market fee was made and there is no prayer that we should quash those bye-laws, the challenge to the impugned demand in those areas must be negatived.

30. With respect to Nippani, the question whether the market-yard was or was not established under the repealed Bombay laws is for adjudication in Writ Petition No. 699 of 1966. So, the question whether the market fee under the new Act can be demanded in that area by the market committee has to be decided in that case and we say nothing about it in these writ petitions.

31. Our conclusion that the market fee under the new Act cannot be recovered in the areas in which no market yards have been established under the repealed enactments is restricted only to the period antecedent to the date on which after the establishment of market-yards in those areas under the new Act on December 7, 1968, and in the case of Hospet on December 16/19, 1968, the new market fee becomes properly exigible.

32. We are asked by the petitioners who carry on trading operations in those areas to say that on the question whether the notifications by which market-yards are established under the new Act are not in accordance with law, liberty should be reserved for them to agitate that matter if they so desire since those notifications were made during the pendency of these writ petitions. On the validity of these notifications, we say nothing in these writ petitions since that question was not and could not be discussed in the matters before us.

33. The discussion so far made takes us to the consideration of the question whether the provisions in the new Act such as those to which we have referred and the bye-laws and the rules made under them could be declared to be either unconstitutional or invalid. It would be convenient, in the context of the discussion already made, to investigate, in the first instance, the sustainability of the argument with respect to Section 65 of the new Act which we have already extracted. The argument constructed on the language of this Section was that although under the provisions of the Act the market committee is under a duty to render service both to the buyer and to the producer as also to the commission agent, the imposition of liability to pay the fee on the byer to the exclusion of the other two categories of persons to whom services are rendered is unsustainable and invites the reproach that it makes a hostile discrimination against the buyer. It is common ground that the fee of which this Section speaks is a fee for services rendered by the market committee, and it is obvious that a fee could be demanded by the market committee only if it rendered those services between which and the fee there is necessary correlation. The argument which was advanced at one stage by Mr. Srinivasan was that the fee to which Section 65 refers is not really a fee but a tax which could be recovered again and again on the occasion of each sale inside the yard and outside the market. The postulate placed before us was that an impost which could be recovered on a plurality of occasions with respect to the same agricultural produce in that way cannot conform to the description of a fee but can only be a tax. On the question whether Section 65 authorises the recovery of a fee at a plurality of points with respect to the same agricultural produce, the Advocates appearing for the market Committees are not themselves in agreement although Mr. Advocate General appearing for the State asks us to place the interpretation that the fee could be recovered again and again on

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the occasion of each sale. Considerable argument was expended on both sides over the question as to whether any service was rendered to the successive purchasers either inside the yard or outside the market such as would enable the Market Committee to make successive claims for the payment of the fee. But, the question whether Section 65 does authorise a fee at more than one point should depend on the construction which we should place on its language having regard to the scheme and the purpose of the Act.

34. When we proceed to understand the provisions of that section in that way, it would be observed that that section does not authorise the recovery of a fee from every buyer in the areas to which it refers but empowers the levy of the fee and its collection "from the buyer in respect of agricultural produce". Although at one stage an argument was constructed in support of the plurality of the impost on the words "at such times as may be specified in the bye-laws" with which sub-section (1) of this section concludes, it is clear that those words do not authorise a plurality of the levy but only speak, as rightly submitted by Mr. Advocate General, of the intervals or the points of time at which the fee which is properly recoverable could be collected. We have no doubt in our mind that those words speak of the collection at the point of time at which these collections could be made. Under that part of the sub-section, the market committee has no more power than to state at what intervals or at what points of time the fee which is properly recoverable could be collected.

35. On a careful consideration of the matter we lean to the conclusion that the purchase in respect of which the fee could be levied or collected is the earliest purchase of the agricultural produce belonging to the producer. It will be seen from the provisions of the Act that the producer who brings his agricultural produce into the market could sell it only inside the yard and it is this sale which he must needs make inside the yard when he brings his produce inside the market. That, is the topic of the impost to which Section 65 refers. It would be unreasonable to place upon statutory provision like Section 65 which provides for the levy of a fee, the construction that every buyer who purchases agricultural produce either inside the yard or outside the market could be made liable to pay the fee, in the absence of words in that section which justify that construction. In the absence of express provision that the fee would be recovered again and again, we must lean to the construction that it could be recovered only once, and, if that construction is correct, it must necessarily follow that the occasion on which the fee could be collected is the occasion when there is a sale by the producer inside the yard or outside the market. The power to levy the fee gets exhausted when the agricultural produce has been sold by the producer to a trader or other person and when the fee has been levied on the purchase so made, there is no more power in the market committee to demand the fee repeatedly from each purchaser thereafter.

36. The language of Section 65 of the new Act is remarkably similar to the language of Section 11(1) of the repealed Madras Act and Sec. 11 of the repealed Bombay Act. Section 11 (1) of the Madras Act reads:

"11(1) The Market Committee shall subject to such rules as may be made in this behalf, levy fees on any commercial crop or produce brought and sold in the notified area at such rates as it may determine."

Section 11 of the Bombay Act reads:

"11. The market committee may subject to the provisions of rules subject to such maxima as may be prescribed levy fees on the agricultural produce brought and sold by licensees in the market area."

Neither the Madras Act nor the Bombay Act stated that the fee could be levied only on the first purchase and not on the purchases made from the purchaser who had already purchased the agricultural produce from the producer. But, it is admitted by Mr. Achar appearing for the market committee of the Bellary district and Messrs. Ramachandra Rao and Mandagi appearing for the market committees of the old Bombay area that under the Bombay and Madras Acts, the market committees were collecting the market fee only once when there was a sale of an agricultural produce by the grower to the trader or some other person, and that the subsequent transaction by the purchasers who made such purchases to others were not subject to any market fee. When there is, as we have already observed, striking resemblance of the language of Section 65 of the new Act and that of Section 11 (1) of the Madras Act and Section 11 of the Bombay Act in the sense that none of these three sections in express language authorises a plurality of the market fee with respect to the same agricultural produce and if in the administration of the Madras and Bombay Acts the corresponding provisions were understood to mean that the market fee could be recovered only once and the legislature employed similar phraseology in enacting Section 65, it would be reasonable for us to say that the legislative intent in enacting Section 65 of the new Act was

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to create an impost which was similar to the impost created by the relevant sections of the Madras and Bombay Acts.

37. The view that we take receives support from the decision of the Supreme Court in Krishna Coconut Co. v. E. G. C. and T. M. Committee, AIR 1967 SC 973 in which there was a discussion of the provisions of S. 11(1) of the repealed Madras Act. The pronouncement of the Supreme Court makes it clear that that section authorised the recovery of the market fee only when there was a sale of the agricultural produce by the producer and not when there were subsequent sales. In the context of that discussion Shelat, J., said this:

"The Legislature had thus principally the producer in mind who should have a proper market where he can bring his goods for sale and where he can secure a fair deal and fair price. The Act thus aims at transactions which such a producer would enter into with those who buy from him. The words "brought and sold" used in Section 11 (1) aim at those transactions whereunder a dealer buys from a producer who brings to the market his goods for sale." There is no reason why we should not understand the words of Section 65 in the same way in which they were explained by the Supreme Court since the purpose of the new Act is the same as the purpose of the Madras Act and there is a great similitude between the language of Section 11 (1) and that of Section 65. It would be unreasonable for us to make a departure from the enunciation made by the Supreme Court in that situation when we interpret Section 65 of the new Act. That enunciation receives further support from another part of the judgment of the Supreme Court in which Shelat, J., said:

"If the fee was levied on sales effected by the appellants with their customers its levy would not be valid under Section 11 (1) and would also be repugnant to Article 286 where goods were delivered outside the State."

38. The conclusion which emerges from this discussion is that under Section 65 the levy of the market fee is on the first sale by the producer inside the yard or outside the market as the case may be to a trader or any other person and that once the agricultural produce has been sold in that manner no market fee could be recovered from a buyer who buys the agricultural produce subsequently. This conclusion negatives the argument advanced on behalf of the petitioners and also maintained by Mr. Advocate General and on behalf of some of the market committees before us.

39. It will be recalled that the contention advanced for the petitioners that the market fee was recoverable under its provisions from every buyer who purchases the agricultural produce either in the yard or outside the market had for its purpose the denunciation of Section 65 on the ground that the impost is really a tax and not a fee. But no one disputes that if the fee is payable only once and on the first purchase such as the one to which we have referred, the character of the impost is that of a fee and not that of a tax. If the impost is a fee and the levy is on the first purchase of the agricultural produce, it is difficult to understand how it could be contended that Section 65 is for any reason unconstitutional. We do not accept the postulate that that section authorises a levy of a fee from the buyer for services rendered to the buyer and others in circumstances in which that fee is recoverable only from the persons to whom services are rendered.

40. It is not necessary for us to investigate the question whether in a given case where services are rendered to two groups of persons the fee could be recovered only from one group to the exclusion of the other. If Section 65 says that the market fee could be recovered from the buyer, it means that that fee which could be recovered from the buyer under its provisions is the fee properly recoverable from him haying regard to the measure of the services rendered by the market committee to him and the correlation between those services and the fee which he is called upon to pay.

41. We do not accept the interpretation which was suggested to us that Section 65 authorises the market committee to recover from the buyer a fee which can be recovered from someone else or that the market committee could under its provisions render services to someone else but recover the fee from the buyer even if it does not render services to him. The petitioners cannot ask us to suggest an interpretation which introduces into the levy an element of illegality although the language of the section does not so introduce it, and then ask us to quash the statutory provision on the ground that it authorises an illegality. It is only in a case in which the statutory provision empowers an illegal levy that we could strike it down. But if it does not, we should not by stretching and straining its language so interpret it that it bestows power to do something illegal and declare the provision to be invalid on that ground.

42. But it was contended that even so, the legislative power to make a legislation authorising the recovery of the market fee resided in Parliament and not in the Legislature of the State. Dependence was placed in support of this contention on entries 92-A and 96 of the Union List and we were asked to say

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that since in a case where an Inter-State sale takes place of agricultural produce, the imposition of a market fee with respect to such inter-State sale would relate to a topic in respect of taxes on the sale or purchase of goods in the case of inter-State trade or commerce within the meaning of entry 92-A of the Union List, a fee in respect of the matter which is within entry 92-A, as stated in entry 96, could be authorised by legislation made by Parliament and not by the State.

43. But the answer to this submission is that the pith and substance of the topic of the subject matter of the Mysore Agricultural Produce Marketing (Regulation) Act, 1966, is what falls within entries 26 and 28 of the State List. Entry 26 relates to trade and commerce within the State and entry 28 speaks of markets and fairs. It may be that a legislation made within the field of these legislative entries with respect to trade and commerce within the State and to markets and fairs may also provide for the imposition of a market fee. But if the legislation is otherwise within the field of entries 26 and 28, that part of the legislation which authorises the imposition of a fee with respect to sales made in the course of inter-State trade and commerce would only be incidental to the main legislation, and so within the competence of the State Legislature. And since entry 65 of the State List authorises a legislation in respect of fees in respect of all the matters in the State List, a fee with respect to matters set out in items 26 and 28 could be authorised by a legislation made by the State. The argument to the contrary does not receive any support from the decision of the Supreme Court in AIR 1967 SC 973 in which the restricted enunciation made was that the interpretation which was sought to be placed on Section 11 of the Madras Act that the market fee authorised could be recovered from every successive buyer if accepted would amount to a contravention of the provisions of Article 286 of the Constitution.

44. The last submission which could be noticed by us in the context of the present discussion is that there was an impermissible delegation by the Legislature of the power to fix the market fee recoverable under the Section since the Legislature had specified only the maximum fee that could be recovered. It is clear that there is no substance in this criticism since the delegation is not open to the reproach that it is a delegation of power with respect to any essential legislative function.

45. Before concluding this branch of the discussion, we should observe that we do not in the course of this judgment embark upon a discussion of the question whether, as contended for the petitioners any services are rendered by the market committee outside the area of the market and in the remaining area of the market area. That is a question which can properly arise for adjudication only in a proper case in which both parties produce the necessary materials in the context of a demand which is challenged.

46. We now proceed to discuss the other provisions in the new Act with respect to each of which the argument advanced was that it was unconstitutional and therefore invalid. It was submitted to us that the first provision which was so assailed was the definition in Section 2 (1) (iii) of the new Act which defines 'Agricultural Produce'. It was said that since this definition authorised the State Government by notification to declare a produce not enumerated in the definition as agricultural produce for the purposes of the new Act, there was unauthorised delegation of legislative power. It is clear that there is no substance in this argument since, as explained by the Supreme Court in Mohd. Hussain v. State of Bombay, AIR 1962 SC 97 such delegation is not beyond the bounds of permissive delegation.

47. The next fascicle of Sections is what comprises Sections 10, 11, 16 (1) (a) and 41. Section 10 which prescribes the composition of the first market committee states that seven members of the committee out of fifteen shall be agriculturists and that there shall be two traders and one commission agent and so on. It was said that excessive representation was made available to the agriculturists.

48. But, in our opinion, the argument overlooks the purpose of the new Act which is to protect the interests of the agriculturists against exploitation by a middleman and others, and it is indisputable that in any given area the strength of the agriculturists cannot but be commensurate with the proportion which Section 10 incorporates.

49. Section 11, it was said, contained an objectionable fourth proviso which says that if persons of the categories specified in any category of clauses (ii) to (vii) are not available, the committee shall consist only of persons of the category available. This proviso is similar to the first proviso to Section 10 (1) and it is difficult to understand how any one can quarrel with these provisos. If a member belonging to any particular category is unavailable, how any one could suggest that persons belonging to the available categories should not take their place, is not easy to comprehend. Section 16 (1) (a) speaks of a disqualification and says an agriculturist who is a partner or a Director of a firm or a body corporate, or a member of a joint family which does business as a trader, commission

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agent or broker, shall not be qualified to be a representative of the agriculturists. The purpose of this disqualification is to prevent the betrayal of the interests of agriculturists by a person who although he is himself an agriculturist has also an interest in the activity of the traders, commission agents or brokers. Moreover, a provision creating a disqualification to function on a statutory body like the market committee is fully within the competence of the Legislature and the restriction such as the one which Section 16 (1) (a) incorporates is in our opinion unexceptionable.

50. Section 41 which provides that every Chairman and Vice-Chairman of the market committee shall be an agriculturist, does not, in our opinion, invite any reproach since its purpose is that the two important offices of the market committee should be filled only by agriculturists the protection of whose interests is the primary and dominant purpose of the new Act.

51. The criticism levelled against Section 66 that it authorises the market committee to insist on the production of accounts and confers power of entry, inspection and seizure, appears to us to be groundless. The power exercisable under this Section is confined to an officer or a servant of the committee empowered by the State Government and the power to make a seizure or an entry could be exercised only when he has reason to suspect the evasion of the provisions of the Act.

52. Section 67 authorises an officer or servant of a market committee empowered in that behalf by the State Government to stop a vehicle or other conveyance and keep it stationary so that its contents could be examined.

53. The purpose of Sections 66 and 67 is the enforcement of the new Act and since the power is confided to a nominee of the State Government and the power could be exercised as the statutory provisions themselves indicate, only in a proper case, it cannot be said that there is entrustment of unguided and uncanalised power without the prescription of any standard.

54. Sections 72 and 75 are subject to some criticism in some of the affidavits of the writ petitions. But, no one presented any argument in support of that challenge, and so it is not necessary for us to discuss that matter.

55. The next Section to which we should advert is Section 76 which directs the sale of agricultural produce in one of the many manners specified in that Section. That Section states that the sale shall take the pattern of a tender system or a public auction or by open agreement or by sample or by reference to a known standard or in such other manner as may from time to time be directed by the market committee with the previous approval of the Chief Marketing Officer. It does not appear to us that the provision of this Section can be subjected to any reasonable criticism since the enforcement of the provisions of the new Act is possible only if the manner of the sale of agricultural produce is also regulated in manner provided by this Section. The sales by tender system or by public auction or by open agreement or by the other methods specified in that section are the methods by which the sales generally take place, and when they take place in that way the parties will have the opportunity to offer their bids freely and in that event the producer could always expect to secure for his agricultural produce a reasonable price. It is clear that the principal purpose of this section is to stop sales which are ordinarily described as under-cover sales so that a sale conducted in a clandestine and secret manner which operates to the prejudice of the agriculturists, is made impossible.

56. But it was said that while it may be possible for the legislature to control in that way a sale by a producer, it was unmeaning for the legislature to introduce a legislative provision for the regulation of sales thereafter at stages where the protection of the interests of the producer is no longer necessary or possible.

57. But since the purpose of the new Act is to regulate the sales of agricultural produce throughout the area over which the market committee exercises its control, the regulation of even subsequent sales is what can prevent circumvention or evasion of the provisions of the new Act so that sale which is really a sale between the producer and the buyer does not masquerade as a sale between a trader and a trader.

58. We now proceed to discuss Section 78 about which there was considerable debate during the argument. That Section prescribes the maximum commission payable to a commission agent and says that it shall be the duty of the commission agent to pay storage charges and insurance charges without adding those charges to the commission fixed by the market committee.

59. The argument advanced before us was that the prescription of a maxium one and a half per cent commission which, shall include the insurance and storage charges payable by the commission agent is an invasion of the fundamental right guaranteed by Article 19 of the Constitution to carry on a business, trade or profession as a commission agent and that the prescription of such a low commission as one and half per cent of the price with the liability to pay storage charges and insurance charges can have

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no other consequence than the elimination of the commission agent and the complete paralysation of his activity in the profession of a commission agent. It was submitted to us that the imposition of the condition that storage charges and insurance charges shall be payable by the commission agent is an unreasonable restriction not falling within Clause (6) of Article 19, and that the prescription of the maximum commission in that way overlooks the possibility of a commission agent in a given case, being fastened with the liability to pay excessive storage and insurance charges if he is to keep the goods entrusted to his custody by the producer for a longer time than the period during which another commission agent is constrained to keep them. Mr. Rama Jois appearing for one of the petitioners produced before us a statement of accounts in that context, and, according to him, a commission agent whose business turnover is of the magnitude of five lakhs would not get a commission exceeding Rs. 1,000 during the whole year.

60. But it should be remembered that the primary purpose of the new Act is to regulate the activity of the marketing of the agricultural produce in such a way that there should be no exploitation of the producer through the instrumentality of middlemen such as commission agents and others.

61. A commission agent is defined by Section 2(8) of the new Act which says that a commission agent is a person who on behalf of his principal and in consideration of a commission keeps the goods of his principal in his custody and sells the same making himself liable to the seller for their price. Those services which are rendered by a commission agent are the usual services rendered by one like him, and while the nature of the services rendered by a commission agent are of the same quality and have the attributes as those which used to be rendered quite a long time ago when the price of agricultural produce was exceedingly low, it is in the knowledge of every one that during recent times there has been a remarkable rise in the price of agricultural commodities and it is that phenomenon which now earns for a commission agent for the same services which he used to render when the market with respect to agricultural produce was in an extremely depressed condition, a correspondingly large commission which is attributable exclusively to the rapid and enormous increase in the price of agricultural produce. It is that condition of the market concerning agricultural produce which makes it possible for the commission agent to secure for himself a large commission than he could have hoped to get at antecedent periods of time, and we should hesitate to say that in that situation a commission of one and a half per cent which is what Section 78 fixes can be said to be unreasonable notwithstanding the fact that such commission includes storage and insurance charges.

62. No one has placed before us any material as to what those insurance and storage charges amount to, save in the affidavit produced on behalf of the State by Mr. Advocate General in which it is stated that the aggregate of the insurance and storage charges does not exceed 5 paise per cent of the price. If what is stated in that affidavit is accepted, it should follow that the percentage varies between 2 per cent and 5 per cent so that what remains for the commission agent which he can call his own varies between 1 per cent and 1.3 per cent.

63. But it is really not necessary to depend upon this material which is produced on behalf of the State since on behalf of the petitioners it was contended that the affidavit which incorporates all this information was produced only during the course of argument and at a late stage when the petitioners themselves had no opportunity to produce any material by way of rebuttal.

64. However that may be, the petitioners themselves have produced no materials which might have assisted the investigation of the question as to whether what remains in the hands of the commission agent after he pays the storage and insurance charges was so inconsiderable as to justify the view that the prescription of the commission by Section 78 is unreasonably low.

65. In AIR 1959 SC 300, Arunachala Nadar v. State of Madras the Supreme Court explained the purpose of the Madras Act in these words :-

"Shortly stated, the Act, Rules and the Bye-laws framed thereunder have a long term target of providing a net work of markets wherein facilities for correct weighment are ensured, storage accommodation is provided, and equal powers of bargaining ensured, so that the growers may bring their commercial crops to the market and sell them at reasonable prices. Till such markets are established, the said provisions, by imposing licensing restrictions, enable the buyers and sellers to meet in licensed premises, ensure correct weighment, make available to them reliable market information and provide for them a simple machinery for settlement of disputes. After the markets are built or opened by the marketing committees, within a reasonable radius from the market, as prescribed by the Rules, no licence is issued; thereafter all g rowers will have to resort to the market for vending their goods. The result of the

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implementation of the Act would be to eliminate, as far as possible, the middlemen and to give reasonable facilities for the growers of commercial crops to secure best prices for their commodities." (P. 305)

A similar enunciation was made in Narendra Kumar v. Union of India, AIR 1960 SC 430 in which the Supreme Court in the context of the question whether the provisions of the Essential Commodities Act imposed an unreasonable restriction observed :

"It must therefore, be held that clause 3 of the Order even though it results in the elimination of the dealer from the trade is a reasonable restriction in the interests of the general public." (P. 437)

66. When the provisions of Section 78 are judged by these standards by which we should assess the reasonableness of these provisions it appears to us that it is impervious to the criticism to which it was subjected.

67. The fact that one commission agent is constrained to keep the goods of his grower in his custody for a longer time than another, and that in consequence the storage and insurance charges in his case are higher, is what is attributable to fortuitous circumstances, and the statement of accounts on which Mr. Rama Jois depended can hardly be of any assistance to his contention since the argument advanced on its basis assumes that all the expenditure shown in that statement was made only over the commission agent's business to which it refers, and that the activity of a commission agent with respect to that turnover extended over the entire period of 12 months. It surely could not have been so. It is also obvious that the turnover relating to areca to which that statement refers although it was to the tune of five lakhs was in respect of a small quantity of areca measuring 600 quintals, and with respect to that transaction even if the commission earned by him was only Rs. 1,000 the petitioner in that case could make no reasonable complaint about it.

68. It was submitted that the imposition by Section 78 on the commission agent, of the liability to pay the value of the goods sold by him whether or not he recovered their price from the buyer, amounted to an unreasonable restriction.

69. We do not agree. Section 78 does no more than to constitute a commission agent a del credere agent, and that he is one is clear from the definition contained in Section 2 (8). It will also be seen from the provisions of Section 85 that the commission agent does not really incur any risk by being fastened with the attributes of a del credere agent.

70. We now go to Sections 85 and 86. Section 85 makes a classification of traders and they are made to fall within four categories. "A" class traders could purchase agricultural produce anywhere in the market area, while the 'B' class traders would do so only in the yard. The area in which the 'C' class traders could make their purchase is the area outside the market and in the market area, while the 'D' class traders are those who make purchases in the market area for a sale to consumers for domestic purposes. Sub-section (2) of Section 85 directs these traders to make deposits or to furnish security or bank guarantee in the various sums enumerated in that subsection, and this deposit or security is necessary only in the case of a trader who wishes to make a purchase on credit.

71. Mr. Srinivasan who did not contend that the classification made by Section 85 was a reasonable classification, made a restricted submission that the imperfection in the section was that it did not put the trader who purchased goods outside the yard but inside the market, into a distinct classification. It was also contended that the market committee rendered no services outside the yard, and that the imposition of a licence fee such as the one prescribed by Section 72 of the new Act is unsupportable.

72. We do not think that the classification made by Section 85 invites any acceptable criticism. It has made, in our opinion, a reasonable classification of the traders and the deposit of the security to which sub-section (2) refers rests also upon a similar classification. That apart of Section 85 (2) which says that a trader who wishes to purchase goods on Credit must deposit the sum of money referred to by it or furnish security as provided therein, is what, in our opinion protects the interests of the commission agent to whom Section 85 refers.

73. On the question as to whether any services are rendered to any of the traders to which Section 85 refers and particularly to the traders functioning outside the yard, it is not necessary for us to make any investigation in this case in which this question does not arise.

74. We do not think that anything can be said about Section 86 which merely provides that a person functioning as the commission agent shall furnish security or bank guarantee to the extent of Rupees 500. The insistence on such security, it is obvious, is reasonable since the commission agent is liable to pay the producer the value of the goods whether he recovers it from the buyer or not.

75. We see nothing objectionable in the provisions of Section 89 which confers power on the market committee to impose penalties for contravention of the statutory provisions especially since from

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the decision of the committee, an appeal could be preferred to the Chief Marketing Officer. On the question as to how Section 89 has to work in actual practice, we say nothing in this case.

76. What we have said so far pertains to the challenge made to the provisions of the new Act. In some of the writ petitions, there is a challenge to some of the other provisions of the new Act. But since no argument was presented with respect to that matter by any one, we negative the contentions pertaining to those matters.

77. The only rule the validity of which was assailed in the course of argument is R. 76 (1). That rule reads:

"No person shall operate in the market area as a trader or commission agent in notified agricultural produce except under and in accordance with a licence granted by the committee under this rule."

This rule is, in our opinion, clearly repugnant to proviso (ii) to Section 8 (1) (b). Clause (b) of Section 8 (1) says that no person shall use any place in the market area for the marketing of the notified agricultural produce, or operate in the market area or in any market therein as a trader, commission agent, broker, processer, weighman, warehouseman, or in any other capacity in relation to the marketing of the notified agricultural produce except under a licence granted by the market committee. To this prohibition which Cl. (b) incorporates, there is more than one exception, and the exception with which we are concerned is the exception created by proviso (ii) (b) to Section 8 (1) (b), and the effect of that sub-clause is that no licence is necessary in the case of a person who purchases agricultural produce in the market outside the yard, from a trader for retail sale. But R. 76 (1) forgets this exemption created in favour of a retail trader and enjoins even that retail trader to obtain a licence even in respect of his activity in respect of which an exemption is created. It was hardly necessary to make that rule since the licencing of the activity in the market area stands fully regulated by Section 8. So we strike down R. 76 (1) which is repugnant to the provisions of Section 8 and we declare it to be invalid to the extent of such repugnancy.

78. Before departing from this rule, we should notice an argument advanced by Mr. Raghuramachar in Writ Petition No. 3827 of 1968 in which the petitioner is a retail trader who complains that the concerned market committee has asked him to obtain a licence under Section 8 although he is not bound to take one. So the petitioner asks us to quash the direction by the market committee that he should take a licence in respect of the entire retail trade carried on by him. Mr. Raghuramachar asserts that the petitioner is only a retail trader who makes purchase from traders outside the yard and that he makes retail sales of the goods so purchased only to purchasers who require them for domestic consumption and that there is an unreasonable restriction on the part of the market committee that he should obtain a licence even for that activity.

79. The impugned direction by the market committee which does not bear any date calls upon the petitioner to take out a licence without the specification of the particular activity in respect of which such licence is necessary. So it becomes necessary for us to examine the question, whether the petitioner is or is not right in his contention that in respect of the activity which he says he is carrying on, a licence is not necessary.

80. Now sub-clause (b) of Cl. (ii) of the proviso to Section 8 (1) (b) makes it necessary for a trader to purchase agricultural produce in the market and outside the yard from a trader if he makes that purchase for retail sale. So, the clear meaning of the words "from a trader for retail sale" occurring in this sub-clause is that if he makes a purchase to which that sub-clause refers, no licence is necessary. And it is equally clear that even to make a retail sale of the goods so purchased, it is unnecessary for the retail trader to obtain a licence. We do not accept the argument advanced on behalf of the market committees which are before us that the exemption is created only in respect of the purchase and not in respect of the retail sales to which that sub-clause refers. The interpretation suggested would lead to the incongruity that a retail trader is under no obligation to take a licence to make purchases for retail sale, but a licence becomes necessary when, for the implementation of the purpose for which he makes a purchase, he makes a retail sale. We should understand the exemption in a reasonable way and should not read it in a manner which defeats its purpose. The words "for retail sale" reinforce the view that the retail sales to which the sub-clause refers could also be made without obtaining any licence such as the one to which Section 8 refers. So, if the petitioner is a person who makes a purchase of agricultural produce from a trader outside the yard but inside the market and makes retail sales of the produce so purchased, it is unnecessary for him to obtain a licence to make those retail sales. So we issue a direction that the market committee shall make a suitable modification of its direction.

81. We should now turn to the impugned bye-laws, and we restrict our discussion to the bye-laws about which an argument was presented before us. But before we do so, it would be necessary for us to notice an argument which was

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directed against the entire body of the bye-laws made by each market committee, after the new Act came into force. The argument that those bye-laws were wholly invalid was constructed on Sections 148 and 149 of the new Act. The stress of the argument was that even in the case of old market committees which acquired the power to function under proviso (c) to Section 154 (1) of the new Act, the preparation of the first bye-laws under Section 149 was obligatory and that the bye-laws made by these old market committees which were not preceded by the preparation of the first bye-laws under Section 149 were beyond their competence.

82. Section 148 says that a market committee by adherence to the procedure prescribed by it shall have the power to make bye-laws for the regulation of the business and the conditions of trading in the market area generally and with respect to the specific matters enumerated in sub-section (2). But Section 149 says that the first bye-laws on the establishment of a market shall be made by the Chief Marketing Officer in consultation with the Chairman of the first market committee after his nomination to that office. It further enjoins that those bye-laws shall take into consideration the local conditions. Sub-section (1) proceeds to state that those first bye-laws so made shall be deemed to be the bye-laws made by the market committee, until superseded or amended by bye-laws made under Section 148.

83. The argument maintained was that the impugned bye-laws were not preceded by the preparation of the first bye-laws to which Section 149 refers and that they have therefore, no efficacy.

84. But this argument overlooks the provisions of Section 10 and proviso (c) to Section 154 (1) of the new Act. Section 10 (1) prescribes the composition of the first market committee and states that first market committee shall consist of the various categories of persons nominated by Government. So, the words "the first market committee" occurring in Section 149 have reference to the first nominated market committee to which Section 10 refers, and the necessity for the preparation of the first bye-laws by the Chief Marketing Officer of the first market committee arises only when that first market committee comes into being by the process of nomination to which S. 10 refers.

85. A first market committee conforming to that description stands constituted in that way only if an old market committee does not have the authority or the power to continue to function as the market committee even under the new Act. But if under proviso (c) to Sec. 154 of the new Act it is the duty of the old market committee to 'exercise the powers conferred, perform the functions, and be subject to the liabilities imposed by the provisions' of the new Act and the rules made thereunder until market committees are constituted under the provisions of the new Act, the old market committee whose bye-laws are challenged before us became thus charged with the duty to exercise powers and perform functions under the new Act, And one of the powers that could be exercised and the functions that could be performed is the power to make a bye-law under Section 148.

86. It is of importance to observe in this context that Section 148 which bestows power to make bye-laws does not bestow it only on the second and subsequent market committees to which Section 11 refers. The repository of that power is the market committee which is defined by Section 2 (2) as a market committee constituted for a market area under the Act. If proviso (c) to Section 154 (1) says that an old market committee could exercise power and perform functions under the new Act, that market committee acquires the status of a market committee established under the new Act; if does not, it cannot exercise the powers created by the new Act or perform functions under it. That would be the true position notwithstanding the fact that unlike proviso (a) to Section 154 (1) which creates a legal fiction that certain things done under the old Act must be deemed to have been done under the new Act, proviso (c) to that sub-section only says that an old market committee shall exercise power and perform functions under the new Act, and so the old market committee acquires the power to make bye-laws under Section 148, although no first bye-laws have been made under Section 149. We do not accept the argument advanced by Mr. Jagannatha Setty that the words "and be subject to the liabilities imposed by the provisions of this Act" occurring in Cl. (c) of the proviso to Section 154 (1) can be understood as divesting the old market committee of the power to make bye-laws under Section 148 until first bye-laws are made under Section 149.

87. Any other view would lead to the anomalous position that the old bye-laws which did not fit into the provisions of the new Act could not operate after the new Act came into force, while the old market committee which is charged with the duty to perform functions under the new Act will have no machinery for such enforcement. It is precisely for overcoming a difficulty which the old market committee might encounter in that way until a new market Committee is established under the provisions of the new Act that proviso (c) to Section 154(1) of the new Act incorporates a provision that old market committees though constituted

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under the old Act shall perform functions and exercise powers under the new Act. The postulate that the old market committee can so function but that it would have no power to make bye-laws under Section 148 without which such functioning becomes impossible, cannot have the support of reason.

88. But it was however urged that even so, the displacement of the old market committees can happen only when a first market committee is nominated under Section 10. Mr. Advocate General in answer to this postulate which Mr. Srinivasan placed before us contended that the provisions of Section 10 are applicable only to a market area which was not in existence under the provisions of the repealed Act and which did not continue under the new Act and that a nominated market committee under its provisions was quite unnecessary in a case in which the old market area continued under the new Act and the old market committee commenced to function under its provisions.

89. We do not read Section 10 in that way. Section 154 is a purely transitional provision as its language clearly discloses. The old market committee is of the nature of a care-taker committee which can function only for a temporary period until a new market committee comes into being in accordance with the provisions of the new Act. The only process by which a new market committee can so come into being is by the observance of the procedure prescribed by Sections 10 and 11 and under their provisions, the first step to be taken for the establishment of a new market committee is to bring into existence a nominated market committee under Section 10 which Government could, in the exercise of the power conferred by it. And, when the first market committee so comes into being, it produces two consequences: it displaces the old market committee, and it becomes necessary for the Chief Marketing Officer of the first new market committee to make the first bye-laws under Section 149, and there can be supersession of those first bye-laws only when the second market committee comes into existence under Section 11 and makes bye-laws under Section 148.

90. The argument placed before us by Mr. Advocate General that in all cases where there is an old market committee the constitution of a first market committee under Section 10 is wholly unnecessary is, in our opinion, unacceptable. The new Act contemplates the establishment of a market committee in a particular way. It is of significance to observe that Section 11 speaks of a second and subsequent market committee. Although that is what the marginal note says, we should not altogether overlook the description which that marginal note gives, and what is clear from the language of Section 11 is that the elected market committee which comes into being under it is the second market committee and the first market committee which is its predecessor is no other than the nominated market committee to which Section 10 refers.

91. So what is clear is that the election of a market committee under Section 11 must necessarily be preceded by the composition of a nominated market committee under Section 10, and it is only by that process that an old market committee which continues to function under the proviso (c) to Section 154(1) can vacate office.

92. That such is the scheme of the new Act is destructive of the contention that the bye-laws made by the old market committees after the new Act came into force have no validity. In our opinion, the competence to make those bye-laws clearly flows from proviso (c) to Section 154(1) of the new Act although they perish when bye-laws are made by the first market committee under Sec. 149.

93. We now proceed to consider the validity of the bye-laws made by the three market committees whose bye-laws were challenged before us. They are the market committees of Bellary, Mysore and Yadgir. With respect to the Bangalore bye-laws, no one has presented any argument, and so we refrain from discussing the validity of any of those bye-laws.

94. The Bellary bye-laws whose validity is challenged are bye-laws 12(1) and (2), 23(11) (b) (i), 22 (14) and 35. Bye-law 12(1) enumerates the categories of agricultural produce in respect of which market fee is payable. There is a catalogue of 16 items in that bye-law, and Mr. Venkanna's argument was that there was no notification under the Madras Act which could be deemed to be a notification made under the new Act, declaring items 3 to 16 of bye-law 12(1) as commercial crops. It was urged that the only 2 items of commercial crops which were declared as commercial crops are items 1 and 2, namely, cotton and groundnuts, and that there was no power in the market committee of Bellary to introduce into the enumeration of agricultural produce under the new Act, items or species of commercial crops which had not been declared under the Madras Act to be such.

95. It is clear that until a notification is made under Section 3 of the new Act, the only agricultural produce the marketing of which could be regulated in the Bellary District under the new Act is the notified agricultural produce under Section 5 of the Madras Act and that notification should be deemed to be a

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notification under Section 3 of the new Act as stated by proviso (a) to S. 154(1) of the new Act. If the crop notified under Section 5 of the Madras Act, is agricultural produce as defined by the new Act, the fact that the notification under the Madras Act called it a commercial crop does not impede the operation of that proviso. We do not also accept the argument of Mr. Venkanna that items 3 to 16 were not declared as commercial crops under the Madras Act. It is seen from a notification made by the Government of the new State of Mysore under Section 4 of the Madras Act on August 19, 1959 that items 3 to 16 enumerated in bye-law 12 (1) had already been declared as commercial crops under the Madras Act, in addition to cotton and groundnuts which had been declared to be commercial crops even by the Government of the Madras State even before the Bellary District became part of the State of Mysore as early as on November 15, 1949.

96. This is not a case in which Mr. Venkanna can challenge the validity of bye-law 12(1) on the ground that the market committee exceeded its power in introducing into the enumeration, agricultural produce which had not been already declared as agricultural produce or its equivalent under the repealed Madras Act. Since the enumeration in bye-law 12(1) had already been made under the repealed Madras Act, that enumeration which should be deemed under Section 154 to be an enumeration made under the new Act is unexceptionable. Clause (2) of bye-law 12 which makes the duty of the commission agent to collect the market fees from the buyer before he delivers the goods to him, is clearly authorised by Sections 65 and 82 of the new Act and was therefore within the competence of the market committee.

97. Before considering the validity of the next bye-law, we should notice the argument that jaggery which is item 12 in bye-law 12(1) is not an agricultural produce and so could not have been included in the enumeration. The argument presented was that jaggery does not fall within the definition of agricultural produce which Section 2 of the new Act incorporates. The relevant portion of that definition which is an inclusive definition reads:

"agricultural produce" includes,-

(i) live-stock or poultry,

(ii) by the labour of any member of one's family, culture, animal husbandry, apiculture, horticulture, pisciculture, forest produce, and........."

98. It was contended that jaggery is an industrial product and not an agricultural product since what grows on the land on which agricultural operations are carried on is sugar-cane and that jaggery is the product manufactured by industrial processes which are carried on subsequently.

99. Now, jaggery was a notified commercial crop under the repealed Madras Act and the Notification by which it was so declared should be deemed to be a notification under the new Act unless it could be said that the notification under the Madras Act is inconsistent with the provisions of the new Act. That inconsistency could exist only if it could be said that although jaggery may be a commercial crop for the purposes of the repealed Madras Act, it is not agricultural produce as defined by Section 2 of the new Act.

100. The main ground on which it was submitted to us by Messrs. Venkanna and Rangaswamy that jaggery is not agricultural produce within the meaning of the definition was that jaggery is in all respects entirely different from sugar-cane, and when sugar-cane loses its identity when it is crushed in a mill and jaggery is produced out of the juice it exudes, it could no longer be said that jaggery which is produced in that way was agricultural produce which the land produced.

101. Now, sugar-cane, it is not disputed, is agricultural produce. Jaggery which is manufactured out of sugar-cane is stated in the dictionary as coarse brown sugar made out of sugar-cane. Although sugar which is contained in the sugar-cane is in the form of sugar-cane when the land grows it, what is really grown on the land is sugar in the form of sugar-cane and if that sugar is expelled from the cane and it becomes jaggery, it is far too unreasonable for any one to suggest that the agricultural produce grown on the land is something very much different from jaggery which is manufactured by that process. So, jaggery is, in our opinion, agricultural produce within the meaning of the definition of agricultural produce which the new Act incorporates. It not only falls within the main definition for the reason that sugar-cane is agricultural produce as it is ordinarily understood, both in the popular sense, as well as by men of business and in the commercial world, but also for the reason that the inclusive part of the definition says that all produce whether processed or not of agriculture, animal husbandry or horticulture is also agricultural produce. Even if sugar-cane can be understood as some cane which is grown on land, then, it will be a product of horticulture and if jaggery is the product of some kind of processing and jaggery which gets so manufactured by processing is a product of horticulture or agriculture, as the case may be, it is agricultural produce within the meaning of the definition in the new Act.

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102. So, if jaggery was called a commercial crop in the notification under the Madras Act, it means no more than that it is a crop which has a special value in the commercial world. It does not follow that it is not agricultural produce provided it conforms to the definition of agricultural produce which the new Act incorporates.

103. That that is so is clear from the enunciation made by the Supreme Court in AIR 1962 SC 97, which emphasised the similarity between the provisions of the Bombay Act and those of the Madras Act. And so, no argument could be constructed to the contrary on the fact that the crop the purchase and sale of which is regulated by the Madras Act is called a commercial crop.

104. So, if under the Madras Act jaggery became a notified commercial crop, and jaggery is agricultural produce within the meaning of the definition under the new Act, the notification under the Madras Act should be deemed to be a notification made under Section 3 of the new Act declaring the intention of the State Government to regulate the marketing of jaggery under the provisions of the new Act. It is by that process that jaggery which by its own attributes falls within the definition of agricultural produce which the new Act contains became notified agricultural produce for the purposes of the new Act.

105. We are of the opinion that bye-law 22(14) and bye-law 23(11)(b)(i) are not valid bye-laws. Bye-law 22(14) authorises the market committee to determine how many assistants shall work under the traders, commission agents and brokers. Although Mr. Achar appearing for the Bellary market committee asserted that Section 63(2)(iv) of the new Act authorised the market committee to make the determination to which bye-law 22(14) refers, it is clear that no such power is bestowed by the Act. Section 63(2) does no more than to empower the market committee to supervise the conduct of the market functionaries and not to delimit the number of functionaries who may work as assistants under a trader, commission agent or broker. So we declare that Bellary bye-law 22(14) to be invalid. There is nothing in Section 148 or 131 which creates that power either.

106. Bye-law 23 (11) (b) (i) is clearly repugnant to the provisions of the Act. It says that the quantity of agricultural produce purchased by a retailer shall not exceed three quintals for each transaction in respect of some categories and five quintals in respect of others. There is no provision in the Act which creates power in the market committee to restrict the purchase made by the retailer in that way.

107. Section 2 (37) which defines 'retail sale' empowers the market committee to specify the quantity which could be sold at a retail sale to a consumer for domestic consumption. But neither the definition nor any other provision in the Act precludes a retailer from purchasing as much of agricultural produce as he desires to purchase subject, however, to the provisions of Section 85 which enjoins the obtaining of a licence of the appropriate classification. So we strike down bye-law 22 (11) (b) (i) of the Bellary Agricultural Produce Marketing Committee, as invalid.

108. Bye-law 35 which prohibits the publication of the proceedings of the market committee, except with the authority of the market committee, is in our opinion quite a good bye-law, since the power to so regulate the proceedings clearly emanates from Section 49(2) of the Act.

109. Among the bye-laws made by the Mysore Agricultural Produce Market Committee, the challenge is to bye-laws 23(10)(b)(i) and (ii), 23(15), 23(20) (1) and 23(2) (3). We are of the opinion that the only bye-law which invokes the condemnation of invalidity is bye-law 23(10)(b) (ii). The others are, in our opinion, good bye-laws.

110. Bye-law 23 (10)(b)(ii) is similar to bye-law 23 (11) (b) (i) of the Bellary Market Committee. This bye-law says that the total quantity sold by a retail seller during the year shall not exceed fifteen thousand rupees. The Act does not confer any power on the market committee to impose that restriction upon the retailer. It is obvious that the market committee which made this bye-law has entirely misunderstood the provisions of Section 85(1)(iv) which says that a trader whose purchase turnover of agricultural produce which he purchases for sale to consumers for domestic consumption exceed fifteen thousand rupees shall not be classified as a 'D' class trader. But that does not mean that the turnover of a trader could not exceed fifteen thousand rupees. All that it says is that if that happens, he gets into the higher class. So we strike down bye-law No. 23(10)(b)(ii).

111. Though bye-law No. 23(10)(b)(1) is awkwardly worded it is in our opinion a good bye-law, for it should be understood to prescribe the upper limit of the quantity which a retail trader could sell to a consumer for domestic consumption in order to impress upon the transaction the character of a retail sale so that in respect of that retail sale the trader could earn the exemption which is created by Proviso (ii)(b) to Section 8(1)(b) of the new Act.

112. Mr. Ramachandra Rao appearing for the market committee asks us to explain this clause of the bye-law in that way. We make it clear that it does not

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prohibit the retailer from making sales of larger quantities so long as he does not claim for the transaction the status of a retail sale as defined by the Act or the exemption which is created by the Act.

113. Bye-law 23(15) regulates the acceptance of bids and preserves to the seller the option to refuse the highest bid. That bye-law does no more than to incorporate a condition which is usually to be found in all auction sales and the power to make this bye-law is to be found in Section 76 of the Act.

114. Bye-law 23(10)(1) says that the market shall be open during specified hours and 23 (2) (3) says that no licensed market functionaries shall transact any business or do anything in connection therewith except during the hours of trading on working days. It is difficult to make any complaint against this provision in the bye-law.

115. Bye-laws 2(4) and 2(5)(B) are the two bye-laws of Yadgir market committee which were challenged in the writ petition presented by Mr. Jagannatha Shetty, who, however, tells us that this challenge no longer survives in view of the notifications which were made during the pendency of these writ petitions and so we say nothing about it.

116. What remains for us to observe is that what we have said about the market fees in cases where the yards were not in existence when the new Act came into force, but were only established during the pendency of these writ petitions, is equally applicable to the license fee to which Section 72 of the new Act refers. So, during the period antecedent to December 7, 1968, when the yards were established in those areas and during the period prior to December 16/19, 1968, when they were established in the Hospet area, the license fee which was payable was the license fee prescribed by the bye-laws under the old Act.

117. These writ petitions succeed to the extent indicated and fail in other respects.

118. No costs.

Order accordingly.

AIR 1960 MYSORE 73 (V 47 C 18) "Firm Faruk Anvar Co. v. Market Committee"

MYSORE HIGH COURT

Coram : 2 M. AHMED ALI KHAN AND MIR IQBAL HUSAIN, JJ. ( Division Bench )

Firm of Faruk Anvar Co., Raichur, Petitioner v. Market Committee, Raichur and another, Respondents.

Writ Petn. (H) 12 of 1956, D/- 23 -6 -1959.

(A) Hyderabad Agricultural Markets Act (2 of 1339 F), S.5 Rules under R.40 - AGRICULTURAL PRODUCE - FREEDOM OF TRADE - WRITS - Tax and fee - Distinction - Petitioners having oil mill at R - Petitioners purchasing groundnut from other places for their own use - Levy of fee on groundnut by Market Committee of R - Legality.

Constitution of India, Art.19(1)(g) and Art.226.

Levy of a fee is different from a levy of tax. So far as the tax is concerned, it is levied on the persons not for the purpose of giving them any benefit but for the general purposes of the State. No doubt ultimately the benefit may accrue generally from taxes so collected to the public at large. Regarding the levy of fee, there must be what is called quid pro quo. When there is no quid pro quo, no fee can be levied. (Para 9)

The petitioners purchased quantities of ground-nut both in the Raichur town in the openmarket as well as in other places for the purpose of crushing them for producing oil in their own mill which was situated at Raichur. The quantities of ground-nut purchased by the petitioners from other markets was transported to their godowns in the mill for their own use and not for sale to anyone. In respect of these goods, the petitioners contended that the Market Committee of Raichur had no right much less authority to levy any fee, as it did, under the rules framed under Hyderabad Agricultural Markets Act.

Held (i) that as there was no quid pro quo for the produce that had been purchased outside Raichur and brought for the purpose of consumption, the fee levied thereon was unjustifiable and without jurisdiction. AIR 1954 SC 282, Followed. (Para 11)

(ii) that the levy of fee was an interference with the free trade and business which an individual citizen is allowed to carry on under the Constitution and hence contravened the provisions of Art. 19 (1) (g) and such infringement of the right of the citizen could be challenged under Art. 226. AIR 1952 SC 115, Followed. (Para 12)

Anno: AIR Com., Const. of India, Art. 19 N. 76, 82; Arts. 32 and 226 N. 35.

(B) INTERPRETATION OF STATUTES - Interpretation of statutes - Subject not to be taxed unless language of statute clearly imposes obligation.

It is a well settled rule of the law that all charges upon the subject must be imposed by a clear and unambiguous language because in some degree they operate as penalties. The subject is not to be taxed unless the language of the statute clearly imposes the obligation. (Para 9)

Cases Referred : Courtwise Chronological Paras

('52) AIR 1952 SC 115 (V 39) : 1952 SCR 572, Mohammad Yasin v. Town Area Committee, Jalalabad 12

('54) AIR 1954 SC 282 (V 41) : 1954 SCR 1005, Commr. of Hindu Religious Endowments v Lakshmindra Thirtha Swamiar 11

('52) Writ Petn. No. 28/5 of 1952, D/- 4-11-1952 (Hyd), Warrangal Industries Ltd. v. Market Committee, Warrangal 13

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M. Shankara Rao, for Petitioner; B. Venkataswamy, High Court Govt. Pleader, for Respondents.

Judgement

MIR IQBAL HUSAIN, J. : This is an application for the issue of a writ of certiorari filed on behalf of a firm run in the name and style of Faruk Anwar and Co., Oil Millers, Raichur, who are the petitioners before this Court, carrying on a business in the said town. The petitioners purchased quantities of ground-nut both in the Raichur town in the open market as well as in other places for the purpose of crushing them for producing oil in their own mill which is situated at Raichur.

It is contended by the petitioners that in respect of the ground-nuts purchased in the Raichur Market yard they have paid the fee levied by the first respondent, viz., the Market Committee of Raichur constituted under the provisions of the Hyderabad Agricultural Markets Act. They purchased quantities of ground-nut from other markets such as Saidapur, Kopbal, Gangavati etc. and transported this produce to their godowns in the Mills at Raichur for their own use and not for sale to anyone.

These were directly received in their godowns for their own consumption i.e. for manufacturing oil therefrom. In respect of the latter goods the petitioners contend, that the Market Committee of Raichur has no right much less any authority to levy any fee. On the other hand the Market Committee wrongly considered that on these produce fees could also be levied. They issued a notice to the petitioners dated 3-4-1956 calling upon them to pay the market fees even on those direct imports from 1-4-1954 within a week of the receipt of that notice.

2. On appeal by the petitioners on the ground that the Committee has no such authority, the matter was further considered in a meeting of the Market Committee on 16-3-1956 under the Chairmanship of the Collector who is the ex-officio Chairman of the said Committee. The Committee resolved that even as regards direct imports of ground-nuts from 1-4-1954, the petitioners are liable to pay fee as per the rules and in case the firm does not comply with the decision and pay the fee within seven days of the final notice the C. M. C. was authorised to cancel the license given to the said firm.

3. Thereupon the petitioners resorted to further remedies that were open to them but without success. As a last resort they submitted their representation to the Government of Hyderabad as well. Government, by its order dated 21-9-1953 rejected the application of the petitioners and held that it was futile to enquire as to whether the produce was brought directly from the agriculturists or purchased from any other agricultural market.

As per Rule 40 of the Rules made under the Hyderabad Agricultural Markets Act, Government held that the fee was rightly levied as the produce come within the jurisdiction of the market.

4. The petitioners contend that the fee so levied on produce purchased beyond Raichur and brought by the petitioners directly into the godowns of their mills is not subject to the said fees. It is contended by the Sri Shankar Ram, the learned advocate for petitioners that in the first place 'fee' is to be distinguished from 'tax' or 'cess'.

If there is to be a levy of fee, there should be a quid pro quo and when there is no quid pro quo, the levy of fee is illegal. The next contention of Mr. Shankar Ram is that there is no warrant for levy of such fee on those goods because it operates as an unreasonable restriction on trade and therefore, offends the provisions of Art. 19 (1) (g) of the Constitution of India.

5. The respondents admit the fact that the produce on which fee is proposed to be levied are directly brought into the petitioners' godowns having been purchased outside Raichur town. But they contend that the petitioners are liable to pay the fee in respect of any goods that are brought within Raichur Municipal limits which is declared to be a market by the rules framed under the provisions of the said Act.

In other words, the respondents' contention is that the word 'market yard of Raichur' includes the whole of the Municipal limits of Raichur town and therefore, on any produce brought into the godowns even of the petitioners which are situated within the Municipal limits fee is to be paid.

6. The main point for consideration is whether the levy, demand and collection of fee in respect of produce brought by the petitioners from places outside Raichur and brought into the godowns of their mills situated in Raichur are wholly illegal as contended by the petitioners and whether such a levy is beyond the powers vested in the Market Committee.

The authority to demand and collect such fees is given to the Market Committee under the provisions of the Hyderabad Agricultural Markets Act (Act II of 1339F). A brief reference to some of the relevant provisions of this Act and the Rules framed thereunder is necessary to assess the object of the Act as well as whether the impugned levy is justifiable or without jurisdiction. The preamble states that it is expedient to provide for the establishment of open markets for the purchase and sale of cotton etc., and for the better regulation of such markets.

This gives an indication regarding the purposes for which the enactment is made. In fact, the pith and substance of this Act is to regulate the sale and purchase of the commodities mentioned in the Act in the open market. Section 3 gives power to the Government to notify the establishment of agricultural or open market.

Section 5 gives power to make rules and S. 5 (v) regarding the management of the market and prescribing of fees by the Market Committee and subject to the provisions of this Act, collection and disposal of such fees. This shows that the Market Committee has got the power to impose fees, collect them and also the power of disposal regarding such fees.

As per sub-r. (xiii) it can make provision for storage arrangements for cotton and agricultural produce. A fund is constituted under S. 10 and all the money received by a market committee is pooled into this fund. This fund is called the Market Committee Fund, and R. 11 indicates the purposes for which such a fund could be utilised.

7. Coming now to the Rules framed under the said Act, Rule 2 (c) (d) and (e) define "Market" "Cotton Market Yard" and "Grain market". Market is defined to mean the whole area notified under S. 3 of the Act. Cotton Market Yard means any enclosure or land reserved for cotton dealings and includes any land which may be notified as such in the Gazette.

'Grain Market" means any land or enclosure reserved for dealing in agricultural produce and includes any land which may be notified as such in

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the Gazette. The Explanation to the said rules states that the same area may be reserved for the dealings in both cotton and agricultural produce. The expression 'Market Yard' includes both cotton market-yard and the grain market-yard.

Rule 5 states that the Committee has absolute control over the Market Yard. The only other relevant rule that I would like to refer to is R. 40 which deals with the levy of market fees and it runs as follows :

(1) "The Market Committee shall levy fees as prescribed by the Secretary to Government, Marketing Department or such officer as may be designated by the Government in this behalf on all cotton or agricultural produce coming into a market-yard either for storage in godowns or for immediate sale as follows :

(The rates are here mentioned)

Clause (2) of Rule 40 states :

"The market committee may collect such fees through its licensed adatyas or in the absence of adatyas through its licensed buyers or from the purchaser himself either directly or indirectly."

The Market Committee viz., the first respondent purports to have taken action under the provisions of this Rule as is evident even from the order passed by the Minister, Rural Reconstruction dated 21-9-1953 referred to above.

8. From a perusal of this Act and Rules framed thereunder it is abundantly clear that the object of the Act is to regulate transactions of the kind mentioned in the Act for the purchase and sale of agricultural produce. It is also clear, and it is not also disputed by the petitioner, that the Raichur Municipal limits has been notified as market area. But the crucial question to be decided is whether agricultural produce brought into this area from other parts not for the purpose of sale or purchase but for consumption is to be subjected to the fees to be levied by the market committee.

There can be no doubt that in respect of the produce that comes within the market-yard fees could be levied thereon and recovered from the transactions of either of sale, purchase or for storage. But so far as the market area is concerned, it is conceded by the petitioner that Market Committee has a right but the restriction is this, viz., if the sale or purchase takes place within the market proper or market area which is wider than the market-yard and which includes by notification, the whole of Raichur town then and then only fee is leviable. But if the produce is purchased from other places and brought within the municipal limits to the godown of the petitioners for purposes of converting the seeds into oil, in other words, for their own consumption, could it be regarded as a purchase or sale within the area? To me it appears there is great force in the contention of the petitioner's advocate that such a transaction cannot come within the four corners of the Act or the rules framed thereunder and that no fees could be leviable thereon.

The petitioners themselves, in their affidavit have admitted that for such transactions of purchase of oil seeds from the market-yard they have paid the requisite fees without any hesitation. Has the market committee a wider jurisdiction in respect of transactions that have not taken place either in the market-yard or in the market area or market proper but that have taken place outside Raichur town.

If the logic of purchase within the market yard or within the municipal limits is extended to these transactions, it would be an unreasonable levy not contemplated under the Act or the rules framed thereunder and therefore, beyond the jurisdiction of the market committee.

9. After all levy of a fee is different from a levy of tax. So far as the tax is concerned, it is levied on the persons not for the purpose of giving them any benefit but for the general purposes of the State. No doubt ultimately the benefit may accrue generally from taxes so collected to the public at large. Regarding the levy of fee, there must be what is called 'quid pro quo'.

In other words, for the services that have been rendered a fee is levied and taking the example of the market, for the management of the market, particularly in the market yard constructing godowns, creating facilities for the purchase and sale of produce, necessary staff and all the incidental charges connected therewith. But when there is no such quid pro quo at all, when in a case like the present one where produce has been purchased from other towns other than Raichur and brought for the purpose of consumption only, no fee could be levied.

Hence if a levy like a fee is made and a levy which is a burden on the subject the provisions of the Act and the Rules made thereunder empowering such a levy are to be strictly construed. For "it is a well-settled rule of law that all charges upon the subject must be imposed by a clear and unambiguous language because in some degree they operate as penalties. The subject is not to be taxed unless the language of the statute clearly imposes the obligation." This quotation is from the standard book on the subject of Interpretation of Statutes by Maxwell, 9th Edition, page 291.

10. Scanning the provisions of the Act and the Rules made thereunder with a little care, I find that there is no provision for imposition of a fee on produce purchased outside Raichur and brought to the petitioner's godown for consumption. The respondents, in their counter-affidavit, contend as follows :

"The market-yard of Raichur has been declared to be the whole Municipal limits of Raichur town and therefore the godown of the petitioners is situated within the market yard and hence the Market Committee has a right either to levy fees on the agricultural produce imported into the market yard as per R. 40 and S. 5 (v)".

I am afraid this averment has no basis whatsoever in fact or in law. No such notification has been produced in support of this contention that the Municipal limits of Raichur town is declared as a "Market Yard". Moreover, market yard has a narrow connotation as is evident from R. 2 (d) and (e) and the explanation to the said Rule, while on the other hand, 'market' has a wider connotation as is evident from R. 2 (c) of the Rules.

Again, as per the said counter-affidavit, reliance is placed on R. 40 for the levy of fees. That could be only with regard to transactions which come into the market-yard either for storage in godowns or for immediate sale. In the present case, the produce has not come into the market yard at all for either of the purposes so mentioned.

It would, therefore, be stretching the application of R. 40 (1) beyond its legitimate limit to the detriment of the subject which, I consider, is improper.

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11. A distinction between 'tax' and 'fee' is clearly brought out in a decision of the Supreme Court reported in AIR 1954 SC 282, Commr. of Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar, where it is held as follows :

"A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. This definition brings out the essential characteristic of a tax as distinguished from other forms of imposition which, in a general sense, are included within it.

The essence of taxation is compulsion, that is to say, it is imposed under statutory power without the tax-payer's consent and the payment is enforced by law. The second characteristic of a tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax.

This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is no element of 'quid pro quo' between the tax payer and the public authority.

Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the tax-payer depends generally upon his capacity to pay."

"A fee is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay.

These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases.

The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden while a fee is a payment for a special benefit or privilege. Fees confer a capacity although the special advantage, as for example in the case of registration fees for documents or marriage licenses, is secondary to the primary motive of regulation in the public interest.

Public interest seems to be at the basis of all impositions, but in a fee it is some special benefit which the individual receives. It is the special benefit accruing to the individual which is the reason for payment in the case of fees; in the case of a tax, the particular advantage if it exists at all is an incidental result of State action.

As a fee is a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should on the face of the legislative provision, be correlated to the expenses incurred by Government in rendering the services." Thus, if there is no 'quid pro quo', fees cannot be levied. In the present case, as there is no 'quid pro quo' for the produce that has been purchased outside Raichur Municipal town and brought for the purpose of consumption, there is every justification for the petitioner to contend that the fee levied thereon is unjustifiable and without jurisdiction.

12. The decision reported in AIR 1952 SC 115, Mohammad Yasin v. Town Area Committee, Jalalabad, lays down the principle

"that if a license fee cannot be justified on the basis of any valid law, no question of its reasonableness can arise for, an illegal impost must at all times be an unreasonable restriction and will necessarily infringe the right of the citizen to carry on his occupation, trade or business under Art. 19 (1) (g) and such infringement can properly be made the subject-matter of a challenge under Art. 32 of the Constitution."

Even under Art. 226 it can be challenged. To me, it appears that the levy of fee on such produce is an interference with the free trade and business which an individual citizen of a State is allowed to carry on under the Constitution and hence contravenes the provisions of Art. 19 (1) (g). Even on this ground the petitioner is entitled to succeed.

13. The learned Government Pleader for the respondents, viz., the Market Committee as well as the Government of Mysore strongly relies on an unreported case of a Division Bench of the erstwhile Hyderabad High Court in Writ Petition No. 28/5 of 1952; The Warrangal Industries Ltd. v. The Market Committee, Warrangal - Similar to this case, there was an application for the issue of a writ of certiorari by the company which challenged the levy of a fee by the Market Committee.

But it is not clear from the facts recited in the said judgment whether the produce viz., the seeds, were purchased in Warrangal town or in the market yard or were brought from outside places for purposes of consumption. It was contended on behalf of the petitioner before their Lordships of the Hyderabad High Court, as is evident from the judgment, that no fee could be levied because the purchase was not for the purpose of storage but for crushing the oil, that the produce was brought into the market yard.

Now the market is a term with wider connotation than the market yard. But their Lordships confine their attention to R. 40 and state that the produce or cotton which comes into the market yard either for storage in godown or for immediate sale is liable to the levy of fee. There can be no dispute so far as that finding is concerned. In the present case, however, the produce was not sold or stored in much less brought into the market yard.

The uncontroverted contention of the petitioners is that these seeds were purchased from outside in other markets like Siadapur, Kopbal and Gangavati etc., and brought to their own godowns not for the purpose of sale but for the purpose of their own consumption. Hence the facts of the unreported case referred to above are distinguishable from the instant case.

14. In the result, the writ petition is to be allowed and it is so ordered. The demand for the collection of market fee in respect of goods purchased beyond Raichur market and brought into the petitioners' own godowns for their own consumption and not for sale is held to be beyond the jurisdiction of the Market Committee, is improper and is liable to be quashed. It is so ordered.

15. We make no order as regards costs.

Petition allowed.

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AIR 1998 ORISSA 167 "Bhagaban Das Agarwalla v. State of Orissa"

ORISSA HIGH COURT

Coram : 2 SUSANTA CHATTERJI AND R. K. DASH, JJ. ( Division Bench )

Bhagaban Das Agarwalla and others, Petitioners v. State of Orissa and others, Respondents.

Original Jurisdiction Case No. 6972 of 1995, D/- 13 -5 -1998.

Orissa Agricultural Produce Market Act (3 of 1957), S.2(1), S.3(ii) - AGRICULTURAL PRODUCE - Agricultural produce - Utensils made up of Sal leaves and Ropes made from Sabai Grass are commercially manufactured items - Not agricultural produce - Market Fees cannot be levied on such utensils. (Para 7)

Cases Referred : Chronological Paras

1996 (1) OLR 195 3

AIR 1992 SC 224 3

M/s. S. Misra, S. Mantry, R. C. Rath and A. K. Sharma, for Petitioner; M/s. I. Mohanty, R. Dash, D. Pradhan, A. K. Mohanty and A. Mohapatra, Addl. Govt. Advocate for Opp. Parties.

Judgement

SUSANTA CHATTERJI, J. :- The present writ petition filed by the petitioners seeks the following reliefs :-

"...... to issue a writ of mandamus or any other appropriate writ or order declaring that

i) Notification in Annexures 1, 1/A, 2 and 2/S so far as it relates to Sabai Rope" and "Sal leaf" utensils are ultra vires of the Act,

ii) Unprocessed or processed Sal leaves are not "agricultural produce" and the persons collecting and processing the same are not "Agriculturist" within the meaning of the Act;

iii) "Sabai rope" and "Sal Leaf" utensils" are commercially manufactured goods which are not subject to market fee as agricultural produce;

iv) opposite parties 2 and 3 are not entitled to collect market fee on manufactured goods for storage at the interval of each 21 days in case the same are stored for sale for transport outside the State for 21 days or more ......"

2. In fact, notice under section 2 (i) of the Orissa Agricultural Produce Markets Act, 1956 covering manufacture of dish and cup out of sal leaves and manufacture of Sabai rope from Sabai grass is being challenged. It is urged that collection of market fees on plates and cups (Cone) manufactured out of Sal Leaves is conceded to be ultra vires the Act by opposite parties 2 and 3. There is a prayer for issuance of writ for refund of market fees collected on those manufactured goods.

3. The case of the petitioners is that Sabai Rope is manufactured by different machines after processing Sabai Grass and this is a new and different commercial goods. Reliance has been made on two reported decisions, namely, AIR 1992 SC 224, M/s Saraswati Sugar Mills v. Haryana State Board and 1996 (I) OLR 195 M/s. Jagannath Cotton Company v. State Government of Orissa and others.

4. Opposite parties 2 and 3 deny the petitioners' contentions. It is pointed out that "agricultural produce" is defined under Section 2 (i) of the Orissa Agricultural Produce Markets Act, 1956. The schedule to Section 2 (i) has undergone considerable change from time to time in exercise of powers conferred under Section 26 of the Act and as per the latest Notification of the State Government under item XI in the Schedule to Section 2 (1) Grass, Fodder, Forest and other miscellaneous, Sabai Grass and rope and Sal Leaves find mention.

5. It is also argued that the State Government vide Notification under Section 4 (7) read with Section 3 dated 26-12-1994 has notified the Schedule including therein gross, fodder, forest and Sal Leaves. Further Sabai grass and rope find mention under sub-items (ii). Accordingly, Sal Leaves, Sabai Grass and Sabal rope are agricultural produces as defined under Section 2 (1) of the Act. Attention of the Court is drawn to several Notifications filed as Annexures 1, B/3, B/2 and C/3. It is also argued that in view of the Notification under Sections 4 (1) and 4 (7) of the Act, opposite parties 2 and 3 are authorised to collect market fees on Sabai Grass, Sabai Rope and Sal Leaves since these are agricultural produces. By way of notification dated 20-2-1961, Sabai Grass has been notified as an agricultural produce for which it is assessable to market fee by opposite party No. 2. Traders have already obtained

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licence for using the market yard of opposite party No. 2 for purchase and sale of Sabai Grass, Sabai Rope and Sal Leaves. In terms of the findings of the Apex Court, the goods and processed goods are different entity and liable for levy of market fee such as paddy and rice, which are treated as separate commodities. Similar is with Sabai Grass and Sabai Rope as well as Sal Leaves. The petitioners are continuing to purchase and sell notified agricultural produces without obtaining the required licence as prescribed under law. The Forest Department allows the petitioners to transport Dry Sal Leaves, but in order to evade market fees the petitioners are claiming the same as manufactured item.

6. Attention of the Court has been drawn to the latest Notification dated 25-11-1988. It is, however, conceded by opposite parties 2 and 3 in paragraph-19 of their counter affidavit that collection of market fees on 'Khali' and 'Dona' manufactured out of Sal Leaves is unauthorised and opposite parties 2 and 3 are liable to refund the same for which appropriate writ may be issued.

7. This Court has considered the contentions and counter contentions. This Court has also perused the scheme of the Orissa Agricultural Produce Markets Act, 1956. This Court has also considered various Notifications issued time to time. Upon perusal of the definition of "Agricultural Produce", it cannot be reconciled how Sabai Rope and Sal leaf utensils are simply agricultural produces. It is found by the Apex Court and several High Courts that the definition as understood is not pedentical, but as understood in common parlance. "Sabai Rope" and "Sal Leaf Utensils" cannot be equated to grass and/or raw material. They are different entities after undergoing various mechanical and manufacturing processes. We thus find sufficient merit in the contention of the petitioners and hold that the Notification under Annexures 1, 1/a, 2 and 2/a as they relate to Sabai Rope and Sal leaf utensils is ultra vires the Act. Consequently the benefits are also available to the petitioners. The writ petition is allowed. Issue appropriate writ accordingly. No costs.

8. R. K. DASH, J. :- I agree.

Petition allowed.

AIR 1997 ORISSA 172 "Govinda Chandra Panda v. State"

ORISSA HIGH COURT

Coram : 2 D. M. PATNAIK AND P. K. MISRA, JJ. ( Division Bench )

Govinda Chandra Panda and another, Petitioners v. State of Orissa and others, Respondents.

O.J.C. Nos. 4064 and 10495 of 1996, D/- 31 -3 -1997.

(A) Constitution of India, Art.226 - Orissa Agricultural Produce Market Act (3 of 1957), S.27(6) - Orissa Agricultural Market Rules (1958), R.33, R.39, R.40 and R.45B - WRITS - CONSTITUTIONALITY OF AN ACT - Challenge on ground, that there was no laying of rules for prescribed -period - Assuming that them was laying before assembly in strict compliance with S. 27(6), it is still imperative for Court to judge validity of Act in case of challenge.

AIR 1973 SC 2427. Foll. (Para 7)

(B) Orissa Agricultural Produce Market Act (3 of 1957), S.18G - Orissa Agricultural Market Rules (1958), R.45B (as amended ) - AGRICULTURAL PRODUCE - Amended rule requiring market committee to

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contribute to Board's fund beyond one time contribution as contemplated by S. 18G This is beyond rule making power of state Rule is ultra vires S. 18-G to that extent. (Para 9)

(C) Orissa Agricultural Produce Market Act (3 of 1957), S.9, S.18B(1)(i) - Orissa Agricultural Market Rules (1958); R.33 (as amended), R.32 - AGRICULTURAL PRODUCE - Board's power of approval of appointment of Officers - It is not ultra vires - In view of powers under Cl. (i) of subs: (1) of S. 18B, Board will be competent to point out any illegality of irregularity in the matter of appointment and punishment pursuant to disciplinary proceedings Provision is not unreasonable nor is in conflict with spirit of the Act - It is aimed at achieving affective control over management of committee. (Para 10)

(D) Orissa Agricultural Produce Market Act (3 of 1957), S.27 - Orissa Agricultural Market Rules (1958), R.39(2), R.40 and R.45 (as amended) - AGRICULTURAL PRODUCE - Substitution of supervisory power of director by that of Board - Objection that decisions of Board will be backed by political considerations - Not tenable - Board being duly constituted supervisory body is supposed to take effective decision after deliberation among its members - It would not be so had power been with Director alone - Further, amendment in question had become necessary to make it consistent with power and functions of Board as prescribed in the newly amended provisions under Ss. 18A to 18G. (Para 11)

(E) Orissa Agricultural Produce Market Act (3 of 1957), S.27 - Orissa Agricultural Market Rules (1958), R.39(2), R.40 and R.45B - AGRICULTURAL PRODUCE - AMENDMENT - Amendment of rules - Time of effectiveness - Amended rule not intended to be effective from date of publication - Validity of actions taken between date of publication of rules and laying thereof before Assembly as required by S. 24-A(1) Orissa General Clauses Act would be attracted - Actions taken under rules shall be valid unless rules are declared ultra vires. (Para 12)

Cases Referred : Chronological Paras

A.H.O. No. 47 of 1991 Dated 23-7-1993 (Ori) Indian Aluminium Company Limited v. State of Orissa 4

AIR 1980 SC 1872 : (1980) 4 SCC 597 7

AIR 1976 SC 1031 : (1976) 1 SCR 552 7

AIR 1972 SC 2427 : (1973) 2 SCWR 129 (Foll) 7

AIR 1969 SC 1114 : (1969) 1 SCWR 532 12

(1873) LR 8 QB 118 : 42 LJ MC 49 6

R. K. Mohapatra and Jagannath Patnaik, for Petitioners: A. S. Naidu and A. K. Mohapatra. Addl. Government Advocate for Opp. Parties.

Judgement

D. M. PATNAIK, J. :- In both the writ petitions under Articles 226 and 227 of the Constitution of India, the petitioners invoke the extraordinary jurisdiction of this Court to quash the notification dated 3-8-1996 (Annexure 1 in O.J.C. No. 10495/96) of the Co-operation Department of the Government of Orissa amending the Orissa Agricultural Produce Markets Rules, 1958 ( for short, the 'Rules') being arbitrary unreasonable against the public policy and ultra vires of the Orissa Agricultural Produce Markets Act. 1956 ( hereinafter referred to as the 'Act').

2. The petitioner in O.J.C. No. 4064 of 1996 is a member of Sakhigopal Regulated Market Committee in the district of Puri and petitioner no. 1 in O.J.C. No. 10495 of 1996 is a life member of the Bahada Jhola Regulated Market Committee and petitioner No. 2 is an ex-member of the said market committee in the district of Nayagarh.

Their case is, the above market committees have been constituted under the provisions of the Orissa Agricultural Produce Market Act. 1953 (Act 3 of 1957). The members of the committee are elected representatives of the traders, agricultural producers, local bodies and officials nominated by the Government. The Marketing Rules 1956 have been framed to carry out the purposes of the Act. According to them, the above notification dated 3-8-1996 brought out substantial amendment of rules 25, 33, sub-rule (2) of rule 39 and rule 45 of the Rules by way of substitution and insertions.

The said rules are challenged as arbitrary, unreasonable and ultra vires of the provisions of the Act. It is claimed that rule 45(b) makes it obligatory for the market committee to contribute to the Board's fund an additional percentage from out of the income of committee besides the statutory contribution of not less than 5% of its income as provided under section 18-G of the Act

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and, therefore, the rule is ultra vires of the Act. Same is also the case in regard to the amendment of rule 33 vesting the power of approval with the Board in the matters of appointment of officers and servants of the Committee and in regard to the punishment pursuant to the disciplinary proceeding in violation of section 9 of the Act. Amended rule 39(2) and rule 45 substituting the controlling and supervisory power of the Director in the existing rules with that of the Board is also claimed to be arbitrary, unreasonable, and against the direction and guideline of the Ministry of Rural Development and Directorate of marketing and Inspector of the Government of India. Besides the above., the entire notification is challenged as invalid, unenforciable for not having been laid before the Orissa Legislative Assembly as provided under section 27(6) of the Act.

3. Opposite party no. 1 , State of Orissa through its under secretary in the Department of Cooperation and Opposite party No. 2, the Director through its Administrative Officer have filed two separate counter-affidavits pleading the amendments to be legal and justified.

4. Mr. R. K. Mohapatra, learned counsel for the petitioner in O.J.C. No. 4064 of 1996, advanced extensive argument with reference to the provisions of the Act, the existing Rules and the amended rules (Annexures 1 & 4). It was strenuously urged that the amended Rules if enforced would work out to the utter detriment of the working of the Market Committee itself and thus are against public policy and unreasonable for which they should be struck down. Besides, it was contended that the rule so amended are invalid for having not been laid before the Orissa Legislative Assembly as per the mandatory provisions of section 27(6 ) of the Act. In support of his contention the learned counsel relied on the case of Indian Aluminium Company Ltd. v. State of Orissa decided by this Court in A.H.O. No. 47 of 1991 on 23-7-1993.

Mr. Jagannath Patnaik, learned counsel for the petitioners in O.J.C. No. 10495/96 supported the points advanced by Mr. Mohapatra, but then supplemented the same by contending that the amendment to rule 33 giving unbriddled power to the Board in the matter of appointments of officers and employees of the Committee is, impermissible being against the spirit of section 9 of the Act and according to him, this would give rise to the scope for misusing the power on political consideration. It was further contended by him that power conferred by the amended rules being contrary to the model Act of the central Government defining the power of the Director and the Board should be declared ultra vires because for unreasonableness. Commenting Board's supervision as inefficient and purfunctory, Mr. Patnaik with reference to the press-clipping dated 18-10-96 published in the Indian Express under Annexure-2 series submitted that the building worth Rs. 3.3 lakhs of the Jeypore Regional Marketing Committee collapsed l0 days after its completion.

5. Mr. Naidu, learned counsel for the Board on the other hand, submitted that sub-section (5) of section 27 of the Act prescribes that all rules made shall be published in the gazette and become effective from the date of such publication and according to the learned counsel, in the present case, draft-amendment having been notified as under Annexure-1 (OJC 4064/96) objection invited and considered and thereafter final notification having been made as under Annexure4, it was not further necessary to lay the rules before the Legislative Assembly.

In other words, according to Mr. Naidu, matter of laying is directory but not mandatory as claimed by Mr. Mohapatra. It was, however, contended by Mr. Naidu that rules which have come into force with effect from 3-8-96, i.e. the date of notification in the gazette as a fact has been laid before the Orissa Legislative Assembly when it commenced its session on 20-11-1996. It was therefore contended by the learned counsel that objection to any amendment could be raised before the Assembly and the rules could be modified and amended and then the same would be made effective in consonance with the provisions of section 27(6) read with section 24-A of the Orissa General clauses Act'.

6. Mr. A K. Mohapatra. learned Additional Standing counsel relied on the decision in the case of Bailey v. William Son, reported in (1873) LR 8 QB 118 and submitted that since the amended rules have been duly notified in the official gazette, they could be held to be operative and therefore could be enforced until that time when the same is laid before the Assembly and therefore any act done under the rules during that period cannot be rendered invalid.

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The rival contentions need examination.

7. The following facts may be kept in mind before dealing with the main point.

O.J.C. No. 4064 of 1996 was filed on 6-4-96 when the rules were notified on 5-4-95 (Annexure 1) in a draft form. The subsequent final notification came into effect on 3-8-96 (Annexure 4). The petitioners, by way of amendment, challenge this final notification. The State, opposite party no. 1 through its Under Secretary filed a counteraffidavit on 5-7-96 which was obviously before, the final notification and did not contend any substantial denial of facts, particularly relating to laying. On 7-10-96 the matter was heard in part in the absence of a counter-affidavit by either the State or the Board. On 21-11-96 the opposite party-Board filed a counter which indicated that the rules had been laid in the Orissa Legislative Assembly which commenced its session on 20-11-96. Obviously, by then the laying could not have been for the entire prescribed period of 14 days. However, a memo along with letter no. 5764/LA dated 5-3-97 has been filed by Mr. Naidu which indicates that the rules have been laid for the prescribed period of 14 days as on 13-97. This subsequent development has adequately established that by now the rules have been laid and therefore they have become valid since 1-397.

7-A. The question however remains as claimed by the petitioners as to the validity of any of the provisions under the amended rules.

Even if the Rules have been laid before the Legislative Assembly that would not stand on our way to judge the validity or otherwise of the rules so challenged as held by the apex court in the cases of Mukam Chand v. Union of India, AIR 1972 SC 2427, Kerala State Electricity Board v. The Indian Aluminium Co. Ltd., AIR 1976 SC 1031 and Regional Transport Authority, Chittor v. Associate Transport, Madras, AIR 1980 SC 1872.

In the case of Hukam Chand (supra) the point was whether the Central Government could frame rules giving them retrospective effect. In para 11 of the judgment while giving out three types of laying, the Supreme Court held that :

"...... The act of the Central Government in laying the rules before each House of Parliament would not, however, prevent the Courts from scrutinising the validity of the rules and holding them to be ultra vires if on such scrutiny the rules are found in be beyond the rule making power of the Central Government.''

In the said case there was a clause for laying the rule before the Parliament, but the same had not been done. The Court held that if the enabling section providing for framing rules did not spell out either expressly or by necessary implication the power of the Central Government to make rules with retrospective effect, then in such event the government would have no power to make that rule. Giving the underlying principle the apex Court observed that unlike the sovereign legislature which has the power to enact laws with retrospective operation, the authority vested with the power of making subordinate legislation has to act within the limits of its power.

In the case of Kerala State Electricity Board (AIR 1976 SC 1031) (supra) in para 25 of the judgment the Court while dealing with the case of subordinate legislation held as follows :

"........ We are, therefore, of opinion that the correct view is that notwithstanding the subordinate legislation being laid on the table of the House of Parliament or the State Legislature and being subject to such modification, annulment or amendment as they may make, the subordinate legislation cannot be said to be valid unless it is within the scope of the rule making power provided in the statute.''

The principles laid down in the case of Hukam Chand (AIR 1972 SC 2427) (supra) was quoted with approval in the subsequent decision in the case of the Regional Transport Authority, Chittor (AIR 1980 SC 1872) (supra). The details of the facts is found to be rather unnecessary. Therefore, notwithstanding the fact that the rules have been laid before the Legislative Assembly in strict compliance of the provisions of section 27(6) of the Act it becomes imperative to judge the validity of the rules so amended as laid down by the Apex Court.

8. Challenge has been made to the rules 33, 39, 40.45-B as ultra vires of the Act vide impugned notification dated 3-8-96 (Annexures 1 and 4 respectively in the cases). Rule 45-B is claimed to be inconsistent with the provision of section 18G of the Act. Section 18-G relates to contribution to be paid by the Marketing Committee to the

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Board. The said section is quoted as under :

"18-G. Contribution to be paid to the Board- Every Market Committee shall, out of its funds, pay to the Board as contribution such percentage of its income derived from licence fees and market fees not less than five per cent of such income as may be prescribed to meet the expenses of the establishment of the Board and also those in incurred in the interest of the Market Committee."

The amended rule 45-B is in the following language :

"45-B. Contribution to be paid to the Board Every blanket Committee shall make contributions to the Board as required under section 18-G of the Act, at a rate of five percentum of its gross income derived from licence fee and market fees in a market year, besides paying such an additional percentum of the said income as may be fixed by the Board in proportion to cost of the works of the Market Committee, executed in that year."

9. Section 18-G of the Act as quoted above is very clear and admits of no ambiguity that the contribution of the market committee to the Board's fund to meet the expenses of the establishment of the Board and expenses incurred for the interest of the market committee shall not be less than 5% of the income of the market committee. On a plain reading, the section does not spell out that besides the above contribution, market committee shall be liable to pay any additional percentage of its income to be fixed by the Board and this, according to the rule, shall be in proportion to the cost of the works under the market committee executed in that year. In other words, the section itself does not delegate the power to the State Government in making the market committed liable to pay any additional contribution besides the one-time contribution which shall not be less that 5% of the gross income and this certainly is not the intention of the legislature in framing section 18-G. This being beyond the rule making power of the State, we declare the same as ultra vires of section 18-G of the Act to the extent of inconsistency spelt out therein.

10. In regard to the challenge to the Board's power of approval under amended rule 33 of the Rules, it may be stated that no doubt section 9 of the Act does not spell out any such approval by either the Director or the Board. The provisions of the section show that market committee is alone competent to appoint its own officers and servants. But clause (i) of section 18-B(1) of the Act prescribes that, subject to the provisions of this Act the Board shall exercise the powers of superintendence and control over the working and other affairs of the Market Committees so on and so forth.

(Emphasis supplied)

Therefore, vesting power of approval is not against the spirit of the main section of the Act and we make it clear that such power of approval with the Board is not meant to be exercised to create any huddle or impediment in the working of the Market Committee or with appointment of its officers and servants; and needless to point out that the Board under the amended rules will be competent to point out any illegality or irregularity in the matter of appointment or punishment pursuant to any disciplinary proceeding. The provision is not unreasonable nor is in conflict with the spirit of the Act, but rather is aimed at achieving an effective control over the management of the Committee. We do not find any reason to hold it ultra vires.

11. So far as amended rules 39(2) and 45 are concerned, the controlling and the supervisory power of the Director has been substituted with that of the Board. We are unable to accept the argument of the learned counsel for the petitioners that the decision of the Board will be backed by political consideration. The Board being a duly constituted supervisory body is supposed to take an effective decision after deliberation among its members which normally would not have been the case, had the power been vested with the Director alone. Further, we accept the case of the opposite parties that such an amendment has become necessary to make it consistent with the power and functions of the Board as prescribed in the newly amended provisions under sections 18A to 18-G of the Act. We, therefore, do not find anything wrong in such amendment.

12. Then it becomes necessary to examine the contention of the learned counsel for the petitioners that since admittedly the rules were not laid before the Legislative Assembly by 3-8-96, all actions taken by the Board under those rules during the period from 3-8-96 till 31-8-97 should be held to be invalid in the eye of law.

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It has been held by the Apex Court in the case of Sukhram Singh v. Smt. Harbheji. AIR 1969 SC 1114 that sometimes statutes have a retrospective effect when the declared intention is clearly and unequivocally manifest from the language employed in the particular law or in the context of connected provisions. It is always a question whether the legislature has sufficiently expressed itself.

If this is the touch-stone to find out the retrospectivity of an Act/Rules, in the case at hand, on going through, the provisions of Section 27, sub-section; (5) and (6) and the amended Rules, we have no hesitation to hold that various provisions of the rules were not meant to be effective from the date of their publication i.e. 3-8-96. That apart, we accept the contention of Mr. Naidu, learned counsel for the Board that Section 24-A(1) of the Orissa General Clauses Act, 1957 will be applicable so as to make this rule effective and valid during the period. This is because the above section states that after the rules are laid, the Legislature may amend the rules and they shall take effect in such modified form so that such modification "shall be without prejudice to the validity of anything previously done under the law". The intention and purpose of this saving clause is not to invalidate any action taken under the rules which have been duly notified in the official Gazette. Therefore, any action taken during the period cannot be invalid. This disposes also the argument of Mr. Mohapatra, learned counsel for the State. Therefore, any action under these rules, unless the rules are declared ultra vires, shall remain valid.

13. In the result, the writ petitions are allowed in part. The amended rule 45- B of the Rules (vide Annexures-1 and 4 respectively) is declared ultra vires to the extent indicated in the body of the judgment. No costs.

14. P. K. MISHRA, J. :- I agree.

Petitions partly allowed.

AIR 1968 ORISSA 217 (Vol. 55, C. 61) "Sita Ramachandra v. Madano Maharana"

ORISSA HIGH COURT

Coram : 2 G. K. MISRA AND B. K. PATRA, JJ. ( Division Bench )

Sri Sita Ramachandra Mahaprabhu, Appellant v. Madano Maharana, Respondent.

First Appeal No. 48 of 1964, D/- 21 -6 -1968. from order of Addl. Sub-J., of Berhampur, D/- 22 -1 -1964.

(A) Orissa Tenants Relief Act (5 of 1955), S.10, S.11 - TENANCY - EVICTION - CIVIL COURT - REVENUE COURT - Tenancy Laws - Question of existence of relationship of landlord and tenant between parties - Only Civil Court, and not Revenue Court, hah jurisdiction to decide - Eviction of tenant - Civil Court has no jurisdiction.

AIR 1962 SC 547, Ref. on. (Paras 3, 9)

(B) Orissa Tenants Relief Act (5 of 1955), S.2(e), S.2(j) - TENANCY - AGRICULTURAL PRODUCE - Tenancy Laws - Relation of landlord and tenant - Existence of - Delivery of portion of agricultural produce by a person to landlord - Acknowledgment of its receipt by landlord as his ''Rajbhag" - Indicates existence of tenancy between such person and landlord - "Rajbhag" means share received by landlord from his tenant. (Para 7)

(C) Evidence Act (1 of 1872), S.64, S.67, S.45, S.47 - EXECUTION - DOCUMENTS - Execution of document - Proof of contents of document - Modes of - Proof of signatures of persons executing documents - Not ipso facto proof of genuineness of their contents - Circumstantial evidence may be necessary - Consistency between recitals of disputed documents with other admitted documents - Disputed documents are deemed to be proved.

AIR 1957 AP 584, Dissented from.

Merely because the signatures of the senders of certain letters have been duly proved and there is no evidence or circumstances to show that the senders had put their signatures, on blank papers which have been subsequently filled up, it cannot be said that the letters must be held to have been proved. But where in addition to that it is also proved that the recitals in those letters are consistent with the contents of other documents admitted in evidence, the letters must be deemed to have been proved and genuine. (Paras 5, 6)

That a letter bears the signatures of the sender may be a strong piece of evidence in favour of the person who contends it is genuine, and in the majority of the cases very slight evidence may be necessary to prove that the letter was signed after it was written. It does not, however, follow from this that the mere proof of signature ipso facto prove the contents of the document. It would equally not be correct to say that execution of a document cannot be in any case be proved except by direct evidence. It may be proved by one of the modes provided in Sections 45 and 47 and also by internal evidence afforded by its contents. The mode of proof by the contents may be of considerable value where the disputed document purports to be a link in a chain of correspondence, some links in which are proved to the satisfaction of the Court. AIR 1957 Andh Pra 584, Diss. AIR 1931 Pat 219 and AIR 1968 Bom 112 and AIR 1957 SC 857, Rel. on. (Para 5)

Cases Referred : Chronological Paras

(1968) AIR 1968 Bom 112 (V 55) : ILR (1966) Bom 420, Mohammed Yusuf v. D and another 5

(1962) AIR 1962 SC 547 (V 49) : (1962) 3 SCR 673, Magiti Sasamal v. Pandab Bissoi 3, 4

(1957) AIR 1957 SC 857 (V 44) : 1957 Cri LJ 1346, Mobarik All Ahmed v. State of Bombay 5

(1957) AIR 1957 AP 584 (V 44) : 1956 Andh LT 783, Sivaramakrishnayya v. Kasi Viswanadham 5

(1931) AIR 1931 Pat 219 (V 18) : 12 Pat LT 233, Ram Lakhan Singh v. Gog Singh 5

P.V. Raindas, D. Mohanty and M.V. Narasinha Murty, for Appellant; H.G. Panda and S. Mohapatra, for Respondent.

Judgement

PATRA, J. :- This is an appeal by an unsuccessful plaintiff in a suit for declaration that the defendant-respondent is not a tenant within the meaning of the Orissa Tenants Relief Act, 1955 in respect of 19.85 acres of land situated in Bhat Kuarda village of Chatrapur Taluk and for a permanent injunction restraining the defendant from entering upon the suit land or in the alternative for recovery of possession of the land. The disputed land originally belonged to the Ankaraboyina family who on 25-4-42 executed a sale deed (Ext. 3) in respect of

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the properties to favour of Chatti Venkata Swamy. Venkata Swamy and his brother Narasimhulu installed the plaintiff deity Sri Sita Ramachandra Mahaprabhu in their house on 15-2-48 and on 10-7-48 executed a registered Trust deed (Ext. 5) in favour of the deity inter alia making a gift of Rs. 42,000 to the deity to be utilised for its Seba Puja and other purposes.

On 13-2-51 both these brothers executed a registered deed gift (Ext. 4) in favour of the deity in respect of the disputed lands. Venkata Swamy died some time in the year 1956 leaving behind his two sons Krishna Murthy and Balakrishnama. The suit giving rise to this appeal was filed by Balakrishnama as the trustee of the deity. Plaintiff's case as set down in the plaint is that about six months before the death of Venkata Swamy (i.e. in 1956), the latter had appointed the defendant to manage the suit lands on behalf of the deity and cultivate the same and make over the yield to the deity after deducting therefrom the expenses of cultivation. Accordingly the defendant cultivated the land in 1956 and paid 13 cart-loads of paddy to Venkata Swamy. Similarly for the year 1957 he delivered 13 cart-loads of paddy to the plaintiff's trustee. The defendants cultivated the land in the year 1958 and in Magh 1959 told the trustee of the plaintiff deity that the Karji of Bhat Kumarda was not allowing the paddy to be taken to Berhampur unless the trustee gave an application to the Karji.

Plaintiff's trustee went to Bhat Kumarda and signed on a paper written in Oriya which defendant gave him. Being not conversant with the Oriya language he could cot know what was written there. The defendant then delivered 11 cart-loads of paddy, being the dues relating to the year 1958. Taking a similar paper signed by the plaintiffs trustee the defendant gave 13 cartloads of paddy to him in 1960 relating to the year 1959 and 12 cart-loads of paddy in the year 1961 relating to the year 1960. Regarding the dues of the year 1961 payable in Magh 1962, the defendant deposited an amount of Rs. 976.49 in the Court of the O.T.R. Collector, Chatrapur in M. P. No. 17/62. After notice was served on the plaintiff's trustee he filed objection that there had never been any relationship of landlord and tenant between the plaintiff and defendant. The O.T.R. Collector passed an order closing the case and directing that the plaintiff's trustee might start a separate proceeding if he so desired (Ext. 7).

The plaintiff on enquiry learnt that the three papers on which the defendant obtained the signature of plaintiffs trustee for the years 1959, 1960 and 1981 were receipts in which the defendant was described as a bhag tenant under the plaintiff. It is alleged that these receipts were obtained from the plaintiff's trustee by fraud and misrepresentation and are not binding on the plaintiff. It is asserted that the defendant was never a bhag tenant In respect of the disputed land and that he was only a manager in respect of the disputed lands and liable to be evicted therefrom.

2. In the written statement filed by the defendant he contended that since the time Chatti Venkata Swamy purchased the disputed lands in 1942 he has been cultivating the lands as a tenant under the Chatti family and has been continuing to do so even after the lands were endowed to the deity. He denied the plaint allegation that he was ever appointed to look after the lands as manager of the deity. The plaint allegation that in the years 1959, 1960 and 1961 the defendant obtained the signature of the plaintiff's trustee on certain papers by misrepresentation of the contents thereof was also denied and it was asserted that the plaintiffs trustee had received the Raj bhag or those years and passed those receipts which were scribed under his direction. As the defendant has been regularly paying the rent and is a tenant in respect of the suit land he is not liable to be evicted therefrom. It was further alleged that the suit is bad for non-joinder of all the trustees of the deity. It was lastly contended that the civil Court has no Jurisdiction to try the suit.

3. The learned Additional Subordinate Judge, Berhampur held following the decision in AIR 1962 SC 547, Magiti Sasamal v. Pandab Bissoi, that he has jurisdiction to decide the dispute between the parries as to whether the defendant was a tenant in respect of the disputed land. On the merits of the case he held that the defendant is a tenant under the plaintiff and that being so, the Civil Court has no jurisdiction to order his ejectment from the suit lands. He also held that under the terms of the trust deed (Ext. 5), after the death of Chatti Venkata Swamy and his brother Narasimhulu the trustees of the deity were Balakrishnama, son of Vankata Swamy and the widow of Narasimhulu. The widow of Narasimhulu being alive and having not joined as a plaintiff in this suit, the suit brought by Balakrishnama alone as the trustee is not maintainable. In the result he passed a decree dismissing the suit with costs. Hence this appeal by the plaintiff.

4. In view of the decision of the Supreme Court in AIR 1962 SC 547, that a civil Court has jurisdiction to decide the dispute as to whether there is relationship of landlord and tenant between the parties, the learned Subordinate Judge was right in embarking on such an enquiry. The main question therefore for consideration in this appeal is whether the defendant is a tenant under the plaintiff. The case of the defendant is that he was a tenant in respect of the disputed land ever since Venkata Swamy purchased the same in 1942. To disprove this case the plaintiff examined P.W. 2, who says that during the years 1954, 1955 and 1956 he had managed the suit lands by cultivating the same and making over the produce to the deity, after deducting there

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from the expenses of cultivation. Admittedly there is nothing in writing to show that he worked as such manager. He belongs to village Mohuda which is about 30 miles from Bhat Kumarda where the disputed lauds are situated.

It is therefore highly unlikely that a man living at such a long distance from Bhat Kumarda would be managing the lands in the latter village. Obviously to get over this improbability he said that he was also managing the lands of his maternal uncle situated at Sahapur village which is about 2 miles from Bhat Kumarda. It is not explained why and under what circumstances the maternal uncle himself could not manage his lands and entrusted them for management to P.W. 2. P.W. 2 does not even know in which direction of the village Bhat Kumarda the disputed lands are situated. According to him all the suit lands are canal irrigated although the plaint schedule itself shows that 7 acres of land are dry lands. We would presently show with reference to some of the documents exhibited in this case that defendant himself was cultivating the disputed land during the years 1954 to 1956.

In these circumstances we are unable to place any reliance on the evidence of P.W. 2. P.W. 4 has deposed that the defendant is cultivating the suit lands as manager of the deity and that prior to its P.W. 2 was looking after the lands as manager and that prior to P.W. 2 one Dina Gouda was cultivating the lands. Dina Gouda has not been examined in this case. P.W. 4 admits that he has never gone over the suit lands. The case of the plaintiff is that the defendant used to manage the suit lands and deliver the produce thereof after deducting therefrom the cost of cultivation. There is nothing in the plaint to show that the defendant was to receive any remuneration for managing these lands on behalf of the deity. Obviously realising this unlikely position it is for the first time stated by the plaintiffs trustee (P.W. 3) in Court that the defendant was to receive 4 bharans of paddy towards his remuneration. P.W. 3 Balakrishnama stated that about six months prior to the death of his father he entrusted to the latter the management of the suit land.

But he admits that the defendant never produced any accounts of expenses of cultivation. If the defendant was really the manager and was under the terms of management required to deduct the cultivation expenses from the total yield it is difficult to believe that he would not maintain an account of the expenses of cultivation and submit the same for scrutiny by the plaintiff. As against the evidence let in on the plaintiff's side the defendant has produced several documents to prove his case that he was a tenant under the plaintiff. Ext. D is a post card dated 8-1-46 written by Chatti Narasimhulu to one Tarini Pradhan wherein defendant Madan Moharana is referred to as the ryot of Bhat Kumarda. D.W. 2 the village Karanam has identified the signature in Ext. D. Exts. C to C-6 are post cards addressed to the defendant by Chatti Narasimhulu during the period from 20-5-48 to 12-7-51 and Exts. C-7, C-9, C-12 are post cards dated 6-5-52, 24-1-55 and 28-1-55 respectively addressed to the defendant by Chatti Venkata Swamy.

C-10 is a post card from Chatti Balakrishnama (son of Venkata Swamy) to defendant and C-11 is a post card from Chatti Ammayi Amma (plaintiff's aunt) to the defendant. These signatures on the post cards have been duly proved and they support the defendant's case that he was cultivating the disputed lands since long before 1956 when according to the plaintiff he was first inducted to the land as a manager. In Ext. C-12 dated 28-1-55 Venkata Swamy refers to defendant as a ryot. Ext. C-11 dated 25-2-59 addressed by Chatti Ammayi Amma to defendant is most revealing. This appears to be a reply to defendant's letter dated 21-2-59. This letter has not been produced by the plaintiff. But from the contents of Ext. C-13 it appears that the defendant had demanded that the sons of Venkata Swamy should go to village Bhat Kumarda and give a receipt and taka the paddy from the defendant. Chatti Amma takes exception to this conduct of the defendant, and reminds the defendant that the lands are deity's lands and as such why the defendant was attempting to bring himself within the purview of the land lawn (obviously referring to O.T.R. Act). She questions whether the defendant had ever executed any muchalika in her favour. The question of executing muchalika arises only in the case of tenant and not in the case of a manager. She finally concludes that she is prepared to grant receipts provided the paddy is brought and delivered.

5. All these letters considerably support the defendant's case. It was however contended in the Court below that these letters were not properly proved and as such were inadmissible in evidence. The learned Subordinate Judge held that the signatures of the senders of these post cards have been duly proved and in die absence of any evidence or circumstances to show that the senders had put their signatures on blank post cards which have been subsequently filed up, the letters must be held to have been duly proved. In arriving at this conclusion he relied on a decision reported in AIR 1957 Andh Pra 584, Sivaramakrishnayya v. Kasi Viswanadham, where it was held inter alia that if a person denies that h« has written a letter which contains his signature, then surely he must prove what he alleges, i.e.; that the letter was got up on a blank piece of paper containing his signature, as also the circumstances in which he happened to put his signature on such a, piece of paper, and that where a man's signature appears in a document at the place where the executant of such a document

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would normally sign, then the signature may prima facie be taken as having been put in token of execution.

This proposition appears to us to have been too broadly stated and we are unable to endorse this view specially in view of the contradictory line of reasoning adopted in the decisions reported in AIR 1931 Pat 219, Ram Lakhan Singh v. Gog Singh and AIR 1968 Bom 112, Mohammed Yusuf v. D and another. That a letter bears the signatures of the sender may be a strong piece of evidence in favour of the person who contends it is genuine, and in the majority of the cases very slight evidence may be necessary to prove that the letter was signed after it was written. It does not, however, follow from this that the mere proof of signature ipso facto proves the contents of the document. It would equally not be correct to say that execution of a document cannot in any case be proved except by direct evidence. To take an illustration, what is to happen if everybody who can speak about the execution of a document is dead and the document is not less than 30 years old ? In such cases the person who wants to rely on the document can do nothing except to adduce proof either of the signature or the handwriting of the person who wrote the documents. In somewhat similar circumstances, the Supreme Court in the case reported in AIR 1957 SC 857, Mobarik All Ahmed v. State of Bombay observed as follows :-

"The proof of the genuineness of a document is proof of the authorship of the document and is proof of a fact like that of any other fact. The evidence relating thereto may be direct or circumstantial It may consist of direct evidence of a person who saw the document being written or the signature being affixed. It may be proof of the handwriting of the contents, or of the signature, by one of the modes provided in Sections 45 and 47 of the Evidence Act. It may also be proved by internal evidence afforded by the contents of the documents. This last mode of proof by the contents may be of considerable value where the disputed document purports to be a link in a chain of correspondence, some links in which are proved to the satisfaction of the Court. In such a situation the person who is the recipient of the document, be it either a letter or a telegram would be in a reasonably good position both with reference to his prior knowledge of the writing or the signature of the alleged sender, limited though it may be, as also his knowledge of the subject matter of the chain of correspondence, to speak to its authorship. In an appropriate case the Court may also be in a position to judge whether the document constitutes a genuine link in the chain of correspondence and thus to determine its authorship".

6. So far as the present case is concerned D.W. 2 Antaryami Patnaik has deposed that letters Exts. C to C-12 are in the hand-writing of Chaitnya Dutta, the gumasta of Venkataswamy. These post cards bear the postal seals of the relevant time when they were posted. Although Chaitnya Dutta had attended the Court as a witness of the plaintiff on some occasions, he was, for reasons best known to the plaintiff, not examined as a witness. A reference to some of these letters had been made in Para 10(c) of the plaint. There is no specific denial in the plaint that these letters are not genuine. On the other hand it was there contended that these letters far from showing the existence of relationship of landlord and tenant between the plaintiff and the defendant only go to establish that the defendant was a manager and agent of the plaintiff. The plaintiff-trustee and who is none else than the son of Venkataswamy examined as P. W. 3 does not say that the signatures appearing in these various letters are not genuine.

All that he says is that he is not aware of the letters and the contents thereof. We will presently refer to two other documents namely Exts. B and B-1 which conclusively establish the existence of relationship of landlord and tenant between the plaintiff and defendant. No doubt Exts. B and B-1 are of the years 1959 and 1960 i. e., later in point of time than the post cards Ext. C series. But the recitals in these two documents being consistent with the recitals in the relevant letters in Ext. C series, they considerably support the defendant's case that Ext. C series letters are genuine. In view of the aforesaid evidence and circumstance of the case we accept the finding of the learned Subordinate Judge that the letters Ext. C series have been duly proved and are genuine.

7. Ext. J is an application in English dated 16-5-49 sent by Chatti Venkata Swamy to the Assistant Civil Supply Officer, Berhampur requesting for a way permit to bring his rajbhag paddy of 12 cart-loads from Bhat Kumarda village it is admitted by the parties that besides the disputed lands Venkata Swamy had no other lands in Bhat Kumarda. There can therefore be no doubt that the rajbhag paddy referred to in Ext. J relates to the paddy from the disputed land There appears to us to be considerable force in the argument advanced by Mr. Panda on behalf of the respondent that rajbhag always refers to what a landlord receives from his tenant and that the receipt of the rajbhag paddy from the disputed lands indicated that the defendant was the tenant and Venkata Swamy was the landlord in respect of the disputed lands.

8. The most important documents in this case are Ext. B dated 5-4-59 and Ext. B-1 dated 2-3-60 which have been already referred to. Ext. B is a receipt signed by the plaintiff's trustee Chatti Balakrishnama and is brother Chatti Krishna Murty acknowledging, having received 11 cart loads of paddy from me defendant towards rent for the disputed lands for fasli 1369. This receipt

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is proved by Antaryami Patnaik (D.W. 2) who had scribed it Ext. B receipt dated 5-4-59 granted by plaintiff's trustee Balakrishriama to the defendant in token of having received the bhag rent for the fasli 1368 in respect of the disputed land. This receipt also had been scribed by D.W. 2 who proved the same. The plaintiff's trustee who was examined as P.W. 3 admitted his signatures 6(b) and 6(a) on Exts. B and B-1 respectively and he also admitted his signature on Ext. 6 which purports to be a receipt granted by him to defendant for having received the rajbhag paddy relating to fasli 1370.

Banchanidhi Patnaik D.W. 3 is one of the attestors to Ext. B-1 and he deposed that Chatti Balakrishnama executed the receipt after getting rajbhag paddy from the defendant and that he signed in the receipt after it was read over to him. The case however of the plaintiff's trustee is prevaricating. In the plaint it was stated that he being a young man who had no knowledge of Oriya and who cannot read Oriya, signed in the paper given by the defendant. This statement indicates that he signed on the paper on which something had been written in Oriya. During his examination in Court he stated as follows :-

"I went to that village and signed on some papers. The contents of the writing were neither explained nor read over to me". This is in accordance with the averments made in the plaint that the Oriya writings were already there on the papers by the time he put his signatures there. But later in cross-examination he stated -

"The writing over Ext. 6(b) was not there when I signed. I put my signature Ext. 6(b) on a blank paper, xx xx I put my signatures Exts. 6 and 6(a) on blank papers.

The above statements indicate that he signed on some blank papers. Apart from the fact that it appears from the evidence of the defendant and his two witnesses D. Ws 2 and 3 that the plaintiff had signed on the receipts after the contents thereof were read over and explained to him, it is impossible to believe that the plaintiff a resident of Berhampur Town would put his signatures on blank papers or on papers containing writings the contents of which he did not care to know. It may be remembered that the earliest of these three receipts is Ext. B 1 dated 5-4-59 and this was a little more than a month after the plaintiff's aunt had written the post card Ext. C-11 to the defendant and to which reference has already been made. By the time Ext. C-11 was written, the defendant had already made it clear to the plaintiff that unless receipts were given to him he was not going to deliver the rajbhag and the defendant's motive in demanding receipts was being suspected by the plaintiff and his aunt.

It is highly improbable that thereafter during three successive years the plaintiff would have any confidence in the defendant so that he would lend his signatures on papers produced by the defendant which were either blank or contained writings in Oriya which the plaintiff did not know. We have therefore no hesitation in accepting the conclusion arrived at by the learned Subordinate judge that Exts. B and B-1 and also the receipt containing the signature Ext. 6 of the plaintiff's trustee are genuine and signed by the plaintiff's trustee after fully knowing the contents thereof. These documents prove beyond any doubt that defendant is a bhag tenant in respect of the disputed lands under the plaintiff.

9. We accordingly hold in agreement with the learned Subordinate Judge that the defendant is a bhag tenant consequently and that the civil Court has no jurisdiction to order eviction of the defendant therefrom. In view of this finding it is not necessary to decide the further question whether the suit filed by one of the trustees of the plaintiff-deity is maintainable.

10. In the result, the appeal fails and is dismissed with costs.

11. G.K. MISRA, J. : I agree.

Appeal dismissed.

AIR 1965 ORISSA 174 (Vol. 52, C. 66) "Secy., Market Committee v. Jhari Sahu"

ORISSA HIGH COURT

Coram : 1 R. K. DAS, J. ( Single Bench )

Secretary, Market Committee, Jatni Railway Market, Appellants v. Jhari Sahu and another, Respondents.

Criminal Appeals Nos. 59 and 60 of 1964, D/- 20 -11 -1964, from Order of Sessions Judge, Puri, D/- 7 -1 -1964.

(A) Orissa Agricultural Produce Market Act (3 of 1957), S.22(2) - AGRICULTURAL PRODUCE - SANCTION FOR PROSECUTION - Sanction for prosecution - Sanction must not only be for prosecution of specified individual but also for specific offence - Non-compliance renders sanction invalid.

AIR 1963 SC 1198 and AIR 1960 Ker 350 61 AIR 1960 Andh Pra 27, Rel. on. (Para 11)

(B) Criminal P.C. (5 of 1898), S.423 - APPEAL - PLEA - AGRICULTURAL PRODUCE - New plea - Prosecution under Orissa Agricultural Produce Market Act (1956), (3 of 1957), without strict compliance with provisions of S.22(2) of Act - Objection can be raised at any stage as it affects jurisdiction itself. (Para 11)

Cases Referred : Courtwise Chronological Paras

('63) AIR 1963 SC 1198 (V 50) : 1963 (2) Cri LJ 194, Gour Chandra Rout v. Public Prosecutor, Cuttack 12

('63) AIR 1963 Ori 158 (V 50) : 29 Cut LT 325 : 1963 (2) Cri LJ 305, Anjaneyalu v. Puri Municipality 11

('60) AIR 1960 AP 27 (V 47) : 1960 Cri LJ 46, Public Prosecutor v. Satyanarayana 13

('80) AIR 1960 Ker 356 (V 47) : 1980 Cri LJ 1469 (1), City Corporation of Trivendrum v. V.P.N. Arunachalam Reddiar 12

H. Kanungo, for Appellants.

Judgement

JUDGMENT :- The Secretary, Market Committee Jatni Railway Fish Market, the complainant in this case, has preferred both these appeals against the orders of the Sessions Judge, Puri, acquitting the accused-respondents and setting aside their conviction and sentence passed by the Sub-Divisional Magistrate, Bhubaneswar.

2. Jhari Sahu, respondent in criminal appeal No. 59/64 is the brother of Khetrabasi Sahu, respondent in criminal appeal No. 60/64. It is the prosecution case that each of them carried on business in potato and onion on 20-6-62 in the market area of Jatni without obtaining necessary license from the local market committee and thereby committed an offence under S. 21(b) of the Orissa Agricultural Produce Market Act, 1956, read with clause 60(1) and (7) of the Rules framed thereunder.

3. The plea of the accused was that they carried on their business jointly and held a joint licence (Ext. A) for the year 1960-61. In the year 1962 when they asked for the licence the complainant insisted that each of the accused persons should take separate licences as they were carrying on their business separately in two different rooms in the aforesaid market. Accused Jhari examined himself as a defence witness in both the cases and also produced the previous licence Ext. A.

4. Two separate cases were started one against each of the accused. In support of the prosecution case, the complainant examined himself and some other witnesses to prove that the 2 accused persons have got two separate stalls in the Railway Market, Jatni, where they sell potatoes and onions.

5. The trial Court was satisfied on evidence that a case under S. 21(b) of the Orissa Agricultural Produce Market Act, 1956, had been made out against the accused persons and he accordingly convicted them and sentenced each of them to a fine of Rs. 51/- in default to simple imprisonment for one month.

6. In both the appeals, the learned Sessions Judge set aside the order of conviction and sentence mainly on the ground that the prosecution had not been launched in accordance with the provisions of S. 22(2) of the said Act, and acquitted the accused persons. It is against this order of acquittal, the complainant has preferred these two appeals, which are disposed of by the common judgment.

7. The only point for consideration is whether the prosecution has been initiated in accordance with the law. The Orissa Agricultural Produce Market Act, 1958 (Orissa Act 3 of 1957) (hereinafter referred to as 'the Act') was enacted for regulating the buying and selling of the agricultural produce and to establish markets for agricultural produce in the State of Orissa. Section 5 of the Act makes provision for establishment of market committees by the State Government and defines the functions of these committees to enforce the provisions of the Act, the Rules and by-laws made thereunder and the conditions of licences granted to traders in such market areas. Section 21(b) provides the penalty for carrying on any business without obtaining a licence. It says :

"Whoever carries on occupation in a market area, without obtaining a licence shall on conviction, be punishable with imprisonment which may extend to one month or with fine which may extend to five-hundred rupees or with both ......."

Rule 60(1) of the Rules framed under the Act also provides that no person shall do any business as a trader or as a commission agent in Agricultural Produce in any market area except under a licence granted by the Market Committee. Sub-Section (7) of R. 60 provides whoever does business as a trader or as a Commission Agent in agricultural produce in any market area without a licence shall be punishable with a fine of Rs. 200/- .....

8. There is no dispute that potatoes and onions, have been declared as 'agricultural produce' for the-purposes of this Act and trading in these vegetables in any market area requires a licence to be granted by the Market Committee. That the accused persons were carrying on business in potatoes and onions without a licence is not disputed. Therefore their liability under S. 21(b) has been fully made out. The only question that remains for consideration is whether the prosecution was properly launched as required under the law. At this stage, it is necessary to refer to Sub-S. (2) of S. 22 of the Act which runs as follows :

"Section 22(2). Prosecution under this Act or any rule or by-laws made thereunder, may be instituted by any person duly authorised in writing by the Market Committee in this behalf."

The learned appellate Court acquitted the accused persons on the ground that the above provision of the law had not been complied with.

9. P.W. 1 is the Secretary of the Market Committee. He filed the prosecution report on 21-6-62. It is stated in that report as follows :

"The Secretary of the Market Committee is authorised to launch prosecution against Sri Khetrabasi Sahu vide Resolution No. 10(d) of the Market Committee dated 14-3-62."

In this report he made no reference to this resolution, or to his authority to institute these proceedings against the accused persons. In fact, there is nothing to show that he was authorised in writing by the Market Committee to institute these proceedings against the accused. Clearly enough the provisions of Sub-S. (2) of S. 22 have not been complied with.

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10. Mr. Kanungo, learned counsel for the appellant, contended that since in the complaint petition there is a reference to the resolution of the Market Committee that itself may be taken as sufficient. In his evidence P.W. 1, however, has not made any reference even to the complaint petition or to the resolution referred to therein.

11. Mr. Kanungo next contended that the accused not having raised any such objection at the earliest stage of the proceedings, it was not open to the appellate Court to take notice of this objection and set aside the conviction on that ground. But these are questions which fundamentally affect the jurisdiction and there is no bar to their being raised at a later stage. It is well-settled that such provisions have to be strictly complied with by the prosecution. In a case of this Court reported in Anjanevalu v. Puri Municipality, 29 Cut LT 325 : (AIR 1963 Orissa 158) where my Lord the Chief Justice was dealing with a case under S. 20(1) of the Prevention of Food Adulteration Act, 1954 which is similar to S. 21(b) of the Act, there it provided that :

"No prosecution for an offence under this Act shall be instituted except by, or with the consent of the State Government or local authority, or a person authorised in this behalf by the State Government or local authority."

In that case a resolution of a general nature was passed by the Municipal Council authorising the Chairman to institute and conduct cases on its behalf. His Lordship held that the words in this behalf in the Sub-Section seems to require that the authorisation of a person to institute prosecution must be with special reference to the particular case under the Prevention of Food Adulteration Act that was placed before the Municipality. In the present case, the text of the resolution of the Market Committee has not been placed before the Court. Even if we accept the prosecution report in the present case, as part of the evidence of P.W. 1, there is nothing in the resolution to show that the Market Committee took into consideration the particular offence alleged to have been committed by the accused and authorised the Secretary to institute a prosecution for a specific offence. For a prosecution to be validly instituted under S. 22(2) of the Act, it is necessary to prove that the Market Committee took into consideration a specific complaint against an accused and then authorised a person in writing to institute a case.

12. The expression 'in this behalf' also finds place in S. 198(B)(3)(a) of the Criminal P.C. In a decision of the Supreme Court reported in Gour Chandra Rout v. The Public Prosecutor, Cuttack, AIR 1963 SC 1198, their Lordships while dealing with the Question whether a complaint had been duly instituted held that the authority concerned must apply their mind to the specific complaint before giving the necessary sanction. The question of authorisation is not a matter of idle formality, but has to be strictly complied with. In a case of the Kerala High Court reported in City Corporation of Trivandrum v. V.P.N. Arunchalam Reddier, AIR 1960 Ker 356 their Lordships also took the same view and held that the sanction required under S. 20 of the Prevention of Food Adulteration Act must show that the authority giving the sanction had applied its mind to the alleged commission of an offence by the accused and was satisfied that the accused has to be prosecuted for the said offence. The sanction must be for the prosecution of specified individual and for specific offences and such non-compliance is a serious irregularity which materially prejudices the accused. In the present case though the name of the accused was there, the specific offence for which he was to be prosecuted is absent from the alleged resolution as appears from the prosecution report.

13. The Andhra Pradesh High Court in a case reported in Public Prosecutor v. Satyanarayanan, AIR 1960 Andh Pra 27 held that when a statute which creates an offence provides for a procedure to be followed and prescribes the limits and limitation) within which the jurisdiction created thereunder could be exercised, it is not open to courts of law to give a go-bye to it and hold that notwithstanding the non-compliance with the conditions provided in the Act, they could nevertheless proceed with the enquiry and the trial into these offences.

14. In view of this position in law, it is no longer open to the complainant to contend that the resolution of the Market Committee is a sufficient authority for initiation of the present proceeding. As I have already said, a copy of the resolution has also not been placed before the Court, to strengthen the submission made by the learned counsel for the appellant. Mr. Kanungo, however, made a prayer to remand this case to the trial Court to fill up the deficiency in the evidence. But we are already at the end of 1964 and more than two years have elapsed in the meanwhile. To remand the case at this stage would certainly be prejudicial to the accused. Under the circumstances, both the appeals must be dismissed, and the order of acquittal maintained.

Appeal dismissed.

AIR 1961 ORISSA 81 (Vol. 48, C. 34) "Hrudananda v. State of Orissa"

ORISSA HIGH COURT

Coram : 2 K. L. NARASIMHAM, C.J. AND G. C. DAS, J. ( Division Bench )

Hrudananda Sahu and others, Petitioners v. The State of Orissa and another, Opposite Parties.

O. J. Cs. Nos. 145, 175 and 176 of 1959, D/- 27 -4 -1960.

Orissa Agricultural Produce Markets Act (3 of 1957), S.4 and S.12 - AGRICULTURAL PRODUCE - CONSTITUTIONALITY OF AN ACT - Constitutionality - Act does not impose unreasonable restriction on fundamental right of trade or trade within State - Imposition of market fees and licence fees is not a tax.

Orissa Agricultural Produce Markets Rules (1958), R.48.

The Orissa Agricultural Produce Markets Act is infra vires the Constitution of India, The object of this Act was to provide better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Orissa. The State Government has under Sub-Sec. (4) of Sec. 4 the right to suspend or cancel any license granted under Sub-Sec. (3) after giving an opportunity to the licensee to be heard. The object of the Act being regulatory, it cannot be said that Sub-Section (4) imposes any unreasonable restriction in matters of regulating trip buying and selling of agricultural produce within the State. This being the object of the Act Sec. 12 cannot be struck down as unconstitutional as it merely empowers the Market Committee to issue licenses to brokers and weighment etc. AIR 1959 SC 300, Rel. on. (Paras 7, 14)

Similarly, R. 48 of the Orissa Agricultural Produce Markets Rules, 1958, which provides for realisation of market fees and license fees cannot be said to be ultra vires. The impugned imposition cannot be held to be tax because the corresponding benefit has been given to the citizen in respect of the fees collected under R. 48. (Para 13)

Cases Referred : Courtwise Chronological Paras

('51) AIR 1951 SC 118 (V 38) : 1950 SCR 759, Chintamanrao v. State of Madhya Pradesh 10

('52) AIR 1952 SC 196 (V 39) : 1952 SCR 597 : 1952 Cri LJ 966, State of Madras v. V.G. Row 10

('59) AIR 1959 SC 300 (V 46) : 1959 Supp 1 SCR 92, Arunachala Nadar v. State of Madras 10, 14

('56) (S) AIR 1956 Bom 21 (V 43) : ILR (1955) Bom 870, Bapu Bhai v. State of Bombay 11

('60) AIR 1960 Mys 73 (V 47), Firm of Faruk Anvar Co. v. Market Committee Raichur 13

('60) AIR 1960 Orissa 88 (V 47) : ILR (1959) Cut 667, Ranchhorlalji v. Revenue Divisional Commr., Sambalpur 12

M.N. Das, for Petitioners; Advocate-General, for Opposite Parties.

Judgement

DAS, J. : - By these several applications the constitutional Validity of the Orissa Agricultural Produce Markets Act, 1956 (Orissa Act 3 of 1957) was challenged by the respective petitioners. The point involved was common to all the petitions. Accordingly, they were heard together and are governed by the common Judgment.

2. In order to provide for the better regulation of buying and selling of agricultural produce and for the establishment of suitable markets therefor inside the State of Orissa, Orissa Act III of 1957 (hereinafter referred to as "the Act") was passed and came into force on February 8, 1957. Under Section 3 of the Act the State Government issued a notification declaring its intention of regulating the purchase and sale of certain agricultural commodities including Jute and subsequently issued a notification under Sub-Sec. (i) of Sec. 4 of the Act bearing No. 10744-NI-N4/59 (D) dated 26th/27th May, 1959, declaring an area around Kendupatna to be a market area within which the purchase and sale of jute amongst other agricultural produce is to be regulated.

Thus, by virtue of this notification no one within the market area or within a distance thereof to be notified in the gazette in this behalf (since notified) could set up, establish, or allow to be set up, established or continued any place for the purpose of sale of any agricultural produce so notified except under a license granted by the State Government. A market committee was established under Sec. 5 of the Act by the State Government within the aforesaid market area. Under Sec. 12 of the Act, this market committee was to issue licenses to traders, Adtyas, brokers and the like for carrying on their occupation within the market area. The

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Market Committee also had the power to renew, suspend and cancel such licenses.

The petitioner contended that by virtue of the aforesaid notification his right to carry on freely a trade in jute and his right to sell the same grown by him as a producer in a greater competitive market has been infringed, thus encroaching upon his fundamental right to carry on the trade or business under Article 19(1)(g) of the Constitution of India. The State Government had also framed certain rules known as the Orissa Agricultural Produce Markets Rules, 1958, by which the market committee has been empowered to collect the license fee from the traders, commission agents, brokers, weighmen, measurers, surveyors and other person operating in the market area according to rates specified.

Thus, the rules framed are repugnant to Art. 301 of the Constitution as interfering with the freedom of trade within the territory of India. It was further contended by the petitioners that Sec. 12 which confers on the Market Committee an unlimited and uncontrolled discretion to grant or refuse licenses is void. Thus the main operative Sections 4 and 12 of the Act being void, the whole Act is ultra vires the Constitution.

3. A counter affidavit was filed by the State Government controverting the several allegations made in the petition. It was stated that the objections as contemplated under Sub-Sec. (1) of Sec. 3 were invited for the declaration of the Government's intention to regulate the purchase and sales in the Kendupatna area. This objection was to be filed within one month from the date of issue of the notification No. 7122/D, dated 24th February, 1959. No objection, however, was filed within the stipulated period.

Thereafter by Notification No. M. I. N. 559-23468/D, dated 26-6-59 the State Government in pursuance of Sec. 5 of the Act, established a market committee for the market area of Kendupatna as declared in the notification of the Development Department No. 19744/D, dated 27th May, 1959. The main source of the income of the market Committee were mainly two (1) the license fee and (2) the market fee. A major portion of the income of the Committee is ear-marked for the development work in the market yard as providing rest-shed and cattle-shed for the producers, erect auction hall and market committee hall, provide sanitary and light arrangement, construct approach roads and disseminate market news service to the producers and traders as well.

Thus, it was contended that the different sections of the Act and the Rules made thereunder do not impose any restrictions nor do they prevent the producers from their right to sell the jute produced by them in a competitive market. On the other hand as the provisions are conducive towards providing facilities for sale under better competition without the cultivator being fettered or made to sell under duress. The notifications under Secs. 3 and 4 bring direct advantage to the jute growers in the particular area inasmuch as the point of transaction and the place of transaction are localised and unrestricted activities of traders at various points are checked.

The market committee as contemplated under Sec. 5 of the Act has been constituted in Development Department Notification No. 23468 dated 24-6-59. This committee as provided under Sub-Sec. (1) of Sec. 6 is a committee representing all interests, namely, agriculturists, traders, local body, cooperative as well as Government Officers. The Market Committee for the Kendupatna area thus consists of 15 members out of which seven are agriculturists, four are traders, one representative of local body, one from the co-operative, one is the regional marketing officer and the Sub-divisional Officer, Sadar (Cuttack) as the Chairman of the said Committee.

Accordingly, in the constitution of the Committee the agricultural interest has been duly safeguarded by adequate representation of seven members out of 15 as against four from traders. Sub-rule (4) of Rule 55 of the Orissa Agricultural Produce Markets Rules, 1958, lays down that the price of agricultural produce brought into the market for sale shall be settled by open auction or by open agreement and not by secret signs and no deduction shall be made from the agreed price of the consignment except for any authorised trade allowance. Sale by open auction system is therefore the best method to ensure competitive market and as such the contention of the petitioner that the right to sell jute grown by him as a producer in a competitive market is not infringed in any way.

On the contrary better facilities are afforded to him so as to encourage competition. The notified commodities brought from villages to the market yard are put to auction in the presence of respective buyers who assemble at the prescribed time and place. The sale is also permissible under special circumstances and the highest bidder is declared as the buyer for that commodity after obtaining the assent of the seller. If a seller does not sell his-produce he is at liberty to pledge his produce with any trader or commission agent for later sale at adequate price. No such restriction of sale is imposed upon the producer outside the are of market proper, which comprises of nine Surrounding Gram Panchayats. Thus, the producer gets the following; benefits :

(1) Correct weighment is ensured where weighing is done by licensed weighmen under the supervision of the market committee staff. Only 40 seers (standard) of jute is taken as unit of one maund as against 41 to 43 seers in the present system.

(2) Better market price due to open auction system.

(3) Market charges on weighing, handling, market fees are clearly defined.

(4) Undue deduction on driage and samples,, as prevalent in the present system are strictly prohibited.

(5) Arrangements are made for settlement of dispute regarding quality and weighment and deduction etc.

(6) Arrangements for the display of correct market information in the market yard are also made.

(7) Quick payment is made to the producers-through issue of sale slips by the purchaser trader, And

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(8) Amenities such as rest houses, cattle shed, drinking water and light arrangement, canteen etc. are provided for the person using the market yard.

The activities of the traders are only restricted within the market proper in accordance with the provision of Rule 55 wherein they cannot purchase the notified commodities but can take the produce of sellers on pledge. On the other hand the trader can purchase outside the limits of market proper without any restriction but nominal market fees as provided in the bye-laws are to be paid by the trader for such purchase outside the market proper. Thus, the right to set jute grown by the petitioner as a producer or as a trader is not infringed in any way. The State Legislature is empowered to impose reasonable restriction on the freedom of trade within the State in the public interest by virtue of cl. (b) of Art. 304 of the Constitution. The petitioners have not eye applied for licenses. The market committee, it was contended, had no unrestricted powers since all their various actions are controlled by the State Government under Sec. 25 of the Act.

4. The sole contention raised by the petitioners was that the operating Section s 4 and 12 being void, the whole Act is ultra vires the Constitution. Though in course of the argument, counsel for the petitioners stated that the Act is reasonable, but the working of it is unreasonable, he contended on behalf of the petitioners that unreasonable restrictions have been put on the retail sales by the producers. According to the petitioners the retail sale should have been completely exempted. Sub-Sec. (4) of Sec. 4 empowers the State Government with unrestricted right in matters of issuing licenses. The other contention in respect of the market fee as contemplated under Rule 48 of the Orissa Agricultural Produce Markets Rules, 1958, was that it was in the nature of a tax and not a fee.

5. Before dealing with the various contentions as raised on behalf of the petitioners it would be relevant to mention that the Orissa Act 3 of 1957 repealed the Madras Commercial Crops Markets Act, 1933, (Mad. Act XX of 1933). Except for certain minor differences, the Orissa Act and the Madras Act appear to be pari materia. Section 3 of the Orissa Act lays down that the State Government may by notification declare its intention of regulating the purchase and sale of such agricultural produce and in such area, as may be specified in the notification. Such notification may also be published in the regional language of the area in a news-paper circulated in the said area or in such other manner as the State Government may deem fit. Sub-Section (2) of that Section provides for any objection or suggestion which may be received by the State Government within a period of not less than one month to be specified in the said notification, may be considered by the State Government. This Section is almost the same as Sec. 3 of the Madras Act. Section 4 of the Orissa Act makes provision for declaration of the market area. So also in the Madras Act by Sec. 4, the Provincial Government was empowered to declare a notified area by publication in the official gazette.

The other clauses of Sec. 4 of the Orissa Act are equivalent to certain other clauses of Sec. 5 of the Madras Act whereas Sec. 5 of the Orissa Act corresponds to Sec. 4-A of the Madras Act regarding the establishment of market committee. The constitution of the Market Committee as contemplated under Sec. 6 of the Orissa Act is practically the same as in the Madras Act. Sections 7, 8, 9, 10 and 11 of the Orissa Act correspond to the same section in the Madras Act. Section 12 of the Orissa Act on the other hand corresponds to Sub-Sec. (1) of Sec. 5 and proviso of the Madras Act, Regarding the expenditure from the market committee fund1 the provision under Sec. 16 of the Orissa Act corresponds to Sec. 13 of the Madras Act. It is unnecessary to refer to the various other sections since we are concerned only with Sees. 4 and 12 of the Orissa Act. Thus, it is fairly clear that except for certain minor difference the Madras Act XX of 1933 corresponds to the Orissa Act III of 1957.

6. One of the main contentions of the petitioners was that the retail sale should have been completely exempted. 'Retail sale' has been defined in the Orissa Act under Sec. 2(1)(xii) to mean a sale of any agricultural produce not exceeding such quantity as a Market Committee may, by bye-laws, made under Sec. 28 determine to be a retail sale in respect of such agricultural produce. In, this case the quantity of retail sale has been fixed by the bye-laws. The whole argument centres round Sub-Sections (3) and (4) of Sec. 4. It would be better to quote Sec. 4 here :

"4(1). After expiry of the period specified in the notification issued under Sec. 3 and after considering such objections and suggestion as may be received before such expiry and after holding such enquiry as may be necessary, the State Government may, by notification, declare the area specified in the notification under Sec. 3 or any portion thereof to be market area for the purpose of this Act in respect of all or any of the kinds of agricultural produce specified in the said notification. A notification under this Section may also be published in the regional language of the area in a news-paper circulated in the said area or may be published in such other manner as the State Government may deem fit.

(2) For the removal of doubts, it is hereby declared that a notification published in the gazette under Sec. 3 or under Sub-Sec. (1) shall have full force and effect notwithstanding any omission to further publish the same in any other manner or any irregularity or defect in such further publication in pursuance of Sec. 3 or Sub-Sec. (1) as the case may be.

(3) On and from the date of the notification issued under Sub-Sec. (1) or such later date as may be specified therein, no local authority notwithstanding anything contained in any other law for the time being in force and no other person shall, within the market area or within a distance thereof to be notified in the gazette in this behalf in each case by the State Government set up, establish or continue or allow to be set up, established or continued any place for the purpose of sale of any agricultural produce so mentioned, except under a license granted by the State Government and except in accordance with the provisions of this Act, rules and bye-laws and the conditions, specified in the license.

Explanation :- A local authority or any other person shall not be deemed to set up, establish or

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continue or to have allowed to be set up, established or continued a place as a place for the purchase and sale of agricultural produce within the meaning of this section, if the seller is himself the producer of the agricultural produce offered for sale at such place or any person employed by such producer to transport the same and the buyer is a person who purchases such produce for his own private use or of the agricultural produce is sold by a retail sale to a person who purchases such produce for his own private use.

(4) The State Government may on the report of the Director, the Collector, the Market Committee or an: officer appointed by the State Government in this behalf, after such inquiry as they deem fit and after giving the licensee an opportunity to be heard may, for reasons to be recorded in writing, suspend or cancel any license granted under Sub-Sec. (3). The order of the State Government in this behalf shall be final ........"

7. It seems that Sub-Sec. (3) of Sec. 4 corresponds to Sec. 5 of the Madras Act and the provisos to Sub-Secs. (1) and (3) of Sec. 5 of the Madras Act correspond to Sub-Sec. (3), the explanation thereto and Sub-Sec. (4) to Sec. 4 of the Orissa Act. It is also fairly clear from the Explanation, to Sub-S. (3) that a local authority or any other person shall not be deemed to set up establish, or continue or to have allowed to be set up, established or continued a place as a place for the purchase and sale of agricultural produce within the meaning of Sec. 4. It further provides that if a seller is himself the producer of the agricultural produce offered for sale at such place or any persons employed by such producer to transport the same and the buyer is a person who purchases such, produce for his own private use or if the agricultural produce is sold by a retail sale to a person who purchases such produce for his own private use.

Thus, adequate protection has been given to the producer within the market area. It may be remembered that the object of this Act was to provide better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Orissa. Thus, he State Government has under Sub-Sec. (4) of Sec. 4 the right to suspend or cancel any license granted under Sub-Sec. (3) after giving an opportunity to the licensee to be heard. The object of the Act being regulatory, it cannot be said that Sub-Sec. (4) imposes any unreasonable restriction in matters of regulating the buying and selling of agricultural produce within the State. This being tile object of the Act Sec. 12 cannot be struck down as constitutional which merely empowers the Market Committee to issue licenses to brokers and weighmen etc.

Similarly Rule 48 provides for the realisation of market fees and it says that the market committee shall levy and collect fees on agricultural produce bought and sold in the market area at such rates as may be specified in the bye-laws. The Market Committee shall also levy and collect license fees from traders, general commission agents, brokers, weighmen, measurers, surveyors and other persons operating in the market area according to rates specified in the bye-laws. But no fee shall be levied on agricultural produce brought from outside the market area for use by the industrial concerns situated in the market area or for export and in respect of which a declaration has been made and certificate has been obtained in Form IV, subject to the provision that if such agricultural produce brought into the market area for export is not exported or removed before the expiry of twenty days from the date on which it was so brought, the market committee shall levy and collect fees, on such agricultural produce from the person bringing the produce into the market area at such rates as may be specified in the bye-laws. Sub-rule (4) says that the seller who is himself the producer of the agricultural produce offered for sale and the buyer who buys such produce for his own private and/or household use shall be exempted from payment of any fees under this rule.

8. Some argument has been made in respect of the proviso and it was contended that no corresponding benefit has been provided by the market committee for the levy and collection of fees on agricultural produce brought into the market area for purposes of export and not exported before the expiry of twenty days from the date on which it was brought. It was contended by the Advocate General that the fees collected in the market area are ear-marked for the development work in the market yard as stated before. Once the agricultural produce is brought into the market area for purposes of export it is inspected by the official of the market committee and the general supervision is maintained. Hence Rule 48 cannot be held to be ultra vires, because fees realised are in the nature of tax.

9. Part XIII of the Constitution deals with trade, commerce and intercourse within the territory of India. Article 301 provides for the freedom of trade, commerce and intercourse throughout the territory of India, Article 302 empowers the Parliament to impose restriction on trade, commerce and intercourse. Similarly, Article 303 puts certain restrictions on the legislative powers of the Union and of the States with regard to trade and commerce. Article 304 again puts restriction on trade, commerce and intercourse amongst the States. Article 304(b) is relevant for our purpose. It says notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law impose on goods imported from other States, such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest. Clause (6) of Art. 19 lays down that nothing in sub-clause (g) shall affect the operation of any existing law in so far as it imposes or prevents the State from making any law imposing in the interests of the general public, restorable restrictions on the exercise of the right conferred by the said! sub-clause, and in particular nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to or prevent the State from making any law relating to (i) professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or (ii) the carrying on by the State or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

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10. It is well settled that in order to be reasonable, a restriction imposed must have rational relation to the object which the Legislature seeks to achieve and must not go in excess of that object (vide Chintamanrao v. State of Madhya Pradesh, 1950 SCR 759 : (AIR 1951 SC 118)). Patanjaii Sastri, C.J., has succinctly stated the law in the case of State of Madras v. V.G. Row, 1952 SCR 597 : (AIR 1952 SC 196) in the following terms :

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed should be applied to such individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time should all enter into the judicial verdict."

This decision was reiterated by the Supreme Court in the case of Arunachala Nadar v. State of Madras, AIR 1959 SC 300. In that case the constitutional validity of the Madras Commercial Crops Markets Act (Act XX of 1933) was challenged. I have shown above that except for certain minor differences the terms and implications of the Madras and Orissa Acts are almost the same. In that case their Lordships of the Supreme Court held that the Madras Legislature by enacting the Madras Commercial Crops Markets Act, 1933, has not put any unreasonable restriction on the trade and commerce inside the State.

Thus, it was held that the Madras Commercial Crops Markets Act (Act XX of 1933), was the result of a long exploratory investigation by experts in the field, conceived and enacted to regulate the buying and selling of commercial crops by providing suitable and regulated market by eliminating middlemen and bringing face to face the producer and the buyer so that they may meet on equal terms, thereby eradicating or at any rate reducing the scope for exploitation in dealings. Such a statute cannot be said to create unreasonable restrictions on the citizens' right to do business unless it is clearly established that the provisions are too drastic, unnecessarily harsh and overreach the scope of the object to achieve which it is enacted.

11. Reliance was sought to be placed on a case of the Bombay High Court reported in (S) AIR 1956 Bom 21, Bapu Bhai v. State of Bombay. That was a case under the Bombay Agricultural Produce Markets Act (22 of 1939). Chagla, C.J. in that case held that it is true that when a restriction is imposed upon the right of the citizen guaranteed to him under Article 19 it is for the State to justify that restriction. But whether a restriction is reasonable or not must be judged not in abstract but in the context of the times and in the context of social needs and social urges. A restriction which may be unreasonable at a particular juncture of time, may be reasonable at a different point of time, and therefore, there is no absolute yard-stick by which one can test as to whether a restriction is reasonable or not. This decision far from supporting militates against the contention of the petitioner.

12. A Division Bench of this Court appears to have considered the question at great length in the case of Ranchhorlalji v. Revenue Divisional Commr., Sambalpur, ILR (1959) Cut 667 : (AIR 1960 Orissa 88). That was a case in which the validity of certain appellate order in declaring to renew the temporary license for the exhibition of cinema films in a temporary building was challenged. Their Lordships held that a statute cannot be struck down as unconstitutional merely because it confers wide discretion on a authority to regulate certain classes of trade or business, by issuing permits or licenses. It is only when no policy or principle has been laid down either in the preamble or in the other provisions of the statute or statutory rules, and the impugned provision confers arbitrary or excessive powers on the authority, it is liable to be struck down. No arbitrary or excessive powers have been shown to have been imposed by the impugned Act on the authorities concerned.

13. Regarding the invalidity of Rule 48, the petitioner sought to rely upon a recent decision of the Mysore High Court reported in AIR 1960 Mys 73, Firm of Furuk Anvar Co. v. Market Committee, Raichur. In that case the learned judges of the Mysore High Court while considering rule 40 framed under the Hyderabad Agricultural Markets Act (II of 1939) went into a discussion regarding the distinction between tax and fee and held that there was no quid pro quo for the produce that had been purchased outside Raichur and brought for the purpose of consumption; the fee levied thereon was unjustified and without jurisdiction. This case cannot be of any avail to the petitioner, for in the instant case the corresponding benefit has been given to the citizen in respect of the fees collected under R. 48 of the Orissa Agricultural Produce Market Rules, 1958. The law is well settled regarding the differentiation between tax and the fee. In view of the facts in the present case the impugned imposition cannot be held to be a tax.

14. Thus the law on this behalf having been clearly laid down by the Supreme Court in AIR 1959 SC 300 in holding the Madras Act XX of 1933, which is pari materia with impugned Orissa Act to be intra vires the Constitution, there does not appear to be any force at all in the contentions raised by the petitioner. In the result, these petitions are bound to be dismissed with costs.

Hearing fee Rs. 50 in each case.

15. NARASIMHAM, C.J. :- I agree.

Petitions dismissed.

AIR 2009 PATNA 175 "Dharampal Satyapal Ltd. v. State of Bihar"

PATNA HIGH COURT

Coram : 2 SUDHIR KUMAR KATRIAR AND KISHORE KUMAR MANDAL, JJ. ( Division Bench )

M/s. Dharampal Satyapal Ltd. and Anr. v. State of Bihar and Ors.

C.W.J.C. Nos. 10145 of 2001 with 11638 and 12258 of 1993, D/- 21 -5 -2009.

(A) Bihar Agriculture Produce Markets Act (16 of 1960), S.29 (as substituted by Act 60 of 1982), S.15 - AGRICULTURAL PRODUCE - WORDS AND PHRASES - Definition of agricultural produce - Includes 'Zafrani Zarda' - Consequently Zafrani Zarda can be subjected to levy of market fee. (Paras 15, 29)

(B) Bihar Agriculture Produce Markets Act (16 of 1960), S.15, S.3, S.4, S.5 and S.30 - Bihar Agricultural Produce Markets Rules (1975), R.80, R.81 - AGRICULTURAL PRODUCE - Levy of market fee on Zafrani Zarda - Validity - No market with attendant facilities established - Government had done bare formality of issuing requisite notifications in terms of S.3, S.4 and S.5 of Act declaring whole area as market yard/sub-market yard without providing requisite facilities - Amounts to unethical and unjustified act to earn revenue - In absence of quid pro quo imposition of market fee on Zafrani Zarda would be illegal. (Paras 27, 29)

Cases Referred : Chronological Paras

AIR 2008 SC 2733 : 2008 AIR SCW 4553 : 2008 (5) ALJ 773 10, 15

(2006) 12 SCC 573 7.1

AIR 2003 SC 3240 : 2003 AIR SCW 4617 7.1

AIR 2002 SC 852 : 2002 AIR SCW 523 9

(2002) CWJC 11638 of 1993, D/- 7-10-2002 (reported in 2003 (3) Pat LJR 60) 9, 10

AIR 1999 SC 3125 : 1999 AIR SCW 3074 10, 16, 22, 26

AIR 1997 SC 188 : 1996 AIR SCW 4355 19, 25

1992 (2) Pat LJR 535 7.2

1985 Supp SCC 476 10

Ramesh Kumar Agrawal, with Shantanu Kumar, Sanjay Pathak and Anupa Nand Jha, K.N. Jain, Sr. Advocate with Rohitab Das and Dr. R. Usha, for Petitioners; B.K. Singh, Chauhan, Binod Kumar Singh, P.K. Shahi, Advocate General with Ritesh Kumar, P.K. Tekriwal, Shashi Bhushan Kumar, Standing Counsel, S.K. Mazumdar, Sr. Advocate with B.K. Singh, Chauhan and Binod Kumar Singh, for Respondent.

Judgement

S. K. KATRIAR, J. :- Common issues have been raised in this batch of writ petitions, have been heard together, and are being disposed of by a common judgment. The representative facts shall be drawn from C.W.J.C. No. 10145 of 2001 (M/s. Dharampal Satyapal Ltd. and another v. The State of Bihar and others).

2. A brief narration of facts essential for the disposal of the writ petitions may be indicated. The Petitioners calls in question different notices contained in Annexures 6, 7 and 9, issued by respondent No. 4 (The Secretary, Agriculture Produce Market Committee, Musallahpur, Patna) (for short Market Committee), whereby the writ petitioners have been assessed to pay market fee on 'Zafrani Zarda' under the provisions of the Bihar Agriculture Produce Markets Act, 1960 (for short 'the Act'). The petitioners have also called in question the notification dated 18th July, 1991, under Section 39 of the Act, and published in the official gazette on 31st July 1991, whereby the schedule appended to the Act has been amended and under head "11 (Narcotics)", two items, namely, Zarda and Zafrani Zarda etc., have been added.

3. Petitioner No. 1 is a company incorporated under the Companies Act 1956, and is engaged in the manufacture, inter alia, of Tulsi brand of Zafrani Zarda in its different factories located outside the State of Bihar and selling the same from its various depots situate throughout India including the State of Bihar at New Bye-pass Road, Anishabad, within Gardanibag Police Station, in the township of Patna. The company is also engaged in marketing and sale of spices under the brand name 'CATCH'. The raw-material used for manufacture/production of Zafrani Zarda is tobacco which is already incorporated in the Schedule of the Act. The petitioners' case is that the process of manufacture of Zafrani Zarda is a sophisticated and cumbersome process. The manufacturers purchase tobacco grown by the agriculturist which is then sorted out and bundled. Plain water is then sprinkled on the bundles of tobacco, and then allowed to ferment for a few days which generate heat in order to cure it. The stalks of tobacco are then separated and removed. The impurities

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in the tobacco are then sifted out, and are then blended with permissible colours and chemicals, cut into strips sheared by machine, and allowed to dry. This product of tobacco is then called Sada Zarda. Manufacturers of Zafrani Zarda like the petitioners purchase Sada Zarda from various places, brought to the factory premises and thereafter various other ingredients are mixed in fixed proportion which is ultimately called Zafrani Zarda. It is thereafter packed in special pouches, or tin containers of various sizes, for marketing and sale in different brand names.

4. The petitioners applied for license under the provisions of the Act under mistaken impression of law and started filing returns.

5. The expression 'Agricultural Produce', occurring in the Act, was amended by Act No. 60 of 1982, and the words 'manufactured or not' was inserted therein with effect from 30-4-1982. By yet another notification dated 18-7-1991, published in the official gazette on 31-7-1991 (Annexure 2), in purported exercise of powers conferred by Section 39 of the Markets Act, products/ items 'Zarda' and 'Zafrani Zarda' etc. were included in the schedule to the Act, (Annexure 2). Invoking powers under Section 3 of the Act, the State Government issued draft notification on 12-5-1992, inviting objections from affected parties for regulation of sale, purchase, storage and processing of all agriculture produce included in the schedule of the Act (Annexure 3). The final notification under Section 4 of the Act in relation to all the market committees in the State of Bihar was issued on 31-8-1992 (Annexure 4), for regulation of sale, purchase, storage and processing of all agriculture produce included in the schedule of the Act.

6. This batch of writ petitions was dismissed by this Court by a common order dated 7th of October, 2002. Aggrieved by the order, the writ petitioners preferred Civil Appeal No. 5779 of 2005 M/s. Dharampal Satyapal Limited and Anr. v. The State of Bihar and others, before the Supreme Court which was heard along with cognate appeals, and were disposed of by a common judgment dated 14-5-2008. The order of this Court was set aside, and the matters were remitted back for reconsideration and disposal afresh. That is how these matters have come up before us and are being disposed of. Paragraph Nos. 7 and 8 of the order of Supreme Court are reproduced hereinbelow :

"7. The High Court by reason of the impugned judgment did not go into other contentions raised by the parties. It was held that the market fee would be leviable with effect from 31st August, 1992. It failed to take into consideration the important question raised by the petitioners that the Notifications were ultra vires the Act and/or would have no application in relation to Zafrani Zarda. It also did not take into consideration the contention of Market Committee that having regard to the provisions of Section 4-A of the Act, Sections 3 and 4 thereof were not required to be complied with.

8. The questions raised by the parties are of significance. They should have been dealt with by the High Court."

7. Mr. Ramesh Kumar Agrawal, learned Advocate appearing on behalf of the petitioners submits that after insertion of any item in the schedule to the Act, notifications under Sections 3 and 4 are mandatory for application of regulatory provisions. By these notifications, the State Government have notionally notified the Market yards/places followed by no further orders, circular regulating the sale/purchase of those items. It is contended that the liability of charging fee under Section 27 of the Act on an item is subject to regulation of such item under the provisions of the Act and the Rules framed thereunder. Zafrani Zarda and spices are not being regulated under any provision of the Act and the Rules framed thereunder and, therefore, question of payment of fee under Section 27 of the Act does not arise. It is further pointed out that neither the State Government, nor the Bihar Agricultural Marketing Board (for short 'the Board') have provided any infrastructural facility as mandated by the Act or the Rules, either to sellers or buyers. It is further highlighted that by reason of the notification issued under Section 4 of the Act, almost entire area of the Patna town has been declared as a sub-market yard with the sole purpose of collecting market fee without providing any mechanism to regulate them. Learned counsel for the petitioner draws our attention to rules 80 and 81 of the Rules, framed under the Market Act.

7.1 It is further contended while interpreting the provisions of an Act that the entire statute has to be read in its entirety in-

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including the purport and purpose of the case as reflected from the preamble of the Statute, as also the statement of objects and reasons. Counsel relied upon (2003) 7 SCC 589 : (AIR 2003 SC 3240) (Indian Handicrafts Emporium v. Union of India) paragraph Nos. 97 and 98 and (2006) 12 SCC 575 paragraph Nos. 97 and 104.

7.2 Highlighting the provisions contained in Section 15(2), it is submitted that sale and purchase contemplated therein is to be made by means of open auction or tender system which is not the case in hand. The end product (Zafrani Zarda) is covered by different provisions of the Standards of Weights and Measures Act, 1976, and Standards of Weights and Measures (Enforcement) Act, 1985, enacted by the Parliament. The said Act has been given effect to by the State of Bihar by means of a notification dated 1st July, 1998. Referring to different provisions of the said Act, it is contended that the same would relate to the commodities sold in packaged form shall bear information regarding the unit, weight and sale price of the commodities. In order to support his contention that Section 15 is mandatory in nature and violation thereof will entail penal consequences, counsel relied on the judgment reported in 1992 (2) PLJR 535 (Keshoram Agarwala v. The State of Bihar).

7.3 The sum and substance of the argument advanced on behalf of the petitioner is that Zafrani Zarda cannot be regulated under the Act and, in fact, is not being regulated at all and, as such, the authorities cannot justifiably impose and realize market fee from the petitioners under Section 27 of the Act. Referring to the notification dated 6-4-1999 (Annexure-12/A), it is contended that the entire length and breadth of Patna town has been declared sub-market yard for the rest of the items including Zafrani Zarda without indicating the methods of regulation in respect of sale, purchase, and processing of "Zafrani Zarda". He submitted that Act is confiscatory in nature in so far as the manufacturers like the present petitioners are concerned.

7.4 Learned counsel for the petitioners further sought to contend that Zafrani Zarda is an industrial product and is incapable of being subjected to fee under the Market Act.

7.5 He also submits that the agriculturist in this country is not subjected to any tax at all, whereas the industrialist is subjected to diverse imposts like duties of excise, sales-tax, income-tax, import duty etc. to which has been added the market fee with the help of fictional concept of "all agricultural produce", and manufactured or not, and declaration of the entire township of Patna as Market Yard/Sub-Market Yard.

8. Mr. Ramesh Kumar Agrawal, learned counsel appearing in C.W.J.C. No. 12258 of 1993, submitted that he has no instructions in the matter.

9. Mr. K.N. Jain appearing for the petitioners in CWJC No. 11638 of 1993 (M/s. Prabhat Zarda Factory (India) Ltd. v. State of Bihar), submitted that it is evident on a plain reading of the aims and objects and the preamble of the Act, that the Act is meant to protect the agriculturist from the exploitation of the middle man, tobacco really being an agricultural produce is liable to market fee, but not Zarda and Jafrani Zarda. He relies on the judgment of the Supreme Court in ITC Ltd. v. Agricultural Produce Market Committee, reported in (2002) 9 SCC 232, paragraph 89 : (AIR 2002 SC 852) which lays down to the effect that agricultural products, not industrial products, can be subjected to levy. In his submission, an industrial product to reach this stage has to cover three stages, namely, raw material, processing, and the end product. The end product is an industrial product and cannot be subjected to levy.

10. The learned Advocate General appearing for the respondent-Board (respondent No. 2) submitted that the petitioners have not challenged the validity of the Act. The definition of agricultural produce, as applicable during the period in question, includes all produces whether processed or non-processed, manufactured or not. The matter is now concluded by judgment of the Supreme Court in Kesarwani Zarda Bhandar v. State of Uttar Pradesh, reported in (2008) 8 SCC 305, paragraphs 4 and 15 : (AIR 2008 SC 2733). The definition of agricultural produce in the Bihar Act is wider than in the U.P. Act. A large number of items which are not apparently agricultural produce have been declared by the Supreme Court to have been validly included in the Schedule to the Act and are, therefore, liable to market fee. He relies on the judgment of the Supreme Court in Belsund Sugar Co. Ltd. v. State of Bihar, reported in (1999) 9 SCC 620, paragraphs 141, 142, 149, 152 and 153 : (AIR 1999 SC 3125). He next submits that in order that an item can be subjected to market

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fee, it must satisfy three conditions, namely, it must be an "agricultural products" within the meaning of Section 2(a) of the Act, it must be used as raw material, and must be included in the schedule to the Act. In his submission, Zarda and Zafrani Zarda satisfy the three conditions. The case of the petitioners is entirely based on the judgment of the Supreme Court in ITC Ltd. v. State of Karnataka reported in (1985) Supp SCC 476 (hereinafter referred to as 'the first ITC case'), which has been overruled in the second ITC case. It is also based on the judgment in Prabhat Zarda (supra) which dealt with the unamended definition of agricultural produce inapplicable in the present case.

10.1 He next submitted that the issues raised on behalf of the petitioners relating to Quid Pro Quo is covered by the authoritative pronouncements of the Supreme Court, wherein it has been held that the services to be rendered in lieu of fees need not be made available on individual basis. Community service is enough.

10.2 He lastly submitted that all kinds of imposts, except income tax, is capable of being passed on to the buyer/ultimate consumer.

11. Mr. S.K. Mazumdar appearing for some of the respondents has adopted the arguments of the learned Advocate General.

12. We have perused the materials on record and considered the submissions of learned counsel for the parties. The unamended definition of agricultural produce is reproduced hereinbelow :

2. Definitions. - (1) in this Act, unless there is anything repugnant in the subject or context -

"agricultural produce" includes all produce, whether processed or non-processed, of agriculture, horticulture, animal husbandry and forest, specified in the schedule."

The same was substituted by Bihar Act 60 of 1982, and was enforced with effect from 30-11-1982. The definition in Hindi, and its unauthorised English translation, is reproduced hereinbelow :

(Vernacular matter omitted.... Ed.)

"(a) 'Agricultural produce' means all produce whether processed or non-processed, manufactured or not, of Agriculture, Horticulture, Plantation, Animal Husbandry, Forest, Sericulture, Pisciculture, and includes livestock or poultry as specified in the Schedule."

(Emphasis added)

13. The change in the content and sweep of the definition after amendment is evident on a plain reading when read in juxtaposition. The petitioners have not challenged the validity of the Act, nor that of the amended definition. It is thus manifest that "agricultural produce" has a much wider sweep than the quondam definition, and now covers all produces whether processed or non-processed, manufactured or not, agriculture, horticulture, plantation, animal husbandry, forest, sericulture, pisciculture and includes livestock or poultry as specified in the schedule. In that view of the matter, we do not find it possible to agree with the submission advanced on behalf of the petitioners that those of the agricultural produce which are used as raw material are alone included in the definition. In view of the position that the Act is covered by Entry No. 28, List No. 2, read with Entry Nos. 14 and 24, of the Constitution, it was open to the Legislature to define 'agricultural produce' as has been done. The Court is always reluctant to interfere with the policy and wisdom of the Legislature. On the heels of Amending Act 3 of 1982, came the amendment in the schedule whereby Zarda and Zafrani Zarda have been included in the Schedule under the heading 11 entitled "Narcotics" vide Notification dated 18-7-1991, published in the Bihar Gazette (Extraordinary) on 31-7-1991 (Annexure-2). The amendment in the Schedule is reproduced hereinbelow :

(Vernacular matter omitted.... Ed.)

It is thus evident that the essential conditions for imposition of market fee on Zarda and Zafrani Zarda are satisfied in the present case. The tobacco produced in fields is covered by the definition of 'agricultural produce', within the meaning of Section 2(a) of the Act, which is within the legislative competence of the Bihar Legislature and has been included in the Schedule to the Act. The petitioners are unmindful of the position that the content and sweep of an enactment has to be determined after taking into account the relevant definitions, the charging section, and the scheme of the Act. The policy and the wisdom of the Legislature in creating new definitions in the enactment may not often times meet the common sense view of the citizen, and generally described as artificial definition. We think that the more accurate way to describe it is by stating that such is the policy and the wisdom of the Legislature. We are thus convinced

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that the essential conditions for imposition of market fee on Zarda and Zafrani Zarda are satisfied in the present case. To conclude this part, we are of the view that Zarda and Zafrani Zarda are "agricultural produce" within the meaning of Section 2(a) of the Act and, therefore, liable to market fee.

14. Learned counsel for the petitioners has strenuously contended that the definition of "agricultural produce" must be read in the background of its aims and objects, and the preamble. It appears to us that the petitioners are picking out one or two expressions here and there in the aims and the objects, and the preamble of the Act, which, if read in isolation, may afford narrow interpretation of "agricultural produce", canvassed by the petitioners. We are of the view that the aims and objects, and the Preamble of the Act, have a very limited role to play in interpreting an enactment, particularly if the provisions of the Act are sound and clear. In case of doubt or difficulty in interpreting the provisions of an enactment, help can be obtained from the objects and the preamble of the Act. It is, inter alia, for this reason that the same are not part of the substantive provisions of an enactment.

15. We must first of all notice the judgment in Kesherwani Zarda Bhandar v. State of Uttar Pradesh (AIR 2008 SC 2733) (supra) relied on by the learned counsel for the respondents wherein the Supreme Court considered the liability of market fee on Zafrani Zarda under the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (25 of 1964). The definition of "agricultural produce" under the U.P. Act is set out hereinbelow for the facility of quick reference :

"2.(a) 'agricultural produce' means such items of produce of agriculture, hoticultures viticulture, apiculture, sericulture, pisciculture, animal husbandry, or forest as are specified in the schedule, and includes admixture of two or more of such items, and also includes any such item in processed form and further includes gur, rab, shakkar, khandsari and jaggery."

The definition in the U.P. Act does not include processed, non-processed, manufactured or not, of agriculture produce. Presence of these expressions in the definition in the Bihar Act makes the difference in the applicability of the Bihar Act. The Supreme Court also considered the definitions of 'agricultural produce' in the U.P. Act, and the unamended as well as amended definitions in the Bihar Act, and came to the conclusion that Zafrani Zarda cannot be exigible to market fee under the U.P. Act. In view of the distinct and different definitions of 'agricultural produce' in the Bihar Act, Zarda and Zafrani Zarda would be liable to market fee.

16. The judgment of the Constitution Bench of the Supreme Court in Belsund Sugar Com. Ltd. v. State of Bihar (AIR 1999 SC 3125) (supra), may be also noticed. That was also a case under the Bihar Act, whereby market fee was sought to be imposed on Sugar. The Supreme Court came to the conclusion that sugarcane, sugar and molasses are covered. The field is therefore, covered by the Special Legislation of the Central and the State and applicability of the Bihar Act being a general law, to sugarcane, sugar and molasses. Sugar is, therefore, completely ruled out the Supreme Court further noticed that the Parliament and the State Legislation have enacted a number of legislations to govern and control sugarcane, sugar, and molasses, with respect to its sale, purchase etc. and is covered by a special set of legislations of the Parliament and the State Legislature. The learned Advocate General rightly submits that the judgment has held that items like vegetable oil, rice mill industries, tea, wheat products, like Ata, Maida, Suji are within the sweep of the Act, though the same may not by a common man's perception be per se agricultural produce. In that view of the matter, manufactured products are also capable of being covered by the definition of 'agricultural produce' in the Bihar Act, provided the aforesaid three conditions are satisfied.

17. Learned counsel for both sides have placed heavy reliance on the second ITC. That was a case where the question for consideration was whether or not the field was occupied by Tobacco Board Act, 1975. The Supreme Court came to the conclusion that the field is partially occupied by the Act, and the unoccupied area is covered by the Bihar Act and, therefore, exigible to market fee. The Supreme Court substantially disagreed with the first ITC. The discussion in the second I.T.C. clearly supports the case of the respondents.

18. Learned counsel for the petitioners has raised the contention that an agriculturist is not subject to any taxation, whereas

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a manufacturer is subjected to different imposts, for example, import duty, excise duty, sales-tax, income-tax etc. The learned Advocate General rightly submits that all imposts other than income-tax are capable of being passed on to the consumer. Indeed income-tax is a tax, not on industry or manufacturing process, but on income which may be from other sources also. Furthermore, imposition of a tax or fee on a group or class of people, to the exclusion of the rest, is essentially a matter of legislative policy and wisdom with which we are normally not inclined to interfere. The contention advanced by the petitioners is rejected.

19. The petitioners have submitted that the manufactured and/or processed item is not being regulated, and there is no Quid Pro Quo within the meaning of Sections 3 and 4 of the Act. The Supreme Court had observed in Sasa Musa Sugar Works v. State of Bihar, (1996) 9 SCC 681 : (AIR 1997 SC 188), that Section 15 is the heart and soul of the Act. Section 15 provides for sale of agricultural produce within the specified area. Section 27 provides for levy fee in the market area, and is reproduced hereinbelow :

"Power to levy fees. (1) The Market Committee shall levy and collect market fees on the agricultural produce bought or sold in the market area at the rate of rupee one per Rs. 100 worth of agricultural produce.

Illustration. - Paddy sold in the market area as well rice produced from such paddy, shall both be leviable.

Explanation. - All notified agricultural produce leaving a market area, shall unless the contrary is proved be presumed to have been bought or sold in such area provided that, when any agricultural produce brought in any market area for the purpose of processing or export is not processed or exported therefrom as the case may be, or any such produce processed in the market area is not exported therefrom within twenty one days from the date of its arrival therein it shall until the contrary is proved, be presumed to have been bought or sold in the market area, and shall be liable for the levy of fees under this section, as if, it had been so bought or sold.

(2) The market fee chargeable under sub-section (1) shall be payable by the buyer, in the manner prescribed.

(3) The fee chargeable under sub-section (1) shall not be levied more than one on a notified agricultural produce in the same notified Market Area."

20. Before we proceed further, we must notice Annexures-3 to 5. Paragraphs 41 and 42 of the writ petition are reproduced hereinbelow :

"41. That the petitioner humbly state that neither any market either principal market yard or the sub-market yard has been actually/factually constructed and established for 'Zafrani Zarda', and 'spices' nor any infrastructural facility provided under the Market Act or the Rules are available to either seller or buyers."

"42. That almost entire area of Patna town has been declared as a sub-market yard with the sole motive to collect market fee because neither any infrastructure facility has been provided by the market committee nor the same can be provided and, therefore, it is clear that the sub-market yard is not a regulated market but it is Patna town which is neither controlled nor managed nor maintained by the respondent market committee and, therefore, it is clear that sale, purchase, storage and proceeding of items in question cannot be regulated by the respondents State or the committee under the provisions of the Markets Act."

21. Paragraphs 41 and 42 of the writ petition have been answered as follows in paragraphs 30 and 31 of the counter-affidavit of respondent Nos. 2 to 4 :

"30. That in reply to paragraph Nos. 37 to 41 of the writ petition, it is stated that in view of the decision of the Hon'ble Supreme Court the petitioners are liable to pay market fee on transaction of 'Zafrani Zarda'."

"31. That the statements made in paragraph Nos. 42 to 54 of the writ application are misconceived."

22. Paragraphs 17 and 18 of the counter-affidavit may also be reproduced hereinbelow :

"17. That in reply to paragraph No. 11 of the writ application it is stated that depot of the petitioner company is situated within the market area of the Market Committee, Musallahpur.

"18. That in reply to paragraph No. 12 of the writ petition, it is stated that the products of the petitioner-Company are being sold in the market area of the Market Committee thus the petitioners are liable to pay

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market fee on their transaction as in the case of tea decided in the case of Belsund Sugar Company (1999 (9) SCC 620 : (AIR 1999 SC 3125)".

The counter-affidavits thus do not answer this question at all. It has nowhere been stated in the counter-affidavits, as to what services are being rendered to the industry in general in the principal market yard, and sub-market yard. It is evident that no facility is being provided in the market yard/sub-market yard. We are, therefore, of the view that the respondents have not factually been able to establish that regulatory measures are in place, and facilities of general nature have been set up, for example, construction of market-sheds, places of rest, toilets etc., in the sub-market yards for this item.

23. Annexure-3 is gazette notification dated 23-5-1992, whereby Gardnibagh, Pirbahore, Kadamkuan, Kotwali, Digha and Sultanganj thana within the township of Patna are sought to be covered by the Agricultural Produce Market Committee, Musallahpur, and objections were invited within the meaning of Section 2(a) of the Act. This does not appear to be a final order. Annexure-4 is the Government notification dated 28-8-1992, published in the Bihar gazette on 31-8-1992, whereby the aforesaid areas of the Patna district have been declared to be within the jurisdiction of the Agricultural Produce Market Committee, Musallahpur. Annexure-5 is the Government Notification published in the Bihar Gazette (Extraordinary) on 23-8-1997, whereby the following areas have been declared to be within the Sub-market yard in the township of Patna :

(Vernacular matter omitted....Ed.)

It is thus evident that the State Government has taken steps under Section 3 of the Act to declare the areas within the concerned Market Committee without specifying the requirement within the meaning of rules 80 and 81 of the Bihar Agricultural Produce Markets Rules, 1975. The same are reproduced hereinbelow :

"80. Establishment of markets. - (1) After the issue of notification under Section 4 and establishment of Market Committee under Section 6, the State Government shall direct the market committee to establish a market.

(ii) When directed to do so under sub-rule (i) the Market Committee shall establish a market for the market area for which it is established.

(iii) After the establishment of market by the Market Committee, the State Government shall issue a notification under Section 5."

"81. Control and Conservancy of market yard. - (i) The Market Committee shall maintain one or more market yards and shall absolute control over the market yards subject to these rules and to the general or special orders of the Government or the Board and to such control as is by these rules or by any other law vested in the Board. The Market Committee shall manage market yards in the interest of trade having regard to convenience of the trade of agriculture produce and the purpose for which the control is vested in the Market Committee. The market yard shall remain open for trading at such hours as the Market Committee may, from time to time fix.

(ii) In the market areas the Market Committee shall exercise such rights as may be necessary for the convenient control of the market and for the convenience and comfort to the person using the market and for collection of the fees, in accordance with provisions of the Act, Rules and Bye-laws.

(iii) The Market Committee may require the owner or manager of any industrial concern located within the market areas to furnish such information in respect of agricultural produce for which the market is established and which is handled or used by the industrial concern, as the Market Committee may think necessary for the purpose of the market."

24. We have noticed hereinabove that the respondents have not provided any facility at all within the meaning of Section 18 read with rules 80 and 81. They have not proceeded further beyond declaring the entire area of the township of Patna as sub-market yard. No market with attendant facilities has been established. This is undoubtedly confiscatory in nature and verges on fraud. The respondents have not made the slightest attempt to satisfy us that Quid Pro Quo exists in lieu of realisation of market fee.

25. In the case of Sasa Musa Sugar Works v. State of Bihar, (AIR 1997 SC 188) (supra) it has been held as follows in paragraph 33 :

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"33. Mr. Sen, in our view, has rightly contended that when the field of control is circumscribed by the items in the Schedule, the actual control part of it including the goods to be controlled, the market area where the control will operate and where the controlled products will have to be sold are left to the judgment of the State Government subject to the statutory conditions imposed by Section 3(1) and Section 4(1) of the Markets Act. Once the notification under Sections 3 and 4 are issued specifying the goods to be controlled and the areas where the control will operate, the other provisions of control contained in Section 5 onwards including the levy of fee under Section 27 of the Markets Act spring into action."

26. The observations of the Supreme Court in Belsund Sugar Co. Ltd. v. State of Bihar (AIR 1999 SC 3125) (supra) are also relevant. Paragraphs 69 and 109 of which are reproduced hereinbelow for the facility of quick reference :

"69.....It is difficult to appreciate the contention of learned Senior Counsel that Section 15 of the Market Act is not the core of the Act. On a conjoint reading of Sections 3, 4, 15, 27 and 30 of the Act it has to be held that it is only because of the operation of Section 15 covering the sale and purchase transactions of agricultural produce that the Market Committee can effectively discharge its functions entrusted to it by the Act. But for Section 15 there would remain no occasion for the Market Committee to effectively regulate the sale and purchase transactions of the agricultural produce concerned. Section 15 mandates the sellers and producers of agricultural produce to operate in the notified market yard or sub-market yards and only at these places the Market Committee through its officers and servants can discharge its functions effectively by regulating these transactions and for that purpose all the infrastructural facilities would be available. The entire machinery provisions enacted for the purpose would fulcrum round the vibrant operation of Section 15. "..........Logically, therefore, there would remain no occasion for the Market Committee to justify levy of market fee under Section 27 of the Act read with Section 30 on these transactions. On a conjoint reading of Sections 27 and 30 of the Market Act, it becomes clear that a Market Committee which has to effectively control and regulate the sale and purchase of agricultural produce brought for sale and purchase in the market area as enjoined by Section 15 can effectively discharge its functions and spend its funds for supplying the necessary infrastructure for this purpose as laid down by Section 30."

"109......Market Committee would not supply adequate quid pro quo for levying market fee as the charge itself does not settle on these transactions by the sugar factories. It may be, as submitted by learned Senior Counsel for the respondents that some sugar factories may have taken the benefit of erecting lighting and preparation of approach roads by the market committees which might have spent sufficient funds for giving these facilities......."

27. We are thus of the view that the State Government has done the bare formality of issuing requisite notifications in terms of Sections 3, 4 and 5 of the Act declaring the whole area as market yard/sub-market yard without providing the requisite facilities at all in terms of Sections 17, 18 and 30 of the Act read with rules 80 and 81. To our mind, this is a confiscatory act, unethical and unjustified act to earn revenue. The respondents have not made any attempt to satisfy us that the requisite facilities, inter alia, in terms of Section 30 of the Act have been provided. Open lands of the township of Patna cannot satisfy the legal requirements. Obviously there is no Quid Pro Quo. We cannot permit such unethical impositions.

28. It is relevant to notice that the Act has now been repealed by the Bihar Agricultural Produce Market (Repeal) Act, 2006 (Bihar Act No. 23 of 2006), published in the Bihar Gazette on 1-9-2006. The aims and objects of the Bill is reproduced hereinbelow for the facility of quick reference :

AIMS AND OBJECT

The Marketing Board and Marketing Committees were primarily constituted to provide a marketing system for agriculture produce to the farmers of Bihar. But this system has completely failed in its object. Besides it, the main object of this Bill is to encourage private and co-operative markets to bring reform in the area of agriculture marketing, to manage farming on the basis of contract and to promote purchasing system directly from the farmers and to enact, it is the main object of this Bill."

29. In the result, we hold as follows :

(i) In view of the amended definition of

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"Agriculture Produce" within the meaning of Section 2(a) of the Act, read with amendment of the Schedule, Zafrani Zarda is capable of being subjected to levy of market fee. We uphold the validity of the Gazette Notification dated 18-7-1991 (Annexure-2), published in the Bihar Gazette (Extraordinary) issue on 31-7-1991.

(ii) We uphold the validity of the Government Notification published in the Bihar Gazette on 31-8-1992 (Annexure-4).

(iii) In view of the position that the State Government and the Board have not discharged their responsibilities mandated by Section 15 read with Sections 3, 4 and 30 of the Act, as well as rules 80 and 81, sale, purchase, storage and processing etc. of Zafrani Zarda is not being regulated. Market fee is sought to be levied without regulating them and providing the mandatory facilities. There is no Quid Pro Quo which in the facts and circumstances of the present case render imposition of market fee on zafrani Zarda was illegal. Consequently the notice dated 8-6-2001 (Annexure-6), the notice dated 26-6-2001 (Annexure-7), and the notice dated 24-7-2001 (Annexure-9), issued by the respondent Secretary of the Market Committee, levying market fee on Zarda and Zafrani Zarda, are hereby quashed.

(iv) The petitioner shall be entitled to refund of the levy, if part or whole of it has already been paid, with interest at the rate of a 9% (nine per cent) from the dates of deposits till the date of refund. The bank guarantees are hereby discharged.

30. Identical reliefs are granted to the petitioners of C.W.J.C. No. 11638 of 1993. The demand notices are hereby quashed.

31. C.W.J.C. No. 12258 of 1993 is hereby dismissed as not pressed.

Order accordingly.

AIR 2005 PATNA 27 "Anil Kumar Saha v. State of Bihar"

PATNA HIGH COURT

Coram : 1 RADHA MOHAN PRASAD, J. ( Single Bench )

Anil Kumar Saha, Petitioner v. State of Bihar and others, Respondents.

C.W.J.C. No. 6839 of 2004, D/- 25 -8 -2004.

Bihar Agricultural Produce Markets Act (16 of 1960), S.9, S.52 - Bihar Agricultural Produce Market Rules (1960), R.4 - ELECTION - AGRICULTURAL PRODUCE - Election of members of Committee - Traders constituency - Voter nominated by firm to vote on its behalf - He was neither a trader/holding trader licence nor ever applied or got licence either as partner or proprietor of firm nominating him as voter - Not eligible to contest election of members of Committee from Traders Constituency.

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Explanation (1) of Rule 4 (ii) shows that every firm qualified to vote in Trader's Constituency shall nominate a person to vote on its behalf. It is nowhere mentioned that it can nominate any person to be a voter on its behalf who will be eligible for contesting election from Trader's Constituency for membership of the Committee. (Para 5)

When a person was nominated by a firm to vote on its behalf and he was neither a trader/holding a trader's licence nor has ever applied or got licence either as a partner or as a proprietor of the firm nominating him as a voter, he was not eligible to contest election from Trader's Constituency for membership of the Committee. (Para 6)

Navniti Prasad Singh, for Petitioner; Ram Balak Mahto Ajay, for Respondent Nos. 4 and 5; Shashi Bhushan Kumar, for the State; K. P. Yadav, for the Board.

Judgement

ORDER:-The prayer in the writ petition is for quashing the communication dated 8-5-2004 (Annexure-6) issued by the Secretary, Agriculture Produce Market Committee, Bhagalpur (Respondent No. 5) declaring that the petitioner has ceased to be a voter of Trader's Constituency No. 2, and, as such, ceased to be the Chairman of the Market Committee, and, further, for quashing the consequential direction of the Director (Marketing), Bihar State Agriculture Produce Market Board, Patna (Respondent No. 3) dated 22-5-2004 (Annexure-8) delegating the power of counter-signing cheques in (sic) the Assistant Director, Agriculture Marketing, Bhagalpur.

2. According to the case of the petitioner in every Market Committee constituted under the provisions of the Bihar Agricultural Produce Markets Act, 1960, hereinafter referred to as 'the Act', and the Rules framed thereunder two members are elected members from the Trader's Constituency. For the purpose of election of trader member, voters' list for Trader's Constituency is prepared. Traders can be individuals or firms like partnership. According to the petitioner, in terms of Rule 4 (ii), Explanation (I) in case of licensee trader being a firm, it can nominate any person to be a voter in its behalf and such a person who is declared a voter becomes eligible for contesting from Trader's Constituency for membership of the Committee. It is contended that after completion of the election in terms of Section 13 of the Act, the State Government notifies the list of elected members and from amongst the elected members notifies a Chairman. According to the petitioner, he was nominated by the partnership firm of Respondent No. 6, who is a licensee trader in terms of Rule 4 (ii) read with Explanation I of the Rules to be the voter on their behalf, and his name was included in the voter list of Trader's Constituency No. 2 under Rule 5 (ii) in Form 1 B representing the firm of Respondent No. 6. Accordingly, he filed nomination seeking election from Trader's Constituency No. 2 of the Market Committee in which he was declared elected. The State Government published a notification in Bihar Gazette Bhagalpur under Section 13 of the Act notifying the elected members of the Bhagalpur Market Committee and the Petitioner who was elected from Traders Constituency No. 2 was notified as Chairman of the Market Committee by the State Government on 28-2-2004 vide Annexure-3. It is alleged that the petitioner gave direction to the Secretary to produce books etc., which was not obeyed by the Secretary as he is not ready to divest his powers in favour of the elected and notified Chairman. On 5-4-2004 the Secretary, however, inquired from Respondent No. 6 as to the status of the petitioner, to which Respondent No. 6 in reply dated 7-4-2004 affirmed that the petitioner had been nominated by the firm and elected and notified by the State Government. On 8-4-2004 the Secretary again sought for further information from Respondent No. 6 as petitioner's name was not mentioned in the application for grant of trader's licence or its renewal, and in reply sent by Respondent No. 6 on 10-4-2004 the proprietor of Respondent No. 6 vide Annexure-5 wrote that in view of provision of the Act and the Rules the petitioner was nominated for contesting the election of the Market Committee, and, as such, the entry of his name in the application for renewal of licence was neither required nor necessary, whereupon the impugned order was passed. Thereafter, Respondent No. 6 on 17-5-2004 vide Annexure-7 informed the petitioner that his nomination by the firm has neither been withdrawn nor cancelled and he still continues to be the voter representing the firm.

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The Director in view of the controversy raised with regard to competency of the petitioner to be the Chairman delegated the Assistant Director with the power for counter-signing on cheques vide impugned order, contained in Annexure-8.

3. A counter-affidavit has been filed on behalf of Agriculture Produce Market Committee, Bhagalpur and its Secretary (Respondent Nos. 4 and 5) stating that the petitioner was neither a trader/holding a trader licence nor has ever applied or got licence either as a partner or as a proprietor of the firm-Respondent No. 6. It is further stated that the petitioner has never traded in the market area of Bhagalpur Market Committee and he is not a trader within the meaning of the Act, as such, he could not have been a member of the Market Committee from the Traders Constituency. It is contended that after joining Respondent No. 5 found that petitioner is representing the firm-Respondent No. 6 without having trader's licence and on enquiry the proprietor of the firm Ramdeo Prasad Saha informed that the petitioner is in no way connected or concern with the firm-Respondent No. 6. He further informed that after publication of the provisional voter list the petitioner approached him that since there will be disturbance in the election he can authorise him to caste vote on his behalf and he got obtained signature on certain papers from Ramdeo Prasad Saha, proprietor of the firm-Respondent No. 6, and the petitioner on the basis of the authority to vote for and on behalf of the firm got his name included in the voter list and himself contested as a candidate. An affidavit sworn by said Ramdeo Prasad Saha in support of his statement has been annexed as Annexure-R4/F to the counter-affidavit. Respondent No. 5 after getting this information that petitioner was never a trader nor he has ever traded on behalf of the firm-Respondent No. 6, thus, he could not have been a member of the Market Committee from the Trader's Constituency, took steps for cessation of the membership of the petitioner either as a member or Chairman of the Market Committee and vide impugned letter dated 8-5-2004 (Annexure-6) informed the petitioner that he ceased to be a member of the Market Committee, Bhagalpur in terms of Section 9(2) of the Act and consequently also ceased to be the Chairman of the Market Committee, Bhagalpur. It is, thus, contended that any notification issued contrary to the statute is void, illegal and the petitioner cannot claim any right to continue as a Member/Chairman of the Market Committee, Bhagalpur.

4. It is submitted by the learned counsel for the petitioner that in terms of Rule 4 (ii), Explanation I of the Rules every firm or corporation qualified to vote in a Trader's Constituency shall nominate a person to be voter on its behalf and such a person becomes eligible for contesting from Trader's Constituency for membership of the Committee. In reply, learned counsel appearing for Respondent Nos. 4 and 5 submitted that the proprietor of the firm-Respondent No. 6, who nominated the petitioner has sworn affidavit stating therein that besides the letter of nomination for the purpose of voting he has not issued any letter to the petitioner and the petitioner is in no way connected with the firm either as proprietor or as a partner. However, petitioner was authorised only to caste vote on behalf of the firm.

5. Rule 4 (ii) deals with Trader's Constituency and its Explanation (1) reads as follows :

"Explanation (1) - Every firm or corporation qualified to vote in a trader's constituency under this rule, shall nominate a person to vote on its behalf and intimate in writing the name of the person so nominated to the Market Committee, not later than the date fixed in this behalf by the Election Officer."

Bare perusal of Explanation (1) of Rule 4 (ii) shows that every firm qualified to vote in a Trader's Constituency shall nominate a person to vote on its behalf. It is nowhere mentioned that it can nominate any person to be a voter on its behalf, who will be eligible for contesting election from Trader's Constituency for membership of the Committee. Morever, from Annexure-R4/F it appears that Ramdeo Prasad Saha, proprietor of the firm-Respondent No. 6 has specifically stated on oath that in the year 2002 petitioner was nominated by him to cast vote in the election of APMC, Bhagalpur and the said nomination was only for the purpose of voting in the election and the petitioner was not nominated/authorised by him to become a voter in the voter list of Trader's Constituency No. 2 of APMC, Bhagalpur. It has been further stated on oath that the petitioner is

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neither a proprietor nor a partner of the firm and he is not even associated with the firm in any manner.

6. Under the facts and circumstances aforementioned, this Court fails to appreciate as to how the petitioner contested the election from Trader's Constituency for membership of the Committee, when he was neither a trader/holding a trader licence nor has ever applied or got licence either as a partner or as a proprietor of the firm-Respondent No. 6, which is essential ingredients for a person to be elected or appointed as a member. Hence, it has rightly been submitted by the learned counsel appearing for Respondent-Agriculture Produce Market Committee, Bhagalpur that any notification issued contrary to the statute is void and illegal.

7. In the result, there is no merit in the writ application and the same is dismissed.

Petition dismissed.

AIR 2005 PATNA 144 "Md. Misbahuddin v. Bihar State Agricultural Marketing Board"

PATNA HIGH COURT

Coram : 1 AFTAB ALAM, J. ( Single Bench )

Md. Misbahuddin, Petitioner v. Bihar State Agricultural Marketing Board and others, Respondents.

C.W.J.C. No. 3772 of 2002, D/- 2 -12 -2004.

Bihar Agricultural Produce Markets Act (16 of 1960), S.52 - Bihar Agricultural Produce Markets Rules (1975), R.129 - AGRICULTURAL PRODUCE - LICENSE - EQUALITY - Licence for setting up Hat/Bazar - Grant of - Committee decided to grant licence for second Hat/Bazar to another person - Though two Hats were held at distance of only 40 meters, there was no clash of days - Relative distance between two Hats cannot be uniform criteria in all conditions - Need of another Hat was to meet requirement of neighbouring villagers on competitive basis - Government Circular containing direction in derogation of Statutory Rules - Would be of no relevance - Finding that there was need for second Hat/Bazar was based on good reasons - Not unreasonable or arbitrary.

Constitution of India, Art.14. (Paras 9, 12)

Mihir Kumar Jha and Md. Kamran, for Petitioner; K. P. Yadav, for the Board. Rajiv Roy, R. K. Singh and Suresh Kr. for Respondent No. 5.

Judgement

ORDER :- Md. Misbahuddin holds a Gudri Hat (Misc. Hat) on his raiyati land under a valid licence granted by the Agriculture Produce Market Committee, Katihar, The Hat is being held since 1994. The licence for the year, 2001-02 was granted to him on 15-3-2001. A few months later, on 9-10-2001, licence was granted by the Market Committee to Md. Nazibur Rahmad (respondent No. 5) as well, for holding Hat on his own raiyati land. The land of Md. Nazibur Rahman for holing hat over which licence was granted is merely at a distance of 40 meters from the Hat of the petitioner. According to the petitioner, the grant of licence for the second Hat had an adverse impact on his collections and it was also in violation of the directions issued by the State Government and the Bihar State Agriculture Marketing Board.

2. Challenging the grant of licence to Md. Nazibur Rahman he earlier came to this Court in CWJC No. 15125 of 2001. That writ petition was dismissed by a single Judge by order, dated 13-12-2001 (Annexure 8) with a direction to the Marketing Committee, Katihar to dispose of his representation/objection to the grant of licence to Md. Nazibur Rahman after affording both sides an opportunity of hearing. He took the matter in appeal, being L.P.A. No. 125 of 2002. The appeal was disposed of by order, dated 29-1-2001, the relevant portion of which is as follows :

"After having heard learned counsel for the appellant and the learned counsel for the Board, we are of the view that the question as to whether the licence can be granted to hold another Mela within the prohibited area or not cannot be decided in writ application. This question has to be decided by the authority who is on the spot. In that view of the matter, we dispose of this application with a direction to the Secretary of the Market Committee, Katihar to consider the grievance of the petitioner and take a decision within 10 days from the date of filing a petition by the appellant pointing out the aforesaid illegalities as well as any other illegalities with regard to grant of licence in favour of private respondent."

3. On remand by this Court the Secretary, Market Committee, Katihar seems to have examined the matter in some detail, taking into consideration all the material facts and circumstances. He not only heard the parties but also held spot inspection on two dates, 5-2-2002 (being a Tuesday) and 8-2-2002 (being a Friday). From the order it

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appears that a spot inspection was made by him also on 28-9-2001, that is, prior to the grant of licence to Md. Nazibur Rahman.) On a consideration of the relevant materials, he passed a detailed order on 12-2-2002, rejected the objections raised by the petitioner and reaffirming the decision for the grant of licence for the second Hat to Md. Nazibur Rahman.

4. The petitioner filed this writ petition on 13-3-2002 challenging the order, dated 12-2-2002 passed by the Secretary, Market Committee, Katihar. The period for which the licences were granted has expired during the pendency of this writ petition and it is not clear whether licence for the second Hat was renewed for the subsequent years. But assuming the position to be so, I proceed to dispose of this case on merits.

5. Before proceeding further it is to be borne in mind that both the Hats held by the petitioner and respondent No. 4 are bi-weekly. The licence given to the petitioner permits him to hold Hat every Tuesday and Saturday and the licence of respondent No. 4 is for holding Hat on Monday and Friday. In other words, though the two Hats are held at a distance of only forty meters, there is no clash of days. The Hats are being held on separate days of the week. Previously there used to be two Hat days; after the grant of licence to respondent No. 5, Hats are being held there on four days in a week.

6. Coming now to the order passed by the Secretary of the Market Committee, he has recorded a number of findings of fact on the basis of his local inspections and the submissions of the parties. From his order, it appears that earlier the petitioner had the monopoly position and neither the shop-keepers nor the consumers, the buyers from the Hat were very happy with his behaviour and attitude. Differences arose between the shop-keepers and the petitioner and this led to the establishment of the second Hat by respondent No. 4. The establishment of the second Hat has satisfied and greatly pleased not only the shop-keepers but all the buyers from the neighbouring villages. In the order passed by him, the Secretary observed that both the Hats were held at the place lying on the border of two villages, namely, Phulkawai and Maraghia. The Hats were at a central place and served the needs of twenty neighbouring villages. The railway station was at a distance of only 2 kms. There were 54 shops in the Hat of the petitioner which was held over a piece of land with an area of 45 decimals. In the second Hat held by respondent No. 5, over an area of 55 decimals there were 54 shops. He further recorded the finding that the number of Shops in the two Hats and the respective areas made available for holding the Hats showed that one Hat was not sufficient to fulfil the requirements of the area. The Secretary further observed :

"That there is opinion among the people in general using both the Hat-land that competitive Hats have provided them a lot of relief. Nearly on alternative day they are in a position to sell and purchase their goods as per their requirement; small vegetable farmers and day to day consumers who had to travel a considerable long distance for their petty transaction appreciated the establishment of both Hats."

7. He then recorded all the important finding that there was a need of another Hat in addition to the former to meet the requirement of the neighbouring villagers on competitive basis. He further observed that the difference between the two licence-holders was more of a personal nature, than commercial and neither of the two could be said to be 'undesirable' for the grant of licence for holding Hat.

8. Mr. Mihir Kumar Jha, counsel appearing for the petitioner assailed the order to grant licence for the second Hat on the ground that it was violative of the Government direction as also the direction issued by the Marketing Board. He referred to a circular letter, dated 5-11-1960 (Annexure 1) issued by the Secretary in the Department of Revenue, Government of Bihar to all the Collectors. In the circular letter, it was said that no parallel Hat should be allowed within the vicinity of three miles. He also referred to a letter, dated 3-11-1999 (Annexure 2) from the Chief Director of the Marketing Board to the Secretary, Market Committee, Mohania in connection with some cattle fair in that Market Committee. The letter from the Marketing Board referred to the Government circular of 5-11-1960 and directed that licence for holding cattle fair should be granted in the light of that circular.

9. With regard to the minimum distance between two Hats any reliance on the Government circular as also on the letter issued

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by the Marketing Board appears to me to be quite misconceived. It may be noted that the Government direction is of the year 1960, that is, long before the framing of the Bihar Agricultural Produce Market Rules, 1975. After the Rules came into force, the grant of licence for setting up Hat/Bazar/Mela is governed by the statutory provision as contained in Rule 129. The statutory provision relevant for the present is contained in Rule 129(iii)(gh) that lays down, as one of the conditions for grant of licence, that the licensing authority should be satisfied that there was need to establish or set up a Hat/Bazar/for agricultural produce. The expression "need to establish" is of much wider import and it also takes within its fold the relative distance between two Hats. The relative distance between two Hats cannot be a uniform criterion in all conditions. The need for the establishment of another Hat may depend upon many considerations, such as the nature of agricultural produce mainly being sold in the Hat, the amount of produce being available for sale, the density of population, the requirements and the purchasing power of the consumers etc. In a given case there may not be need for two Hats even at a relative distance of more than three miles and in another case two or more Hats may co-exist at the same place.

10. After coming into force of the Market Rules, the direction contained in the Government circular lost its relevance.

11. The same would apply to the letter issued by the Marketing Board. It can only be seen as a direction given in the facts of a particular Hat otherwise it must be held to be unenforceable and inoperative being at variance with and in derogation to the statutory rules.

12. As noted above, the Secretary in the impugned order has recorded the finding, at two places, that there was the need for the second Hat and the finding is based on good reasons. The finding cannot be said to be unreasonable or arbitrary. The grant of licence to respondent No. 5, therefore, cannot be held to be bad or illegal by any means.

13. The petitioner is not entitled to any relief. This writ petition has no merit and it is dismissed.

Petition dismissed.

AIR 2004 PATNA 56 "Shree Prakash Singh v. State of Bihar"

PATNA HIGH COURT

Coram : 2 NAGENDRA RAI AND R. S. GARG, JJ. ( Division Bench )

Shree Prakash Singh, Petitioner v. State of Bihar and others, Respondents.

C.W.J.C. No. 8483 of 2001, D/- 11 -7 -2003.

(A) Bihar Agricultural Produce Markets Act (16 of 1960), S.39, S.3, S.2(a), Sch., Entry 20 - AGRICULTURAL PRODUCE - Lactogen and Milkmaid - Are agricultural produce - Their inclusion in Schedule of Act - Cannot be assailed on ground that said products cannot be treated as agricultural produce being trade mark.

Trade and Merchandise Marks Act (43 of 1958), S.1.

Lactogen and Milkamaid are agricultural produce as defined under the Act and their inclusion in the Schedule of the Act by notification D/- 10th April 2001 cannot be assailed on the ground that the said products cannot be treated as agricultural produce being trade mark. Trade and Merchandise Marks Act has no application with regard to sale, purchase etc. of agricultural produce. Moreover, the names of milk products have been mentioned in the notification by way of example of the milk product and thus mentioning of the product does not mean that the trade mark has been treated as agricultural produce, on the other hand, they have been included as agricultural produce being products of the Milk. Further, the Trade Marks Act operates in different area. The Act has been enacted to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks. It has nothing to do with the sale and purchase of agricultural produce which the State Legislature is competent to do by virtue of Entry 28 of the State List to Sch. VII of the Constitution of India. The inclusion of the name of the products of the petitioner has been made by way of

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instances and the products of the Milk as such Baby food which is a product of the Milk. (Paras 30, 41, 50)

Moreover, artificial definition has been given to the word "agricultural produce" under the Act and once the item is covered by the sweep of the definition the same is an "agricultural produce" and it can be included in the Schedule of the Act. In view of the definition of the Act it is not only the basic produce of agriculture but the product resulting from processing or manufacturing from such raw material would also remain agricultural produce. The fact that some other ingredients are also included while processing or manufacturing the basic agricultural produce, the said products shall not cease to be agricultural produce. In the instant case, so far as Milkmaid is concerned it is made of milk. So far the Lactogen is concerned apart from Milk other ingredients are also added. The basic material used in producing the product is Milk and as such it is covered by Entry No. 20 under heading "Animal Husbandry products" (VIII) of the Schedule of the Act which includes product of Milk, milk powder, baby food and products used therein (along with ingredient) except milk. (Para 37)

Further even if these items would not have been there, the two products in question would fall under the category of the product of the Milk (Baby food) as mentioned in sub-item 20 brought by way of amendment under Part VIII "Animal Husbandry Products" of the Schedule to Act. (Para 40)

(B) Bihar Agricultural Produce Markets Act (16 of 1960), S.39, S.3, S.2(a) - AGRICULTURAL PRODUCE - Levy of market fee - Products in question "agricultural produce" as defined in Act - Will not attract levy of fee unless notifications under S.3 and S.4 are issued. (Para 48)

(C) Bihar Agricultural Produce Markets Act (16 of 1960), S.39 - AGRICULTURAL PRODUCE - Validity, of - Sufficient guide lines given to State Govt. to exercise power under S.39 - Section is valid.

Constitution of India, Art.14.

The policy and the object of the Act has been made by the legislature and power under S. 39 has been only given to the State Government to add substitute or delete the agricultural produce in the light of the object and policy of the Act and the definition of the agricultural produce. Thus, there is sufficient guideline given to the State Government to exercise the power under the aforesaid section. Thus, there is no excessive delegation of power to the State Government. (Paras 55, 58)

(D) Bihar Agricultural Produce Markets Act (16 of 1960), S.2(a), S.39 - CONSTITUTIONALITY OF AN ACT - Validity of Act - Raw materials for products in question purchased from other States and products manufactured in other States - Act cannot be held to be not applicable to those products on ground that it would have extra-territorial operation and would be invalid.

Act cannot be held to have extra-territorial operation on ground that in respect of "lactogen and milk maid", Milk and other products used in preparation of the aforesaid two items, are purchased from other States and the products are also manufactured in other States and not in the State of Bihar whereas the Act has been enacted for protection of the agriculturist of the State of Bihar from the middlemen and as such it has no application to the said two products. Once the products are brought within the different market area in the State of Bihar for sale the same will attract the provisions of the Act. Even if an agricultural produce initially is not grown in the market area and manufactured outside the market area but is brought in a manufactured form within the market area for sale, such sale transaction in connection with such a produce would be covered by the sweep of the Market Act. (Paras 59, 60)

(E) Bihar Agricultural Produce Markets Act (16 of 1960), S.39, S.3, S.2(a) - AGRICULTURAL PRODUCE - Milk products such as Lactogen and Milkmaid - Levy of market fee, on - Cannot be challenged on ground that Act is not applicable in respect of milk and milk products in view of Milk and Milk Products Order, 1992 - No where in the control order there is any provision with regard to fixation of price and regulating sale and purchase of milk and milk products.

Essential Commodities Act (10 of 1955), S.3.

Milk and Milk Products Order (1992), Cl.4. (Para 64)

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Delhi Cloth and General Mills Co. Ltd. v. Agricultural Produce Market Committee, AIR 1993 Pat 43 15

M/s. Saraogi Paper Mills v. State of Bihar, 1993 (1) Pat LJR 510 20

Shri Shankar Makhana Bhandar v. State of Bihar, 1993 (1) Pat LJR 490 20

James' s Trade Mark James v. Soulby, 1986 FSR 472 20

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General Electric Co. v. General Electric Co. Ltd., 1972 (2) All ER 507 20

Jan Mohammad Noor Mohamad Bagban v. State of Gujarat, AIR 1966 SC 385 20

Union of India v. M/s. Bhanimal Gulzarimal Ltd., AIR 1960 SC 475 54

D. S. Garewal v. State of Punjab, AIR 1959 SC 512 54

M. C. V. S. Arunachala Nadar v. State of Madras, AIR 1959 SC 300 28

State v. Narayandas Managilal Dayame, AIR 1958 Bom 68 (FB) 20

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S. Pal, Sr. Advocate, R. N. Junjhunwala; S. Sanyal, D. Sen, R. N. Prasad and A. K. Sinha, for Petitioner; B. N. Singh, AAG I, and Ram Priya Sharan Singh JC to AAG I, for State; Ram Janam Ojha Sr. Advocate, K. P. Yadav, Suresh Kumar, Ajay Kumar, Avinash Kumar and Amal Kumar, for Respondent Nos. 4 to 10.

Judgement

NAGENDRA RAI, J. :- The petitioner, a clearing and sales agent of products of Nestle India Limited (hereinafter referred to as the Company) has filed the present writ application for quashing the notification dated 10th April, 2001 whereby amendment has been made in the Schedule of the Bihar Agricultural Produce Markets Act (hereinafter referred to as the Act) in exercise of power under Section 39 of the Act in so far as the products made by the Company included under item No. VIII of the Schedule captioned as Animal Husbandry Products and notices issued by the Agricultural Produce Markets Committee, Mussalahpur (hereinafter referred to as the Committee) asking the petitioner to take licence and to pay market fee with regard to the said products. At the time of argument, learned Senior counsel appearing for the petitioner confined the challenge to the notification only with regard to two products, namely, lactogen and milkmaid being sub-items Nos. 22 and 25 under heading VIII, Animal husbandry products. Copies of the notification as well as two notices have been annexed as Annexures 1, 2 and 3 to the writ application respectively.

2. The case of the petitioner is that the Company has factory in various locations in the country for manufacture of its product. The products manufactured by the Company are milkmaid, everyday, lactogens milk, cereals, nestum, nescafe, noodles, sauces, cubes, tea, Kitkat and other items. The Company has appointed number of clearing and sales agents (hereinafter referred to as C and S Agents) in various parts of the country to whom products are despatched from its factory on stock transfer basis. The C and S Agents clear the said products despatched to them from Rail/Road heads and store the same in their godowns. The Company has also appointed distributor

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in various parts of the country for distributing the said products to retail dealers. The C and S agents invoice the goods to the distributor of the respondent-company received from the Company' s representatives. The Patliputra Cands owned by the petitioner has been appointed as Clearing and Sales Agent of the Company and M/s. Patliputra Trading Company has been appointed as distributor by the Company for distribution of its products in Patna covering the area of Patna Town and M/s. Sarvottam Sales Corporation has also been appointed as distributor within the jurisdiction of Agricultural Produce Markets Committee, falling within Patna City.

3. Originally Milk was in the Schedule of the Act. By notification No. S.O. 730 dated 2-5-1977 it was deleted from the Schedule. Subsequently the notification dated 2-6-1977 was cancelled by another notification dated 21-5-1977. Again in 1984 the milk except in liquid form was substituted. In the year 1986, the Bihar Agricultural Produce Markets Board (hereinafter referred to as the Board) took a stand that the petitioner-firm is liable to pay market fee on the various products of the company and a demand was raised towards the market fee by the Committee on all the products sold by the Company through the petitioner. The petitioner challenged, the validity of the aforesaid action taken by the Committee by filing CWJC No. 4133 of 1986. Its claim was that the Act was not applicable with regard to products dealt with by it. The said writ application along with other writ applications was heard and disposed of on 15-12-1987 which is reported in 1988 PLJR 830 (sic). The petitioner in the said writ application challenged that the product marketed by it, namely, milk maid, Lactogen, Nestum Baby Cereal, Cerelac, Nespray milk powder, Lactogen Full Protein Followup Formulas, everyday dairy coffee whitener in powder form, Tomoato Ketchup and Hot and sweet type sauces made from sugar, chilli synthetic vinegar etc. are not covered by the Act. It was held by this Court that Nestum Cerelac, Amulspray, Chocolate, Ketchup, Milkafe and cheese are not agricultural produce but the two products, namely, Lactogen and milkmaid which are subject matter of challenge in this writ application and other products were held to be covered by item No. 9 in Part VIII (Animal Husbandry Products) of the Schedule, ' Milk' . The said judgment was challenged by the petitioner before the Apex court by filing SLP and the Leave was granted in the year 1988 but no stay was granted and the Civil Appeal No. 1216 of 1988 arising out of the aforesaid SLP was dismissed for default on 9th December, 1991.

4. Thereafter the Committee issued notice to the petitioner to pay market fee on all products marketed by it except those products, namely, Nestum, Cerelac, Amulspray, Chocolate, Ketchup, Milkafe and cheese which have been held to be not covered by the provisions of the Act. The petitioner was also directed to obtain licence, file return and to pay outstanding market fee. The petitioner aggrieved by the aforesaid action taken by the Market Committee filed a writ application being CWJC No. 5799 of 1998 before this Court challenging the applicability of the Act which is still pending. The petitioner has subsequently filed other writ applications also challenging the applicability of the Act which are pending. In the meantime, the aforesaid notification dated 10-4-2001 has been issued amending the Schedule including item No. VIII, captioned as "Animal Husbandry" of the Schedule and sub-items were added which are as follows :

20. Products made from milk-Milk Powder, Baby food and Products used therein (alongwith ingredient (except milk) i.e. Amul Spray.

21. Amulya.

22. Lactogen.

23. Lactodex

24. Raptakos.

25. Milk Maid.

26. Cheese.

27. Panir.

28. Glaxo.

29. Skimmed Milk.

30. Milk Whitener.

5. As stated above, initially the petitioner challenged all the entries from 20 to 30 but later on he confined the challenge only to two items, namely, Lactogen and Milkmaid being sub item Nos. 22 and 25. According to the petitioner, these two products though included in the schedule are not milk products and thus are not the agricultural produce as defined under Section 2(a) of the

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Act and, accordingly, the Act is not applicable. The further grievance is that even if they are agricultural produce, by only inclusion of the products in the Schedule in exercise of power under Section 39 of the Act, the Act is not applicable to the said products unless formalities as contemplated under Sections 3 and 4 are complied with. In support of the aforesaid stand, learned counsel for the petitioner has made several submissions which will be considered hereinafter.

6. The stand of the respondents-Board and the Committee as evident from their counter-affidavits is that both the products are the Milk products and covered by the provisions of the Act and the State Government being a competent authority in terms of the provisions of the Act in exercise of power has amended the Schedule and categorically and specifically added milk product and Baby food including Lactogen and milk maid as a Product of the milk under the heading Animal Husbandry products. The name of lactogen itself suggest that it is a milk product as ' Lacto' is adjective of Milk, ' acqua' is of water and ' gen' is the abbreviation of the word Genus and the two words together ' Lactogen' means a product of which milk is the genus. Thus, by business name and terminology also it is a species of manufactured milk. It is further stated that the composition of milk of different species shows that it contains about 90% of water and on dehydration water content comes down with the result that percentage of protein, fat, sugar, salt and vitamins goes up. From the composition and process of manufacture of lactogen as mentioned in the writ application it becomes clear that items added in the Schedule are manufactured milk product. Reference has also been made to the Milk and Milk Product Order, 1992 issued by the Central Government wherein milk product has been defined which includes infant milk food, skimmed milk powder, whole milk powder, Chocolate products, cheese and other items containing milk or milk product. Thus, both the products are agricultural produce and amenable to the provisions of the Act.

7. The further stand is that once the products are included as agricultural produce in the Schedule, the provisions of the Act is applicable and it is not necessary to take recourse to the provisions of Sections 3 and 4 of the Act before applicability of the Act to the said agricultural produce. The respondents have rightly asked the petitioner to obtain licence fee and pay market fee with regard to these products and other produces as mentioned in the notification and the notices issued in pursuance thereof.

8. Before dealing with the submissions advanced at the bar it will be apt to refer to the provisions of the Act and the notifications issued from time to time and the relevant judgments rendered by this Court as well as by the Apex Court in the matter.

9. The Act has been enacted to provide for the better regulation of buying and selling of Agricultural produce and the establishment of markets for agricultural produce in the State of Bihar and for matters connected therewith. Section 2(a) defines the Agricultural produce, according to which agricultural produce means all produce whether processed or non-processed, manufactured or not, of agriculture, Horticulture, Plantation, Animal Husbandry, Forest, Sericulture, Pisciculture, and includes livestock or poultry as specified in the Schedule. Section 39 of the Act empowers the State Government to add, amend or cancel any of the items of agricultural produce specified in the Schedule by issuance of notification. Section 2(h) of the Act defines the market which means a market established under this Act for the market area and includes, a principal market yard and sub-market yard or yards, if any and 2(i) defines the market area which means any area declared to be a market area under Section 4 and Schedule has been defined under Section 2 (r) which means Schedule of this Act.

10. Chapter II of the Act deals with constitution of markets and market committees. Section 3 of the Act contains a provision with regard to issuance of notification of intention of exercising control over purchase, sale, storage and processing of agricultural produce in specified area and the same runs as follows :

"3. Notification of intention of exercising control over purchase, sale, storage and processing of agricultural produce in specified area. (1) Notwithstanding anything to the contrary contained in any other Act for the time being in force, the State Government may, by notification, declare its intention of regulating the purchase, sale, storage and processing of such agricultural produce

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and in such area, as may be specified in the notification.

(2) A notification under sub-section (1) shall state that any objection or suggestion which may be received by the State Government within a period of not less than two months to be specified in the notification, shall be considered by the State Government."

11. According to the said provision, once the State Government decides to make the provisions of the Act applicable into any area then it will declare its intention by issuance of notification of regulating the purchase, sale, storage and processing of such agricultural produce and in such area which is to be specified in the notification. The notification will further provide that the objection or suggestion may be received with regard to issuance of the aforesaid notification within the specified period mentioned therein which shall be considered by the State Government.

12. Section 4 of the Act contains a provision with regard to declaration of market area which runs as follows :

"4. Declaration of market area.- (1) After the expiry of the period specified in the notification issued under Section 3 and after considering such objection and suggestions as may be received before such expiry and after holding such enquiry as it may consider necessary, the State Government may by notifications, declare the area specified in the notification under Section 3 or any portion thereof to be a market area for the purposes of this Act, in respect of all or any of the kinds of agricultural produce specified in the notification under Section 3.

(2) On and after the date of publication of the notification under sub-section (1), or such later date as may be specified therein, no municipality or other local authority, or other person, notwithstanding anything contained in any law for the time being in force, shall, within the market area, or within a distance thereof to be notified in the official Gazette in this behalf set up, establish, or continue, or allow to be set up, established or continued, any place for the purchase, sale, stores or processing of any agricultural produce so notified, except in accordance with the provisions of this Act, the rules and bye-laws."

Explanation .- A municipality or other local authority or any person shall not be deemed to set up, establish or continue or allow to be set up, established or continued a place as a place for the purchase, sale, storage or processing of agricultural produce within the meaning of this section, if the quantity is as may be prescribed and the seller is himself the producer of the agricultural produce offered for sale at such place or any person employed by such producer to transport the same and the buyer is a person who purchases such produce for his own use or if the agricultural produce is sold by retail sale to a person who purchases such produce for his own use.

(3) Subject to the provisions of Section 3, the State Government may at any time by notification exclude from a market area any area or any agricultural produce specified therein or include in any market area or agricultural produce included in a notification issued under sub-section (1).

4. Nothing in this Act shall apply to a trader whose daily or annual turnover does not exceed such amount as may be prescribed."

13. According to the said provision after expiry of the period specified in the notification issued under Section 3 and after considering such objection and suggestions as may be received before such expiry and after holding such enquiry as it may consider necessary, the State Government may by notification declare the area specified in the notification under Section 3 or any portion thereof to be a market area for the purposes of this Act in respect of all or any of the kinds of agricultural produce specified in the notification issued under the preceding section. After the publication of the notification under sub-section (1) of Section 4, the municipality or other local authority or any other person is prohibited to set up, establish, or continue, or allow to be set up, established or continued any place for the purchase, sale, stores or processing of any agricultural produce so notified in the market area, or within a distance thereof to be notified in the official Gazette except in accordance with the provisions of the Act, the rules and Bye-laws. Sub-section (3) empowers the State Government by notification to delete any market area or any agricultural produce mentioned in sub-section (1) of

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Section 4.

14. Section 5 of the Act contains a provision with regard to declaration of market yards. Section 15 of the Act contains a provision with regard to sale of agricultural produce and it provides that once the notification has been issued under Section 4 of the Act no agricultural produce shall be bought or sold by any person at any place in the market area other than the relevant principal market yard or sub-market yard or yards established therein except such quantity as may on this behalf be prescribed for retail sale or personal consumption. Sub-section (2) of Section 15 provides that the sale and purchase of such agricultural produce in such area notwithstanding contained in any law be made by means of open auction or tender system except in cases of such class or description of produce as may be exempted by the Board. Section 27 of the Act empowers the Market Committee constituted under the Act to levy and collect market fee on agricultural produce bought or sold, in the market area at the rate specified therein. The market fee chargeable is paid by the buyer.

15. By notification No. S.O. 730 dated 2nd May, 1977 the State Government in exercise of power under Section 39 of the Act deleted several items from the agricultural produce. Butter and Milk were deleted from item No. VIII (Animal husbandry products). Sugar was also deleted from the heading Miscellaneous (XII). Subsequently the State Government issued another notification No. S.O. 857 dated 21st May, 1977 cancelling the earlier notification dated 2-5-1977. The notification S.O. No. 857 dated 21st May, 1977 issued under Section 39 of the Act was challenged before this Court by filing batch of cases with regard to sugar only. The said writ applications were disposed of by a common judgment dated 30th March, 1992 which is reported in, AIR 1993 Patna 43 (Delhi Cloth and General Mills Co. Ltd. v. Agricultural Produce Market Committee). This Court held that cancellation of the earlier notification dated 2-5-1977 by notification dated 21-5-1977 did not tantamount to an automatic revival of sugar being an item in the Schedule. For including the items in the Schedule of the Act positive action of issuing separate notification adding items in the Schedule was necessary. This Court also held that even if it is assumed that item was included by notification dated 21-5-1977 such inclusion does not authorize imposition of market fee under Section 27 of the Act because it did not comply with the requirements under Sections 3 and 4 of the Act including any item in the Schedule of the Act.

16. Special Leave Petition was filed by the Board before the Supreme Court. Leave was granted but no stay was granted. Again by memo No. 3027 dated 12-5-1992 additional notification was issued clearly including sugar, milk and milk product and other products in the Schedule under different captioned. On 13-10-1992. Bihar Agricultural Produce Markets (Second Amendment) Ordinance, 1992 was promulgated which was replaced by the Bihar Agricultural Produce Markets (Amendment) Act, 1993. By the said Act, Sections 4-A and 4-B were inserted which run as follows.

"4-A. Sections 3 and 4 not to apply to Section 39.- (1) The provisions of Sections 3 and 4 shall not apply to the exercise of powers by the State Government under Section 39 to amend the Schedule by addition of any item of agricultural produce not specified therein.

(2) The State shall not order the deletion of any item in exercise of its power under Section 39 without giving an opportunity for hearing to the affected parties."

4-B. Validating of market fee levied and collected.- Notwithstanding any judgment, decree or order of any Court to the contrary, any market fee levied and collected shall be deemed to be valid as if such levy and collection was made under the provisions of this Act as amended by this Act and Notification No. 730 dated 2-5-1977 shall be deemed never to have been issued and no suit or other legal proceedings shall be maintained or continued in any Court for the refund of the fee collected under the provisions of this Act and no Court shall entertain any proceedings challenging the fee recovered or the continued levy and recovery of the fee merely on the ground that liability had ceased on the issuing of Notification No. 730 dated 2-5-1977."

17. Under Section 4-A it was specifically provided that the provisions of Sections 3 and 4 will not apply to the exercise of powers by the State Government under Section 39 to amend the Schedule by addition of any

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item of agricultural product not specified therein. However, in case of deletion of any item in exercise of aforesaid power an opportunity of hearing is to be given to the affected person. Section 4-B validated the levy of market fee and collection and provided that notwithstanding any judgment, decree or order rendered by any Court to the contrary, any market fee levied and collected shall be deemed to be valid as if such levy and collection was made under the provisions of this Act as amended by this Act and the notification No. 730 dated 2-5-1977 shall be deemed to have never been issued and no proceedings shall be levied for refund of the fee. The said amendments were challenged by the sugar mills by filing several writ applications before this Court which were disposed of by order dated 20-1-1994 reported in 1994 (1) PLJR 407 H. M. P. Sugar Ltd. v. State of Bihar. This Court held that Section 4-A is ultra vires of Sections 14 and 19 (G) of the Constitution of India and not protected by Article 16 of the Constitution. Even if the said provision is held to be valid the retrospective part is ultra vires of Articles 14 and 19(g) of the Act. Section 4-B is partly valid and partly invalid. The first part of Section 4-B is invalid and cannot be given effect to. The second part is valid and can be given effect to. Parts 3 and 4 of Section 4-B are merely ancillary and consequential to the first and second parts. The said judgment was challenged by the Board as well as by the Sugar Mills and was finally disposed of by the Apex Court on 8th July, 1996 which is reported in (1996) 9 Supreme Court Cases 681 : (AIR 1997 SC 188). The Apex Court held that Sections 4-A and 4-B are valid and the imposition of market fee and collection of such, market fee are legal and valid.

18. Thus it is clear that prior to issuance of the notification under challenge the milk was one of the items under caption ' Animal Husbandry Products' which was deleted and subsequently the notification deleting the Milk and other products was cancelled which was challenged to with regard to Sugar covered by the said notification and the Apex Court held that in view of the amended provisions of Sections 4-A and 4-B, the notification dated 2-5-1977 deleting the items including Milk will be deemed to have never been issued.

19. Several writ applications were filed before this Court challenging the applicability of the Act to the products, namely, sugar, sugarcane and molasses, vegetable oils, rice products, animal husbandry products, milk, wheat products and tea. This Court decided that the Acts are applicable with regard to said products and the matter was challenged by the aggrieved party before the Supreme Court by filing several Civil Appeals and the same were disposed of by a Constitution Bench of 10th August, 1999 and the case is known as "Belsund Sugar Co. Ltd. v. State of Bihar" reported in , (1999) 9 SCC 620 : (AIR 1999 SC 3125). The matter with regard to Milk and Milk products has been dealt with by the Apex Court under heading No. 5 from paragraphs 135 to 140. The two products, namely, Lactodex and Raptakos SIF (Special infant food) manufactured by the appellant of Civil Appeal No. 1880 of 1988 were held to be non-agricultural produce by the Apex Court. The appellant in that case claimed that baby food under the trade name "Lactodex and Raptakos SIF are not agricultural produce. The Apex Court held that sub-item 20 captioned under the title "Animal Husbandry Products" refers to milk except liquid milk. By no stretch of imagination, tinned baby food containing various ingredients which may include some milk facts or proteins though in powder form can be said to be milk powder simplicitor or whole milk not in liquid form. The Apex Court noticed that there is no item of milk products in the Schedule to the Act under the caption "Animal Husbandry Products" whereas such produce with regard to other items have been included in the Schedule and accordingly held that respondents Board has not shown that these two products were agricultural produce being Animal Husbandry products of "milk" in a non-liquid form and accordingly held that the Act is not applicable. After the aforesaid judgment the State Government issued the notification dated 10th April, 2001 incorporating the products made from Milk such as milk powder, babyfood and products used therein (along with ingredient except milk) i.e. Amul spray and subsequent entries from 21 to 30 giving the trade names of the products of milk.

20. Learned Senior counsel appearing for the petitioner raised following submissions;

(I) Trade marks or brand names are not

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agricultural produce as defined under Section 2(a) of the Act. Lactogen and Milkmaid are trade marks and not the goods and thus not the agricultural produce and accordingly, cannot be included in the schedule and will not be subjected to regulatory procedure under the Act. In support of the aforesaid submission he relied upon the book names as "Intellectual property, Patents, Copyright, Trade Marks and allied rights" written by W. R. Cornish and book named as "Property in trade mark" written by Mr. Narayanan (IVth edition Chapter III), 1972 (2) All ER 507 (General Electric Company v. The General Electric Co. Ltd.), 1886 (33) Chancery Division at page 395 (In Re James' s Trade Mark James v. Soulby), 1986 FSR 472 (Coca Cola Trade Marks), AIR 1995 Supreme Court 2372, (M/s. Gujarat Bottling Co. Ltd. v. Coca Cola Company) and AIR 1965 Supreme Court 35 (sic) (Consolidated Foods Corporation v. Brandon and Co. Private Ltd.) Relying upon the aforesaid authorities, the learned counsel for the petitioner submitted that the trade marks is an specie of intellectual property and it is a mark on the good and not the good itself and thus it cannot be treated as agricultural produce under the Act.

(II) Even if it is assumed that two products, namely, Lactogen and Milkmaid are agricultural produce and rightly included in the Schedule of the Act by the State Government in exercise of power under Section 39 of the Act, the said products cannot be subjected to regulatory procedure under the Act unless the procedure provided under Sections 3 and 4 has been followed. In support of the aforesaid submission he relied upon the judgment of the Supreme Court reported in (1996) 9 Supreme Court Cases 681 : (AIR 1997 SC 188) (Sasa Musa Sugar Works v. State of Bihar and the judgments of this Court reported in AIR 1983 Patna 311 (M/s. Sree Bahariji Mills Ltd. v. State of Bihar) and 1993 (1) PLJR 490 (M/s. Shri Shankar Makhana Bhandar v. State of Bihar) 1993 (1) PLJR 510 (M/s. Saraogi Paper Mills v. The State of Bihar).

(III) The State is not competent to issue the aforesaid impugned notification under Section 39 of the Act with regard to two products in question. As Trade Marks Act is a legislation made by the Union Government by virtue of an authority conferred under Entry 49 of List I of Schedule VII of the Constitution of India which covers inter alia Trade and Merchandise Marks, the State has no power to make law with regard to matter covered by the said entry as the two products are not the goods but the trade mark and covered by the provisions of the Trade Marks Act, 1999 made by the Central Government. Consequently, the legislature has no authority in law to delegate the power to the State Government to include the articles in the Schedule of the Act.

(iv) Section 39 of the Act itself is ultra vires as it confers unguided power to add, substitute and delete the agricultural produce from the Schedule of the Act. Schedule is a part of the Act and addition, substitution and deletion of the agricultural produce falls within the domain of the policy matter and the same cannot be delegated by the Legislature to the delegatee (State Government). In support of the said submission he relied upon the judgments of the Supreme Court reported in AIR 1951 Supreme Court 332 (In re Art. 143, Constitution of India and Delhi Laws Act (1912) etc.) and AIR 1954 SC 569 Rajnarain Singh v. Chairman Patna Administration Committee, Patna).

(v) The Act is ultra vires as it has extra territorial operation. The object of the Act is to protect the agriculturist of the State of Bihar from the middlemen. The Milk used for preparing the milk product in question is not of this State, on the other hand, the same is of the other State and manufacturing of the goods by the Company is also made outside the State. In support of the same he relied the judgment of the Supreme Court reported in AIR 1965 Supreme Court 385 (Jan Mohammad Noor Mohamad Bagban v. The State of Gujarat) and a Full Bench decision of the Bombay High Court reported in AIR 1958 Bombay 68 (The State v. Narayandas Managilal Dayame).

(vi) In view of the special provisions of the Milk and Milk Product Order 1992, made by the Central Government in exercise of power under Section 3 of the Essential Commodities Act, the Act in question has to give way to the aforesaid special provision.

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(vii) By issuance of impugned notification the State Government has nullified the judicial decision of the Supreme Court in the case of Belsand Sugar Co. Ltd. v. State of Bihar, reported in (1999) 9 SCC 620 : AIR 1999 SC 3125.

21. Learned counsel appearing for respondents-Board and Committee submitted that in Belsund Sugar Co. Ltd. (supra) the appellant before the Apex Court challenged that Lactodex and Raptakos SIF (special infant food) are not agricultural produce. The Apex Court having noticed that the milk except liquid milk was added at sub-item 20 captioned under the title "Animal Husbandry Products" held that the aforesaid two products which are admittedly milk products cannot be termed to be agricultural produce being animal husbandry products of milk in a non-liquid form and accordingly held that Act is not applicable with regard to the said products. Thereafter the impugned notification has been issued by the State Government on 10th April, 2001 including the milk products also as agricultural produce and under newly added entry No. 20 under the caption "Animal Husbandry Products", the products made from milk - Milk powder, Baby food and products used therein (along with ingredient (except milk) i.e. Amul Spray have been added as agricultural produce. The brand names have been given only for the purpose of showing some of the products by way of example/illustration to identify the products made from the milk. Thus trade mark has not been treated as an agricultural produce, on the other hand they have been included as a milk product.

22. He further submitted that once the Article is included in the Schedule of the Act in exercise of power under Section 39 of the Act as agricultural produce it is subjected to regulatory procedure under the provisions of the Act and fees are leviable even if the procedure under Sections 3 and 4 has not been followed, specially when in this case the procedure under Sections 3 and 4 has already been followed with regard to milk.

23. The Act has been enacted by the State under Entry No. 28 (Market and Fairs) of State List of Schedule VII of the Constitution of India. It has nothing to do with the trade and merchandise mark as mentioned under Entry 49 of List I of Schedule VII of the Constitution of India. The Trade Marks Act, 1999 enacted by the Central Government under the aforesaid entry deals with different matter and it has no concern with the market and fairs which is a State subject under which Act has been enacted.

24. Section 39 of the Act does not confer unguided and uncanalised power on the State Government, on the other hand after reading the aims and object, preamble and the provisions of the Act it is clear that policy and object have been laid down by the Legislature and power has been conferred on the State under Section 39 to achieve the policy and object. No policy matter has been delegated to the State Government. Enough guideline has been provided under the Act itself with regard to addition, substitution and deletion in respect of agricultural produce under Section 39 thereof. This question has also been considered by a Division Bench of this Court in the case of M/s. Mahabir Tea Company v. State of Bihar, reported in 1979 BLJR 560, and it has been held that Section 39 is a valid piece of legislation.

25. He further submitted that Act has no extra territorial operation and this submission in regard to Tea matter has already been considered and rejected by the Apex Court in Belsund Sugar Co. Ltd. (supra) in Paragraph 153 of the judgment.

26. He further submitted that the Milk and Milk Product Order, 1992 has been issued under Section 3 of the Essential Commodities Act and the same deals with different matter and not with regard to matters covered by the provisions of the Act.

27. The aforesaid notification in no way nullifies the judicial decision given by the Supreme Court in Belsund Sugar Co. Ltd. (supra), on the other hand notification has been issued to include the milk products as agricultural produce which were not included earlier whereas the products of other agricultural produce such as paddy etc. were already included in the Schedule.

28. The Act has been enacted to provide for the better regulation of buying and selling

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of Agricultural produce and the establishment of markets for agricultural produce in the State of Bihar and for matters connected therewith. The main object of the Act is to protect the growers of agricultural produce who on account of their ignorance, illiteracy and lack of collective bargaining power may get exploited by middlemen and economically strong purchasers of their agricultural produce with the result that the agriculturists may not get adequate price for their produce. The Apex Court has upheld the constitutional validity of the similar provision as well as the provision of this Act and emphasised the necessity of such enactment with a view to protect the producers of agricultural produce from being exploited by the middlemen and profiteers and to enable them to secure a fair return for their produce. Reference in this connection may be made to the Constitution Bench Judgements of the Supreme Court in the case of M.C.V.S. Arunachala Nadar v. State of Madras, reported in AIR 1959 SC 300 and in the case of Belsund Sugar Co. Ltd. (supra).

29. From the definition of agricultural produce as quoted above it is clear that definition is very wide one and artificial definition has been given to words ' agricultural produce' as it includes all produce whether processed or non-processed, manufactured or not, of Agriculture, Horticulture, Plantation, Animal Husbandry, Forest, Sericulture, Pisciculture and includes livestock or poultry as mentioned in the definition. It does not include only basic product but also product processed or manufactured from the said basic product. Any product after processing or manufacturing from basic raw material would remain agricultural produce. The milk is agricultural produce mentioned in the Schedule though it was deleted for some time but in view of the judgment of the Supreme Court in Sasa Musa Sugar Works (supra) such deletion was wrongly made as stated above. The words ' milk product' was not included in the Schedule and by the impugned notification the milk product has also been included in the Schedule and some of the milk products which are commercially known as milk product have also been included in the Schedule though it would have been better if they had been mentioned by way of examples of milk products in entry No. 20 under caption "Animal husbandry products itself."

30. The two text books and the decisions cited by the petitioner as mentioned above show that the trade mark is an intellectual property and the function of the trade mark legislation is to protect the mark but not the article which is marked and the main purpose of the trade mark is to describe something which distinguishes the goods rather than the goods themselves. There is no controversy with regard to the aforesaid proposition and trade mark cannot be agricultural produce. The Trade Marks Act has been enacted by the Parliament with a view to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks. The said Act has no application with regard to sale, purchase etc. of agricultural produce. As stated above, the names of milk products have been mentioned in the notification by way of example of the milk product and thus mentioning of the product of the petitioner does not mean that the trade mark has been treated as agricultural produce, on the other hand, they have been included as agricultural produce being products of the Milk.

31. The main question is to be decided as to whether the products of the petitioner is agricultural produce or not by virtue of these ingredients. If it is milk product then it is agricultural produce as defined under Section 2 (a) of the Act. The petitioner has given only the ingredients of Lactogen-1 and Lactogen-2 and not of Milkmaid in the writ application which are as follows.

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The manufacturing process of the aforesaid two products are as follows :

(1) Milk Powders (Lactogens/Everyday)

Milk is received in the FMR prep. and sent to the Liquid Plant. Here is first standardised and then routed through evaporator to increase the TC (Total concentration). Concentrated milk is then sprayed through drier fower (ESRON in Nestle terminology to get Milk Powder)

Fresh Milk-Standardraised - Evaporator - Spray Drier

To - 15% to - 51% !

Rest water ! Bulk

! Powder

Filling

(II) MILKMAID

Fresh milk is standardised and then treated in a vacuum pan to make it thick, principle is that boiling point induces when pressure is reduced hence it is easy to remove excess water content and thicker the milk.

Fresh milk - Standardisation - Vacuum pan - Concentrated milk.

32. Thus, according to the petitioner, so far Milkmaid is concerned apart from milk no other item is added in it. So far Lactogen is concerned as it appears from the details mentioned above that milk fat is 12.93 per 100 gm of powder and milk protein is 15% and thereafter other items are included. According to the petitioner both the items are not milk products.

33. The Board on the other hand has given the average composition of the milk of different species taken from Chambers Encyclopedia in Paragraph 12 of the counter- affidavit which runs as follows :

34. It is further stated on behalf of the Board that protein consists of (i) Casinogene, a phospho protein found in milk when fresh as a soluble calcium salt, (ii) lactolabmine

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and lactoglobiline - Milk sugar or lactose is formed from glucose - salts are mainly potassium, sodium and calcium salts of hydrochloric and phsophoric acids, vitamins are also present in milk. It is further stated that milk surplus to the liquid market is manufactured into butter, cheese, condensed evaporated and dried milk, malted milk and many patent foods, butter milk, cream and cream derivaties. Milk is produced in liquid manufactured and condensed form. Liquid milk contains 90% of water and also protein, fat, sugar and vitamins. On dehydration water content comes down with the result that percentage of protein, fat, sugar, salt and vitamins goes up.

35. Thus, from the composition of contents of milk as aforesaid and process of manufacture of Lactogen and Milkmaid it is clear that they are milk products and as such they have rightly been included.

36. Learned counsel appearing for the Board have also referred the definition of Milk and Milk Product under the Milk and Milk Product Order, 1992 which includes skimmed milk, panir and Chhena, Condensed milk (Sweatened and unsweetened, whole milk powder, infant milk food and whole milk powder, chocolate products and other articles containing milk or milk product.

37. As stated above, artificial definition has been given to the word ' agricultural produce' under the Act and once the item is covered by the sweep of the definition the same is an ' agricultural produce' and it can be included in the Schedule of the Act. In view of the definition of the Act it is not only the basic produce of agriculture but the product resulting from processing or manufacturing from such raw material would also remain agricultural produce. The fact that the some other ingredients are also included while processing or manufacturing the basic agricultural produce, the said products shall not cease to be agricultural produce. In this case as noted above so far as Milkmaid is concerned it is made of milk. So far the lactogen is concerned apart from Milk other ingredients are also added. The basic material used in producing the product of the petitioner is Milk and as such it is covered by entry No. 20 under heading "Animal Husbandry Products" (VIII) of the Schedule of the Act which includes product of Milk, milk powder, baby food and products used therein (along with ingredient) except milk.

38. The learned counsel appearing for the petitioner further submitted that the similar products, namely, Lactodex and Raptakos SIF (special infant food) of another Company have been held to be non-agricultural produce within the meaning of the Act by the Apex Court in Belsund Sugar Co. Ltd. (supra) and the products of the petitioner be also held to be not covered by the provisions of the Act.

39. It is difficult to accept the aforesaid submission. It appears that the appellant-Company before the Supreme Court in Belsund Sugar Co. Ltd. (supra) had challenged that the Lactodex and Raptakos SIF were not the agricultural produce as defined under Section 2 (a) of the Act before this Court. This Court negatived the said contention and held that the aforesaid two articles Lactodex and Raptakos SIF sold in packed tins were in substance milk products and, therefore, "agricultural produce" within the meaning of the Act. The matter was challenged before the Apex Court and the said matter has been considered from Paragraphs 135 to 140 in the judgment. The Apex Court held that only entry that has been made is ' Milk' except liquid milk in the Schedule of the Act under heading "Animal Husbandry Products". There is no entry of milk products like Milk powder, baby food etc. and as such in absence of such entry two products cannot be said to be agricultural produce being animal husbandry products of "milk" in a non-liquid form and accordingly held that the Act is not applicable. It is apt to quote Paragraphs 135 to 140 of the said judgment.

"135. This takes us to the consideration of Civil Appeal No. 1880 of 1988. The appellant in this appeal is an incorporated company with its registered office and factory at Bombay. It claims to produce baby food under the trade names "Lactodex and Raptakos SIF" (special infant food). Its products are sold all over the country including Bihar State. It has its Central Office at Patna. Being located outside Bihar it purchases its raw materials from the territories outside Bihar. Out of the raw materials procured from outside, the aforesaid two types of infant food are manufactured outside Bihar but some of the products of the Company are received in Bihar State packed in sealed tins.

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The appellant-Company earlier had two brances being Sales Offices, one at Patna and the other at Muzaffarpur. The latter branch is since closed. Both these branches fall within the jurisdiction of the Agricultural Produce Market Committees at Patna and Muzaffarpur. According to the appellant though its activities were not covered by the sweep of the Market Act, it was required to obtain licences under the Act for operating at both these places in the market areas. The appellant contended in the writ petition before the High Court that the direction of the marketing authorities requiring the appellant to take licences under the Market Act was clearly ultra vires and illegal for the simple reason that the products sold by its within the market area were not agricultural produce at all. Therefore, they were not governed by the sweep of the Act.

136. The High Court in the impugned judgment negated this contention and held that both these articles sold in packed tins were in substance milk products and, therefore, "agricultural produce" as defined by Section 2 (1) (a)

137. Learned counsel appearing for the appellant vehemently submitted that before the aforesaid two products can be subjected to the regulatory procedure of the Market Act, it must be shown by the respondents that they are "agricultural produce". He invited our attention to Section 3 of the Act and submitted that the very first step of the applicability of the Act is the declaration of intention by the State Government for regulating the purchase, sale, storage and processing of "agricultural produce" as mentioned in the notification. That the said term "agricultural produce" as defined by Section 2 (1) (a) clearly indicates that the agricultural produce which is to be covered by the sweep of the Act has to be one which should be specified in the Schedule. When we turn to the Schedule of the Act framed as per Section 2 (1) (a), we find one of the Animal Husbandry Products at Item VIII, sub-item 20 as milk except liquid milk. Thus any product consisting of solidified milk, like milk powder, is contemplated by the said item. It was submitted that in the entire Schedule nowhere do we find any mention of baby food which may be substitute for milk or solidified milk. It was, therefore, contended that the appellant which manufactures and sells special infant foods like "Lactodex" and "Raptakos" cannot be required to take any licence under the Market Act.

138. Refuting this contention, learned Senior Counsel for the respondents submitted that as noted by the High Court the aforesaid two products manufactured and sold by the appellant do contain as base material "milk" in solidified form. He invited our attention to the details submitted by the appellant before the High Court and as noted by the High Court in its judgment in connection with the ingredients and constituents of these two products.

"LACTODEX"

Per 100 ml. when reconstituted

6g : 45 ml

Proteins 1.9 g

Carbohydrates 9.6 g

Milk fats 0.9 g

Minerals 0.5 g

Vitamin A 265 IU

Vitamin B 6 40 mcg including that derived from milk powder

Vitamin D 40 IU

Calories 54

"RAPTAKOS SIF"

Per 100 ml when reconstituted

4.5 g : 30 ml

Proteins 1.8 g

Fats 3.0 g

Carbohydrates 9.6 g

Minerals (Ash) 0.4 g

Iron 0.6 g

Vitamin A 225 IU

Vitamin D 60 IU

Vitamin E 1.3 IU

Vitamin B 1 0.07 mg

Vitamin B 2 0.11 mg

Nicotinamide 0.9 mg

Vitamin B 6 0.04 mg

Vitamin B 12 0.15 mg

Vitamin C 0.5 mg

Calories 73 mg

139. Placing reliance on these ingredients, it was submitted that per content is 0.9 gm and that other minerals and vitamins may also include milk powder. Similarly,

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Raptakos (special infant food) also contains proteins and fats. He also contended that even milk which is a complete food may contain vitamins, therefore, it cannot be said that these two products are not milk products or products containing some ingredients of milk. It is difficult to accept this contention for the simple reason that the aforesaid Schedule at sub-item 20 captioned under the title "Animal Husbandry Products" refers to milk except liquid milk. By no stretch of imagination, tinned baby food containing various ingredients which may include some milk fats or proteins though in powder form can be said to be milk powder simpliciter or whole milk not in liquid form. It is also pertinent to note that there is no item of milk products in the Schedule to the Act under the caption "Animal Husbandry Products". In this connection, it is profitable to contradistinguish this entry in the Schedule with Items 14, 15 and 16 under the caption "Cereals" in the very same Schedule. In the listed items under the caption "Cereals", we find "Wheat" separately mentioned as Item 3 as compared to wheat, atta, suji and maida separately mentioned at Items 14, 15 and 16. This shows that the basic agricultural produce - "wheat" is treated as a separate agricultural produce as compared to its own products manufactured out of wheat, namely, atta, suji and maida. Those products of the basic agricultural produce concerned are separately mentioned as "agricultural produce" in the Schedule so far as "cereals" are concerned. But similar is not the scheme in connection with milk. Milk products like baby foods are not separately mentioned. Under the very caption "Animal Husbandry Products", butter and ghee are separately mentioned as Items 7 and 8 which are wholly manufactured out of milk. It, therefore, becomes clear that save and except butter and ghee no other milk product is sought to be covered by the sweep of the Act as "Animal Husbandry Products" and the basic animal husbandry produce like "milk" only in solid form is sought to be covered by a separate solitary Item 20 as one of the "Animal Husbandry Products". Therefore, any other manufactured product like the present one, utilising the same ingredients of milk powder as one of the ingredients but which are processed by addition of all other extra items with the result that finished products like baby foods emerge as manufactured items for serving as substitute for milk to be fed to infants who cannot digest liquid milk or solidified milk as such, cannot be treated to be "agricultural produce" as part and parcel of the listed "Animal Husbandry Products" mentioned in the Schedule to the Act. Learned Senior Counsel for the appellant in support of his contentions tried to rely upon specimen copies of printed material affixed to the sealed tins of these manufactured commodities "Lactodex" and "Raptakos", which, according to him, are substitutes for mother' s milk and are to be used to feed infant babies who cannot take milk in its natural form. Learned Senior Counsel for the respondents tried to repel this submission by contending that this type of the printed material was not produced before the High Court. Be that as it may be undisputed fact remains that these two special infant foods are meant for infant babies who are to be fed by mixing this baby food powder with water to make it a paste as a substitute for mother' s milk.

140. In the light of the express provisions concerning the relevant items of the Schedule to the Act to which we have referred, it has to be held that on the material before the High Court in connection with the ingredients of the aforesaid two products of the appellant, it could not be effectively shown by the respondents beyond any doubt that these two products also were "agricultural produce" being animal husbandry products of "milk" in a non-liquid form. Consequently, there was no occasion for the respondent-authorities to insist that the appellant for the sale of the aforesaid two products within the market area governed by the Market Act in the State of Bihar was required to take any licence under that Act. It is not the case of appellant that any market fee was required to be charged from him by the Market Committee. The only grievance made was that the appellant was required to take licence under the Market Act. Hence the question of refund of any market fee would not survive for consideration in the present case. This appeal will have to be allowed and the writ petition filed by the appellant in the High Court also consequently will have to be allowed by quashing the impugned notice calling upon the appellant to take licences under the Market Act."

40. Thus, the view taken by the Apex

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Court with regard to two products does not support the case of the petitioner. As after the aforesaid judgment, notification has been issued amending the Schedule and the products of the Milk such as Milk powder, baby foods etc. have been included in the Schedule. The products of the petitioner have been included by way of instances. Even if these items would not have been there the two products of the petitioner would fall under the category of the product of the Milk (Baby food) as mentioned in sub-item 20 brought by way of amendment under Part VIII ' Animal Husbandry Products' of the Schedule to Act.

41. Thus, the two products of the petitioner, namely, Lactogen and Milkmaid are agricultural produce as defined under the Act and their inclusion in the Schedule of the Act cannot be assailed on the ground that the said products cannot be treated as agricultural produce being trade mark.

42. The question for consideration is as to whether the inclusion of article in Schedule of the Act making it agricultural produce itself is sufficient to subject the aforesaid agricultural produce to the regulatory procedure provided under the Act. In other words, if the goods are included in the Schedule and by virtue of it becomes agricultural produce the authority is competent to levy fee on the said produce on the sale and purchase thereof or the formalities under Sections 3 and 4 of the Act have also to be gone into before subjecting the aforesaid agricultural produce to the regulatory procedure under the Act.

43. Under the scheme of the Act, agricultural produce has to be specified under the Schedule of the Act and Section 39 of the Act empowers the State Government to add, substitute and delete the agricultural produce. Sections 2 as quoted above clearly show that the State Government has first to declare its intention to exercise control over purchase, sale, storage and processing of such agricultural produce in specified area. This has to be done by issuance of notification and under sub-section (2) of Section 3, affected person is empowered to file objection or suggestion and thereafter under Section 4 the said objection has to be considered and further inquiry, if necessary, has to be made and thereafter the State Government will declare the area specified in the notification under Section 3 or any portion thereof to be a market area for the purpose of the Act in respect of all or any of the kinds of agricultural produce specified in the notification under Section 3. Once the notification is issued under sub-section (1) of Section 4, no Municipality or other local authority, or other person within the market area, or within a distance specified therein will set up any establishment for the purpose of sale, purchase, stores (storage) or processing of any agricultural produce so notified, except in accordance with the provisions of the Act, the Rules and Bye-laws. Under Section 5 Market Area has to be declared and thereafter a Market Committee has to be constituted and sale of agricultural produce has to be made in the Principal Market Yard or as envisaged under Section 15 of the Act and thereafter the Market Committee as constituted under the Act will be entitled to levy fee under Section 27 of the Act.

44. From the reading of the provisions of the Act as a whole it is clear that inclusion of the article in the Schedule itself does not cover the agricultural produce within the sweep of the other provisions of the Act. The article may be included in the Schedule and will become agricultural produce as defined under the Act but the liability to pay fee will not arise unless the State Government declares its intention that a particular area with regard to specified agricultural produce shall be notified for the purpose of sale, purchase etc. of the agricultural produce and after hearing the objection of the affected person final notification is issued for the aforesaid purpose regarding specified area and specified agricultural produce. After the formalities under Sections 3 and 4 are complied with, the other provisions of the Act including establishment of Market Yard or sub-yard or Market Committee, prohibition from sale or purchase of agricultural produce in any Market Area and levying of fee will begin.

45. In Sasa Musa Sugar Works' s case (supra) one of the questions for consideration was as to whether any inclusion of an item in the Schedule of the Market Act under Section 39 brings about any control or regulation of sale, purchase, storage or processing of such produce or whether in order to regulate and bring the produce under control, it is necessary that intention to regulate a produce is to be notified and

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has to be decided as provided under Sections 3 and 4 of the Act.

46. Learned counsel appearing for the Board in that case submitted that Section 39 is an independent provision and it is the instrumentality by which a produce is brought into the Schedule. It is only when a produce finds its place in the Schedule, that its control under the Market Act by notifications under Sections 3 and 4 of the Act becomes relevant and possible. Before Sections 3 and 4 of the Act can be applied, the produce concerned must be in the Schedule, as defined in Section 2(1)(a) of the Markets Act. Provisions of Sections 6 and 18 and the Rules imposing various restrictions and also levy of fee under Section 27 of the Markets Act will apply to all goods including goods notified under Section 4(1) of the Markets Act. Dealing with the said matter, the Apex Court in paragraph 33 of the judgment held that once the good is included the actual control part of it including the goods to be controlled, the market area where the control will operate and where the controlled products will have to be sold are left to the judgment of the State Government subject to the statutory conditions imposed by Section 3(1) and Section 4(1) of the Markets Act. Only after issuance of the notification under Sections 3 and 4 is issued, Section 5 onwards including levy of fee comes into action. It is apt to quote paragraph 33 of the judgment which runs as follows :

"Mr. Sen, in our view, has rightly contended that when the field of control is circumscribed by the items in the Schedule, the actual control part of it including the goods to be controlled, the Market Area where the control will operate and where the controlled products will have to be sold are left to the judgment of the State Government subject to the statutory conditions imposed by Section 3(1) and Section 4(1) of the Markets Act. Once the notification under Sections 3 and 4 are issued specifying the goods to be controlled and the areas where the control will operate, the other provisions of control contained in Section 5 onwards including the levy of fee under Section 27 of the Markets Act spring into action."

47. A Division Bench of this Court has also occasion to consider this question in the case of M/s. Sree Bahariji Mills Ltd. (supra) wherein similar view has been taken that unless notifications under Sections 3 and 4 are issued with regard to specified agricultural produce and the specified area with regard to sale etc., the agricultural produce will not be subjected to levy of fees under the Act.

48. Thus, though the products of the petitioner are agricultural produce as defined under the Act but it will not attract levy of fee unless notifications under Sections 3 and 4 are issued.

49. Thus, the aforesaid submission of the learned counsel appearing for the petitioner is accepted and it is held that unless notifications under Sections 3 and 4 are issued, the products of the petitioner cannot be subjected to levy of fee under the provisions of the Act. The respondent-Committee cannot insist for taking licence and pay fee under the Act.

Point No. (III)

50. The Trade Mark Act operates in different areas as stated above. The Act has been enacted to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks. It has nothing to do with the sale and purchase of agricultural produce which the State Legislature is competent to do by virtue of Entry 28 of the State List to Schedule VII of the Constitution of India. The inclusion of the name of the products of the petitioner has been made by way of instances and the products of the Milk as such Baby food which is a product of the Milk.

Point No. (IV)

51. Law is well settled that whether any particular legislation suffers from excessive delegation or not is to be determined after going through the scheme, the provisions of the statute including its preamble, and the facts and circumstances in the background of which the statute has been enacted, the history of the legislation, the complexity of the problems and once it is found that the legislation has laid down the policy and has also given guidelines to implement its policies in the enactment and the delegatee is empowered to carry out the policy within the guidelines laid down by the Legislature then the power exercised by the delegatee cannot be held to be ultra vires and impermissible in law.

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52. Learned counsel for the petitioner relied upon two decisions of the Supreme Court in the case of (In re, Art. 143, Constitution of India and Delhi Laws Act (1912) etc. (AIR 1951 SC 332) (supra) and in the case of Rajnarain Singh (AIR 1954 SC 569) (supra) and submitted that the Schedule being part of the Act, amendment could be made only by the Legislature as it relates to the policy-matter and in exercise of delegated power under Section 39 of the Act the State cannot amend or add agricultural produce. It was held in the case of In re, Art. 143, Constitution of India etc. (AIR 1951 SC 332) (supra) that the essential of the legislative functions, viz. the determination of the legislative policy and its formulation as a rule of conduct, vest in the Parliament or the State Legislatures, as the case may be, and nowhere else. In Rajnarain Singh' s case (supra) in paragraph 31 of the judgment it was held that "an executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms and there was some divergence of view about this in the former case but this much is clear from the opinions set out above it cannot include a change of policy."

53. As stated above, it is settled law now that policy and enacting the policy to be binding rule of conduct cannot be delegated and that is what the aforesaid two decisions lay down.

54. The question of delegation of power has been considered by the Supreme Court in catena of cases and as such it is not necessary to discuss all those cases in order to avoid multiplicity. Reference may be made only to some of the cases, viz.; AIR 1954 SC 465 : (1954 Cri LJ 1322) (Harishankar Bagla v. The State of Madhya Pradesh); AIR 1955 SC 25 (Edward Mills Co. Ltd., Beawar v. State of Ajmer); AIR 1959 SC 512 (D. S. Garewal v. The State of Punjab); AIR 1960 SC 475 (Union of India v. M/s. Bhanimal Gulzarimal Ltd.); AIR 1974 SC 1660 (Gwalior Rayon Mills Mfg. Co. Ltd. v. Asstt. Commissioner of Sales Tax); AIR 1975 SC 1172 (M/s. Sable Waghire and Co. v. The Union of India) and AIR 2001 SC 1493 (Kishan Prakash Sharma v. Union of India). It has been held therein that Legislature has to discharge its primary legislative function itself and not through others. It cannot abdicate its legislative function which include, determination of policy and enactment laying down the aforesaid policy. The delegated authority has to act as subordinate authority and not parallel authority and the delegated authority can be given power only to carry out the objects and policy of the Act and delegation beyond that will amount to abdication and self-effacement. Recently in the case of Kishan Prakash Sharma (supra) the Apex Court considered the question of delegated legislation and has reiterated the settled law in paragraph 18 of the judgment as follows :

"So far as the delegated legislation is concerned, the case law will throw light as to the manner in which the same has to be understood and in each given case we have to understand the scope of the provisions and no uniform rule could be laid down. The Legislature in India have been held to possess wide power of legislation subject, however, to certain limitations such as the Legislature cannot delegate essential legislative functions which consists in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. The Legislature cannot delegate uncanalised and uncontrolled power. The Legislature must set the limits of the power the law and by laying down standards for guidance of those on whom the power to execute the law is conferred. Thus the delegation is valid only when the legislative policy and guidelines to implement it are adequately laid down and the delegatee is only empowered to carry out the policy within the guidelines laid down by the Legislature. The Legislature may, after laying down the legislative policy, confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of the policy. When the Constitution entrusts the duty of law-making to Parliament and the Legislatures of States, it impliedly prohibits them to throw away that responsibility on the shoulders of some other authority. An area of compromise is struck that Parliament cannot work in detail the various requirements of giving effect to the enactment and, therefore, that area will be left to be filled in by the delegatee. Thus, the question is whether any particular legislation suffers from excessive delegation and in ascertaining the same, the scheme, the provisions of the statute including

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its preamble, and the facts and circumstances in the background of which the statute is enacted, the history of the legislation, the complexity of the problems which a modern State has to face, will have to be taken note of and if, on a liberal construction given to a statute, a legislative policy and guidelines for its execution are brought out, the statutes, even if skeletal, will be upheld to be valid but this rule of liberal construction should not be carried by the Court to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on the executive. These very tests were adopted in Ajay Kumar Banerjee' s case, AIR 1984 SC 1130 : 1984 Lab IC 691 (supra) also to examine whether there is excessive delegation in framing schemes and reading the preamble, the scheme and the other provisions of the enactment taking note of the general economic situation in the country, the authorities concerned had to frame appropriate schemes. Therefore, it is not open to the petitioners to contend that there is excessive delegation in relation to the enactment to frame schemes."

55. The question for consideration is whether in view of the settled law it can be said that the State Legislature has abdicated its legislative power regarding laying down the policy and enacting the aforesaid policy to be binding rule of conduct to the State Government or by Section 39 only power has been given to implement the policy and the object of the Act. For finding out the said question, the object and reasons mentioned in the Act along with the provisions of the Act and the Schedule has to be looked into. The preamble of the Act itself shows that it has been enacted for better regulation of buying and selling of Agricultural produce and the establishment of Markets for agricultural produce in the State of Bihar and for matters connected therewith. Section 2(a) defines the agricultural produce which includes not only basic agricultural produce but all produce whether processed or non-processed, manufactured or not. It has specified the agricultural produce in the Act itself. Thus, the policy and the object of the Act has been made by the Legislature and power under Section 39 has been only given to the State Government to add, substitute or delete the agricultural produce in the light of the object and policy of the Act and the definition of the agricultural produce. Thus, there is sufficient guideline given to the State Government to exercise the power under the aforesaid section.

56. In the case of Sable Waghire and Co. (supra), one of the questions for consideration, was as to whether the power given to the Central Government under Section 8 of Emblems and Names (Prevention of Improper Use) Act (1950) to amend the Schedule containing the names or emblems whose improper use was prohibited by Section 3 of the Act, was excessive delegation. The Central Government enacted the aforesaid Act to prevent the improper use of certain emblems and names for professional and commercial purposes. The petitioners before the Supreme Court were manufacturing bidis under the pictorial representation and the trade name "Chhatrapti Shivaji Bidi". After coming into the aforesaid Act they were allowed sometime to use the same but later they were asked not to use the aforesaid trade marks in view of the provisions of the Act which was challenged before the Apex Court. Section 3 of the Act contains a provision for prohibition of improper use of certain emblems and names specified in the Schedule. Section 4 of the Act prohibits registration of certain Companies etc. if the use of such name is in contravention of Section 3 of the Act. Section 8 of the Act conferred power on the Central Government to amend the Schedule which runs as follows :

Power of the Central Government to amend the Schedule 8. "The Central Government may, by notification in the Official Gazette, add to or alter the Schedule, and any such addition or alteration shall have effect as if it had been made by this Act."

57. The said question was considered by the Apex Court from paragraphs 15 to 17 and it held that taking into considerations the provisions of the Act, object and reasons it was imperative necessity for regulating the use of certain emblems and names and Section 8 of the Act rightly confers power on the Central Government to consider from time to time as to the items to be included in or omitted from the Schedule in the light of knowledge and experience gathered from the nook and corner of the entire country. There is, therefore, no excessive delegation of legislative power by Parliament in favour of the Central Government. It is relevant to

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mention paragraph 17 of the judgment which runs as follows :

"We take it that the scheme disclosed in the provisions of the Act read with the preamble, and the Objects and Reasons make it clear that there was imperative necessity for regulating the use of certain emblems and names. The fact that only improper use of the names and emblems is prohibited itself provides guidance. The original entries in the Schedule would also point to the nature and character of the names, emblems and entities. It is not possible for the Parliament to envisage the possibility of improper use of all names and emblems as time goes on. Not is it possible to enumerate in the Schedule an exhaustive list of all the names, emblems and entities. Section 8, therefore, makes provisions for empowering the Central Government to add to or alter the Schedule. In the nature of things, there is no abdication of legislative function by Parliament in delegating its power under Section 8 in favour of the Central Government which will be the appropriate authority to consider from time to time as to the items to be included in or omitted from the Schedule in the light of knowledge and experience gathered from the nook and corner of the entire country. There is, therefore, no excessive delegation of legislative power by Parliament in favour of the Central Government. From the Objects and Reasons, the preamble and the provisions of the Act with the built-in limitations in Section 3 taken with the Schedule, a policy is clearly discernible and there is sufficient guidance therein to enable the Central Government to exercise its power under the Act. The relevant matters mentioned above are sufficiently informative of the policy of the law to rob the efficacy of an argument on the score of scantiness in the Act. The impugned Notification dated March 16, 1968 of the Central Government under Section 8 cannot, therefore, be invalid. The objection on the score of Article 14 is of no avail."

58. The case in hand is squarely covered by the aforesaid decision of the Apex Court. Here taking into consideration the object and reasons of the Act, the preamble and the definition of the agricultural produce which includes basic agricultural produce as well as processed or manufactured, it is clear that sufficient guideline has been given to the State Government under Section 39 of the Act to amend, substitute or delete the items of the Schedule. Thus, there is no excessive delegation of power to the State Government. This question has also been considered by a Division Bench of this Court in the case of M/s. Mahabir Tea Company (supra) and it has been held that Section 39 of the Act is not unconstitutional or a piece of excessive delegation. Thus, this point is also devoid of substance.

Point No. (V)

59. In support of the submission that the Act has extra-territorial operation it was submitted that the Milk and other products used in preparation of the aforesaid two items are purchased from other States and the products are also manufactured in other States and not in the State of Bihar whereas the Act has been enacted for protection of the agriculturist of the State of Bihar from the middlemen and as such it has no application to the said two products. This question cannot detain us for the simple reason that it has already been considered by the Apex Court in the case of Belsund Sugar Co. Ltd. (supra) in regard to Tea matter in paragraphs 145 to 153. Relying upon the earlier constitution Bench judgment of the Apex Court in the case of M. C. V. S. Arunchala Nadar v. State of Madras, reported in AIR 1959 SC 300, it was held in paragraph 152 that even if an agricultural produce initially is not grown in the Market Area and manufactured outside the Market Area but is brought in a manufactured form within the Market Area for sale, such sale transaction in connection with such a produce would be covered by the sweep of the Market Act.

60. Thus, once the products of the petitioner are brought within the different Market Area in the State of Bihar for sale the same will attract the provisions of the Act.

Point No. (VI)

61. The stand of the petitioner is that the Milk and Milk Product Order, 1992 issued by the Central Government in exercise of power under Section 3 of the Essential Commodities Act covers the field with regard to milk and milk product and in that view of the matter the general provisions of the Market Act will get excluded and superseded by the special provision of the Control Order.

62. Milk and Milk Product Order has

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been enacted under Section 3 of the Essential Commodities Act and it defines the milk and milk product and clause (3) provides for constitution of Milk and Milk Product Advisory Board and the function of the Board as mentioned in Clause (4) runs as follows ;

4. Functions of the Board.- (1) The Board shall assist, aid and advice the Central Government on any matter concerning the production, manufacture, sale, purchase and distribution of milk and milk product and on matters incidental thereto.

(2) Without prejudice to the generality of the provisions of sub-paragraph (1), the Board may advise the Central Government on matters relating to,-

(a) facilitation of the supply of availability of liquid milk, by balancing uneven supplies in different regions and seasons;

(b) maintenance or increase in the supply of milk, and equitable distribution and availability thereof;

(c) Establishment of proper standards and norms for control and handling of milk and milk product;

(d) maintenance of high standards of sanitary and hygienic conditions in the manufacture of milk and milk product;

(e) establishment, promotion or registration of any industry which relatable to milk product; and

(f) such other purposes as are necessary or incidental to the effective implementation of the Order.

3. Where the Central Government considers that the expertise of the Board may be utilised in the implementation of this Order in any respect, it shall be competent for the Central Government to direct that any of its functions relating to the implementation of the Order shall be performed by the Board, subject to such conditions, restrictions and limitations as the Central Government may specify, whereupon it shall be competent for the Board to discharge those functions."

63. There is provision for registration under Clause (5) which provides inter alia that no person shall manufacture or carry on business in milk or any milk product nor create any manufacturing facility for the business unless registration is granted. Clause (10) deals with production or handling of milk or milk product which prohibits handling of milk and milk product in excess of the capacity specified in the registration. Clause (11) provides for collection of the milk as specified in the registration certificate.

64. Nowhere in the control order there is any provision with regard to fixation of price and regulating the sale and purchase of milk and milk products. Thus, in no way provision has been made with regard to any of the matters covered by the provisions of the Act and accordingly it cannot be held that the Act is not applicable with regard to milk and milk products.

Point No. (VII)

65. According to the petitioner the impugned notification is a nullification of the decision of the Supreme Court in Belsund Sugar Co. Ltd. (supra) as in the said case the Apex Court held that the two products, namely Lactodex and Raptakos SIF are not the agricultural produce, but even then the Milk products of the petitioner has been included by the impugned notification is worth rejection. From the judgment of the Supreme Court in Belsund Sugar Co. Ltd. (supra) as quoted above it is clear that the sole ground for holding that the aforesaid two products are not agricultural products is that the Milk product, such as baby food etc. were not included in the Schedule and in absence of the same it was held that the said product cannot be said to be agricultural produce as defined under the Act. After the aforesaid judgment to overcome the aforesaid situation the State has issued the aforesaid notification and it has included the products of the Milk such as baby food in the same manner as it has included the product of the other basic agricultural produce. There is no question of nullification or bye-passing or overriding the judgment of the Apex Court.

66. Thus, in conclusion it is held that the products of the petitioner, namely, Lactogen and Milkmaid are agricultural produce as defined under the Act and the notification under Section 39 of the Act is valid one and it cannot be assailed on any of the grounds urged on behalf of the petitioner. But as stated above, the inclusion of agricultural produce in the Schedule of the Act itself does not bring the aforesaid agricultural produce within the sweep of the Act for the purpose of licence and levying fees unless steps are taken under Sections 3

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and 4 of the Act and a notification is issued under Section 4 of the Act with regard to agricultural produce included in the Schedule with regard to specified Market Area or Areas. Admittedly, no procedure as provided under Sections 3 and 4 of the Act has been taken and no notification has been issued under Section 4 of the Act up-till now with regard to newly added entries under caption ' Animal Husbandry Products' including the products of the petitioner and in that view of the matter, the products of the petitioner are not subjected to regulatory procedure under the Act. The respondents cannot insist for licence nor demand fee under the Act without compliance of the provisions of Sections 3 and 4 of the Act with regard to products in question.

67. Accordingly, the notices issued directing the petitioner to get licence with regard to the said products as contained in Annexures-2 and 3, are not sustainable in law and quashed. However, it will be open to the State to bring the newly added agricultural produce in the Schedule including the products of the petitioner within the sweep of the regulatory procedure after taking steps under Sections 3 and 4 of the Act.

68. In the result, the writ application is allowed in part as indicated above.

69. R. S. GARG, J. :- I agree.

Application partly allowed.

AIR 2001 PATNA 70 "Maha Kali Milling Co. (P) Ltd., M/s. v. B. S. A. Marketing Board"

PATNA HIGH COURT

Coram : 2 RAVI S. DHAWAN AND SHASHANK K. SINGH, JJ. ( Division Bench )

M/s. Maha Kali Milling Co. (P) Ltd., Petitioner v. Bihar State Agriculture Marketing Board and others, Respondents.

Civil Review No. 63 of 1999, D/- 2 -8 -2000.

Bihar Agricultural Produce Markets Act (16 of 1960), S.9, S.27A - AGRICULTURAL PRODUCE - Market Committee - Expiry of term - Committee thereby ceased to function - State Govt. thereafter failed to notify any person to carry on functions of committee - Assessment made by Sub-Divisional Officer in terms of S. 27A in such state of affairs would be an irregularity but not illegality. (Paras 7, 9, 10)

Navniti Prasad Singh, Raj Kishore Prasad, Tej Bahadur Roy, Gajendra Pratap Singh, Purnendu Singh, Mriganj Mauli, Vinay Mistry, Vijoy Kr. Sinha and Rajesh Mohan, for Petitioner; Shashi Anugrah Narain, Advocate-General, S. D. Yadav, Sr. Advocate, for State, Ram Janam Ojha, Sr. Advocate, K. P. Yadav, for Respondents.

Judgement

ORDER :- The origins of this matter being placed before the Court on a review application need to be stated briefly. This is a matter under the Bihar Agricultural Produce Markets Act, 1960.

2. AC.W.J.C. No. 2355 of 1977 M/s. Maha Kali Milling Co. (P) Limited, Digha, Patna v. Bihar State

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Agricultural Marketing Board had been filed. The writ petition was dismissed on the grounds of an alternate remedy. It would be best to reproduce the order dated 3 March, 1998 on the writ petition :-

"In this writ application, the prayer of the petitioner is for quashing of the order, dated 30-11-96 passed by the Sub-divisional Officer-cum-Special Officer, Agricultural Produce Market Committee, Mussallehpur, Patna, by which the assessment has been made in terms of Section 27A of the Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as 'the Act'). Having regard to the statutory appeal available to the petitioner, I am not inclined to interfere with the order, aforesaid.

Accordingly, the petitioner, if so advised, may file an appeal in terms of Section 27B of the Act. If there is any delay in filing the appeal, that shall be condoned in view of the fact that the petitioner was prosecuting his remedy before this Court by way of the instant writ application. Let it be recorded that I have not gone into the merit of this case. This disposes of the instant writ application."

3. Thereafter, the petitioner filed a Letters Patent Appeal. The petitioner did not resort to invoking the remedy as provided, as an appeal. Thus, Letters Patent Appeal had been filed. The Letters Patent Appeal was dismissed on 14 October, 1998 and the following order had been passed dismissing the appeal :-

"This Letters Patent Appeal is directed against an order dated 3-3-98 passed in C.W.J.C. No. 2355 of 1997.

M/s. Maha Kali Milling Co. (P) Ltd. Digha, Patna, had filed a writ petition for issuance of a writ in the nature of certiorari for quashing the assessment order and the demand notice dated 6-12-96 whereby a demand of Rs. 8,97,691.92 (Rupees Eight Lakh Ninety seven thousand six hundred ninety one and paise ninety two) only was made.

The writ Court by the impugned order dated 3-3-98 non-suited the appellant directing it to exhaust the statutory remedy by way of appeal available under Section 27B of the Bihar Agricultural Produce Markets Act, 1960 (hereinafter to be referred to as the Act).

The Writ Court appears to have passed the order impugned based on the doctrine of "exhaustion of alternative remedy".

The record also demonstrates that instead of filing appeal, the appellant chose to file revision. But in view of the provisions of Section 27-B of the Act, the revision was not entertained being not tenable.

Shri Mahto learned senior Counsel for the appellant contends that initially the assessment order passed in terms of Section 27-A of the Act assessing Rs. 8,97,691.92 (Rupees Eight Lakh Ninety seven thousand six hundred ninety one and paise ninety two) only and pursuant to that demand made is completely without jurisdiction and whenever the order is found to have been passed without jurisdiction the Writ Court is not loathed to interfere with the same notwithstanding the fact that statutory appeal is provided just as provision of Section 27-A of the provides for appeal.

This submission has no two opinion provided the order under challenge is completely without jurisdiction being a NULLITY.

In this regard it is needless to say that jurisdiction means authority to decide and thus it is well settled that a Court, Tribunal or any statutory authority having jurisdiction over the subject matter as well as over the parties thereto is bound to decide and it does not lose its jurisdiction by coming to a wrong conclusion or decision whether it may be wrong in law or in fact and thus even though it decides wrong it would not be doing something which it had no jurisdiction to do. Thus the order rendered by such authority having jurisdiction cannot be treated as nullity and provision of appeal provided in the statute must be resorted to.

However, if the authority is statutorily not empowered to seize with the matter and decides the case which suffers for want of inherent jurisdiction, indeed only in such set of circumstances the argument of without jurisdiction would be tenable and in discretionary jurisdiction the Writ Court may entertain despite the provision of statutory appeal. But such is not the position in the instant case. Though learned Counsel has tried to advance argument that the assessment made is without jurisdiction, no foundation is laid to this effect before the Writ Court and that is why even the impugned judgment dated 3-3-98 ex facie does not speak of the same.

This being so the submission made by Shri Mahto is not available at this appellate

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stage.

A general trend is being now developed that where resorting the remedy to file statutory appeal, amount is required to be deposited, instead of doing so, the assessment order is being challenged in writ petition taking the plea of jurisdiction. The same is the position with this case.

However, where the law has taken care of providing appeal such practice of entertaining writ petition must be deprecated and rightly the Writ Court has dismissed the petition.

For the reasons stated in the order impugned that the appellant may avail the statutory remedy under Section 27-B of the Act, in our considered opinion, this appeal has no merit. Accordingly, it is dismissed in limine without issuing notice to the other side."

4. Thereafter, the petitioner filed a Special Leave Petition before the Supreme Court. The special leave petition was withdrawn by the petitioner and it was contended that the petitioner would file a review application before the High Court. Thus, the present review application has been filed.

5. The Court has heard the matter yesterday and today. Learned Advocate General is also before the Court.

6. Plainly the contention on behalf of the petitioner is that the assessment which was normally to be done by the Sub-Committee of the Market Committee under the Act has not been made as there is no validly constituted Market Committee. Thus, it is contended that the Sub-Divisional Officer is a poor substitute and even if this aspect is to be ignored no notification has been issued by the State of Bihar to invest powers in the Sub-Divisional Officer to carry on the functions of the Market Committee. Thus, the Sub-Divisional Officer is not clothed with any authority to carry on the functions of the Market Committee. Plainly, if the aspect of jurisdiction is to be considered and it goes to the root of the matter the submission made by the petitioner had to be answered by the respondents. It is not necessary for the Court to go into the record as it is accepted by learned Advocate General, Bihar as also learned counsel who appears on behalf of the Marketing Board that there is no notification in existence upon which the Sub-Divisional Officer has been required to carry on the functions of the Market Committee.

7. In the present context, the term of the Market Committee has been given in S. 9 of the Act. As the term of the last Committee came to a close and taking all the necessary extensions into account a situation was rendered that the Committee ceased to function, a situation recognised under Sub-sec. (5) of S. 9 of the Act. Clearly, this situation could only be remedied provided the State Government had notified a person to carry on the functions of the Market Committee. This the State Government did not do. It is not for the Court to find out the reasons why this had not been done or why the situation escaped the attention of the State Government. S. 17 A perhaps could come as an aid by saving any act which may have been done by the Market committee from being invalidated. But, even this situation cannot remedy the state of affairs as the learned Advocate General has fairly accepted that there is no Market Committee consequent upon a notification which ought to have been issued under sub-sec.(5) of S. 9 but never saw the light of the day.

8. This again leaves a situation that somebody is exercising the functions of the Market Committee but has not been given the sanction by law to carry on these functions. A faint attempt on behalf of learned counsel for the Board, to save the situation under S. 33 A of the Act cannot be invoked by suggesting that the Bihar Agricultural Marketing Board impliedly having permitted the Sub-Divisional Officer to carry on the functions of the Committee may be understood to save the assessment order as having been rendered by a Sub-committee of the Market Committee. Collections of fees by the Market Committee is one aspect of the matter, to make an assessment of making fee as may be leviable is an entirely different aspect. A taxing and an assessing authority must have the sanction of the law to discharge their functions.

9. This is a bad situation and the sooner it is remedied by taking recourse to the law by investing the functionary to act in lieu of the Market Committee or the Sub-Committee the State Government needs to formalise this announcement without delay as it may render all Acts of the corporation sole, which at present the Market Committee, as void.

10. In the present case, the situation may not arise because this order is being

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rendered by consent of all parties. If recourse to an alternative remedy is to be had, then, it rests on the proposition that all defects in the order, by which the petitioner is aggrieved, may become the subject matter of consideration in the appeal. The petitioner does not resist the proposition that he has immunity from assessment. In case, he cannot take the stand as his contention is that he has deposited the admitted fee. Only that person would deposit the admitted fee who accepts that he is liable to trade within the market area and is subject to Market Committee assessing him. The petitioner is one such person. But the petitioner's submission that the Market committee or whoever its functionaries as a sub-committee, in the absence of a Committee may be does not inspire confidence and the assessment by a Sub-Divisional Officer without authority perhaps is void. The petitioner may not be incorrect. In fact, none of the respondents has succeeded in countering the argument or submissions on behalf of the petitioner. Thus, it leaves the assessment order perhaps in a state of irregularity though not illegality.

11. It is in this regard that the Court indicated to learned counsel for the petitioner that the only aspect which could aggrieve it is the imposition of a full penalty standing at Rs. 4,76,551.24. By the assessment of 30-11-1996 by the Sub-Divisional Officer, Annexure 2 to the review application and Annexure 3 to the writ petition, the petitioner was assessed at Rs. 4,76,551.24. The petitioner deposited Rs. 27,705.28 and after taking into account this amount the balance stood at Rs. 4,48,845.96. On this amount a full penalty of like amount was also added. Thus, the petitioner was required to deposit a sum of Rs. 8,97,691.92.

12. As there is an issue whether the assessing authority had been invested with the powers to make an assessment, no resistance has been offered to the proposition that the imposition of a penalty may be bad at this stage and in any case imposition of 100% penalty only implies that no mind had been applied and it ought to be considered whether a lesser amount may be imposed. The petitioner has, during the pendency of the review application, deposited a sum of Rs. 1,50,000/-. This leaves a balance of Rs. 2,98,845.96.

13. Learned counsel for the petitioner has consented that he will advise the petitioner to file an appeal under S. 27B of the Bihar Agricultural Produce Markets Act, 1960. This the petitioner may, provided the appeal is filed within one month from today. It will be within the discretion of the appellate authority to go into the question of penalty also. Whether it has to be waived or imposed and if imposed then how much ? Clearly, all issues will be open before the appellate authority.

14. This disposes of the review application and any orders on the writ petition and the Letters Patent Appeal shall stand modified accordingly.

Order accordingly.

AIR 1999 PATNA 142 "Kamal Oil and Dal Mills, M/s. v. Managing Director, B.S. Marketing Board"

PATNA HIGH COURT

Coram : 1 NARAYAN ROY, J. ( Single Bench )

M/s. Kamal Oil and Dal Mills, Petitioners v. Managing Director, Bihar State Marketing Board and others, Respondents.

C.W.J.C. No. 8297 of 1998, D/- 5 -4 -1999.

Bihar Agricultural Produce Markets Act (16 of 1960), S.9(5), S.27A - AGRICULTURAL PRODUCE - Levy of Market-fee - Assessment - S.D.O. notified as special officer from particular date - He cannot make assessment retrospectively from date prior to notification notifying him as special officer, even if he is competent under S. 27-A of Act. (Paras 5, 6)

Cases Referred : Chronological Paras

Ramji Prasad v. State of Bihar, AIR 1992 Pat 59 : 1991 (1) PLJR (HC) 446 5

A. K. Jain, for Petitioner; S. K. Saraf, for Respondents.

Judgement

ORDER :- Heard Mr. A. K. Jain, learned counsel appearing on behalf of the petitioner, and Mr. S. K. Saraf, learned counsel appearing on behalf of respondents.

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2. By this writ application the petitioner has prayed for quashing order dated 25-1-1995 passed by respondent No. 4, the Sub-divisional Officer, Nawadah, whereby and whereunder he has made the assessment for levy of market fee by virtue of the Notification issued under sub-section (5) of Section 9 of Bihar Agricultural Produce Market Act, 1960 (hereinafter referred to as the Act).

3. Learned counsel appearing on behalf of the petitioner submitted that respondent No. 4 was notified to act as Special Officer by Notification dated 3-5-1995 and even if he was notified under sub-section (5) of Section 9 of the Act he was not competent to do so with retrospective effect and, therefore, the order of assessment made by respondent No. 4 is wholly without jurisdiction.

4. Counter-affidavit has been filed on behalf of the respondents wherein these facts have already been admitted. The respondents have brought on record the Notification dated 3-5-1995, marked as Annexure-A to the counter-affidavit. It is manifestly clear from the Notification as contained in Annexure-A to the counter-affidavit that the Sub-divisional Officer was notified as a Special Officer under sub-section (5) of Section 9 of the Act with effect from 3-5-1995.

5. It is settled law that the Special Officer as notified under sub-section (5) of Section 9 of the Act is competent to exercise powers under Section 27A of the Act when the Market Committee is not in existence. In this connection reference can be made to the case of Ramji Prasad v. State of Bihar, 1991 (1) LJR (HC) 446 : (AIR 1992 Pat 59). Since the respondent No. 4 was notified as Special Officer, as referred to above, vide Notification dated 3-5-1995 and even if he was competent to pass assessment under Section 27A of the Act, he could not have made the assessment on 25-1-1995. In this application the petitioner has challenged the action of respondent No. 4 by which in purported exercise of power under Section 27A of the respondent No. 4 has made the assessment dated 25-1-1995.

6. Considering the facts and circumstances of the case, therefore, per se, it appears that the order impugned, as contained in Annexures-1 and 2, is wholly without jurisdiction. I, therefore, allow this writ application and quash the assessment orders as contained in Annexures-1 and 2. However, the Market Committee, if it is in existence, or if a Special Officer has been appointed under sub-section (5) of Section 9 of the Act it shall be at liberty to make fresh assessment in accordance with law.

Writ application allowed.

AIR 1998 PATNA 45 "Ashok Kumar Singh v. State of Bihar"

PATNA HIGH COURT

Coram : 1 A. ALAM, J. ( Single Bench )

Ashok Kumar Singh, Petitioner v. State of Bihar and others, Respondents.

C.W.J.C. No. 7435 of 1996, D/- 3 -3 -1997.

Bihar Land Reforms Act (30 of 1950), S.33J andBihar Agricultural Produce Market Rules (1960), R.129(v) - LAND REFORMS - AGRICULTURAL PRODUCE - LICENSE - Grant of licence for holding mela by Marketing Committee - Cancellation of, by Chairman in appeal - Not permissible.

No appeal would lie against an order passed by the Market Committee granting a licence or refusing to grant a licence or against an order passed by the Market Committee cancelling a licence earlier granted by it. Therefore cancellation of licence, granted by Market Committee for holding the mela, by the Chairman

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in appeal was without jurisdiction as even S. 33-J of the Act deals not with the powers and functions of the Chairman but with the powers and functions of the Marketing Board which is an independent and distinct statutory body. (Paras 12 and 16)

Cases Referred : Chronological Paras

1984 Pat LJR 974 (FB) 13

Shiv Kriti Singh, Sr. Advocate, for Petitioner; R. B. Mahto, Sr. Advocate, S. Kumar, K. P. Yadav and S. N. Mishra for the Marketing Board and the Committee; K. N. Choubey, for proposed Intervenor.

Judgement

ORDER :- This writ petition has been filed challenging an order dated 8-4-1996 (Annexure 1) passed by the Chairman, Bihar Agricultural Marketing Board in Appeal Case No. 1/1996. By the impugned order, the Chairman cancelled the licence granted by the Agricultural Produce Market Committee, Buxar to the petitioner to hold Mela on certain lands claimed by him. The impugned order was passed on a memorandum filed by one Surendra Mohan Singh (not a party respondent to this writ petition); from the cause title and the operative portion of the impugned order, it appears that the memorandum was registered in the office as an appeal under Rule 129 of the Bihar Agricultural Produce Market Rules and it was dealt with by the Chairman as such. It may also be appropriately, observed here that though arguments were advanced at some length on the merits of the impugned order, that is, regarding the validity of the reasons assigned for cancelling the licence, it later turned out that the order may not be able to pass the jurisdictional test and may have to be struck down on the ground that no appeal lay before the Chairman and he did not have the competence or the authority to cancel the licence granted by the Market Committee. In the later stages of the hearing of this case, learned Counsel focussed their submissions on this aspect of the matter, I accordingly propose to briefly touch upon the submissions made on the merits of the order and then to examine in some detail the question whether the Chairman had the necessary legal authority to pass the impugned order.

2. The controversy in this writ petition relates to the petitioner's right to hold Mela on some plots of land of Khata No. 1405 situated in village Barhampur in the district of Buxar and to obtain a licence from the Market Committee in terms of Rule 129 of the Rules. The petitioner's title over the lands in question is not in dispute. What, however, is in dispute is whether the bundle of rights, which are collectively expressed by the word 'title', include the right to hold Mela on the lands or whether that right, in respect of the lands in question, vested in the State at the time of abolition of Zamindari in terms of Section 7B of the Bihar Land Reforms Act, 1950?

3. Earlier when the petitioner was denied licence to hold Mela on the lands of different khatas including Khata No. 1405, of village Barhampur, he came to this Court in CWJC No. 8344/1989. That writ petition was disposed of by a Bench of this Court by order dated 5-12-1989 (Annexure 3). Insofar as the present controversy is concerned, the relevant portion of the order is as follows :

". . . . . . . . . . The only reasons given in Annexure V, the order of the Chairman dt. 26-4-89 is that there was no specific order of the High Corut to allow the petitioner to hold hat or Bazar on Khata No. 1405 that may be so but the Court had said that the case of the petitioner in respect to this Khata should be considered and in case the petitioner fulfils the requirement under the Act and the Rules then his case may be considered. That has not been done. The prayer with respect to Khata No. 1405 has to be allowed. A direction is accordingly given to the respondents to consider the case of the petitioner with respect to this Khata."

4. It appears that no action was taken by the authorities of the Board and the Market Committee within two months from the date of that order as directed by this Court and that give the petitioner the cause to file a contempt petition being MJC No. 189/1990. During the pendency of the contempt petition the Court was informed that the petitioner was granted the licence for holding Mela on the lands in question, and the contempt petition was accordingly disposed of recording the statement made on behalf of the Market Committee.

5. According to the petitioner's case the licence which is renewable on a year to year basis has since been renewed in his favour without any interruption. In terms of the licence, the petitioner

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holds cattle fair on some plots of land of Khata No. 1405 twice in a year, one in the month of Baisakh and the other in the month of Phalgun. It is further the case of the petitioner that one Surendra Mohan Singh who was on enmical terms with him constantly tried to get the licence cancelled with a view to cause harm and injury to the petitioner. He first filed a petition before the Secretary of the Market Committee, Buxar for cancelling the petitioner's licence on the ground that the lands of Khata No. 1405 were Baksht lands over which the petitioner had no right to hold Mela. The Secretary of the Market Committee by his letter dated 15-2-1996 (Annexure 7) replied that it was not possible to cancel the licence granted to the petitioner. The said Surendra Mohan Singh then filed a memorandum on 23-6-96 before the Chairman, Bihar State Agricultural Produce Marketing Board. In the memorandum it was alleged that plots of Khata No. 1405 in respect of which the petitioner was granted licence were Bakasht lands. It was further alleged that the petitioner's predecessor-in-interest had also received compensation from the State Government for keeping the lands vacant at the time of holding of Mela and the petitioner had obtained a licence by suppression of these facts. It was also alleged that the petitioner had made defalcation of a large amount of market fee collected by him as an agent of the Committee and for this Barhampur P.S. Case No. 13/1993 was instituted against him. It was also alleged that the grant of licence to the petitioner was causing huge loss of revenue both to the State and the Market Committee. On those grounds, the Chairman of the Board was requested to take appropriate actions.

6. As noted above, the memorandum was registered in the office of the Chairman as an appeal preferred under Rule 129 of the Rules. The petitioner appeared there and filed his rejoinder. After hearing the parties the Chairman passed the impugned order cancelling the licence granted to the petitioner.

7. In the impuged order the Chairman observed that according to the petitioner's case his ancestors had purchased the lands of Khata No. 1405 from the former landlord. It, therefore, followed that what was conveyed to the petitioner's ancestors, the purchasers from the landlord, was the raiyati interests in the land and not the right to hold Mela on the land as that right of the landlord had vested in the State of Bihar under Section 7B of the Bihar Land Reforms Act, 1950. He further observed that in connection with the Mela held earlier on the basis of the licence granted to the petitioner, the Secretary of the Market Committee had instituted Barhampur P.S. Case No. 13/1993 in which the petitioner was an accused of misappropriation, forgery and making defalcation of lacs of rupees. It was, therefore, clear that the petitioner was not a 'desirable person' for the grant of licence within the meaning of Rule 129(iii)(c) of the Rules. For the aforesaid two reasons, he passed the order for cancelling the licence granted to the petitioner both in respect of the lands of Khata No. 1405 and 120.

8. Mr. Shiv Krint Singh, learned Senior Counsel for the petitioner submitted that the Chairman erred in invoking the provisions of Section 7B of the Bihar Land Reforms Act, 1950 for cancelling the licence granted to the petitioner. Learned Counsel submitted that Section 7B of the Act would have any application only if it could be shown that a Mela was being held on the land in question by the intermediary at any time within three years of the date of vesting of the intermediary rights; the Section would have no application in a case where the holding of the mela on a raiyati land commenced after the vesting of the Zamindari. He further submitted that in the impugned order there was no finding, much less any materials on which such a finding could be based, that Mela was being held on the lands of Khata No. 1405 at any time within three years of the date of vesting of Zamindari. According to the learned Counsel, there were enough material in the form of entries in the cadestral survey khatiyan and the recent khatiyan to suggest otherwise. He also submitted that a simple proceeding for the grant of licence for holding Mela was hardly appropriate for deciding such complicated questions as vesting of rights under the Bihar Land Reforms Act, 1950.

9. Mr. R. B. Mahto, learned Senior Counsel appearing on behalf of the Marketing Board submitted that admittedly a criminal case was pending against the petitioner in which he was accused of having defalcated a large sum collected as market fee in Mela held on the same lands in the previous years. On that basis, the Chairman had found that the petitioner was not a desirable

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person for the grant of licence. This finding of the Chairman could be hardly called into question. Then making a reference to clause (c) of sub-rule (iii) of Rule 129, Mr. Mahto submitted that this finding alone was sufficient to justify the order cancelling the licence granted to the petitioner.

10. As I propose to dispose of this application on a different question, I am not required to make any conclusive pronouncement on the submissions made by the counsel on the aforesaid two issues relating to the merits of the orders passed by the Chairman. I may, however, indicate that on the question of Section 7B of the Bihar Land Reforms Act, I was prima facie inclined to accept the submissions made by Mr. Singh, counsel for the petitioner; on the other hand, I find myself in agreement with Mr. Mahto that the finding recorded by the Chairman that the petitioner was not a 'desirable person' for the grant of licence was beyond any interference by this Court and that would have provided a sufficient ground for cancelling the licence granted to him. Thus, the position that emerged after hearing the parties on the merits of the impugned order rendered the petitioner not entitled to any relief from this Court.

11. In that position Mr. Singh completely altered the line of his attack and questioned the very jurisdiction and competence of the Chairman to pass an order cancelling the licence granted by the Market Committee. Mr. Singh submitted that the impugned order was passed in purported exercise of power under Rule 129(v) of the Rules. Learned Counsel submitted that sub-rule (v) of Rule 129 provided an appeal to the Chairman only against an order passed by the Secretary of the Chairman of a Market Committee under sub-rule (iv) and no appeal would lie against an order passed by the Market Committee granting a licence or refusing to grant a licence (under sub-rule (iii)) or against an order passed by the Market Committee cancelling a licence earlier granted by it. For a proper appreciation of the submission it would be useful to reproduce Rule 129 in full :

"129. Licence for setting up Hat/Bazar/Mela.- (i) No person or authority shall, within the Market area, or within the distance notified under sub-section (2) of Section 4, set up, establish, or continue any place for the purchase, sale, storage or processing of notified agricultural produce except under and in accordance with the terms and conditions of the licence in Form XX issued in this behalf by the Market Committee.

(ii) Every person or authority desiring to hold licence shall make an application in writing to the Market Committee and shall pay the licence fee of Rs. 50 annually. Every licence issued under this rule shall be valid for the financial year ending on 31st of March.

(iii) On receipt of such application together with the amount of fee prescribed under sub-rule (ii), the Market Committee may grant him the licence applied for if-

(a) it is satisfied that the applicant is solvent;

(b) Cash security of Bank's guarantee if so required is given;

(c) it is satisfied that the applicant is a desirable person to whom a licence may be granted; and

(d) it is satisfied that there is need to establish or set up a Hat/Bazar/Mela for agricultural produce and the person or the authority had in the past ever set up or established such Hat or Bazar or Mela, for sale, purchase, storage, processing of agricultural produce;

(iv) The Secretary may suspend the licence for a period of one month and with the approval of the Chairman for three months for breach of any of the terms and conditions of the licence. If such breach is repeated twice, the licence may be cancelled by the Market Committee provided before passing such order, a reasonable opportunity, of being heard shall be given to the licensee;

(v) Any person or the authority aggrieved or dissatisfied by the order of the Secretary or the Chairman, may appeal to the Chairman of the Board within seven days of the order and the order passed by him shall be final."

(Emphasis supplied)

12. From the above, it is clear that sub-rule (iii) and (iv) envisage passing of different types of orders by different autho-rities, under sub-rule (iii) the Market Committee on an application made to it, can pass an order granting licence to hold a Mela or refusing to grant the licence. Under sub-rule (iv), for the breach of the terms and conditions of the licence, the Secretary/Chairman of the Committee may pass an order suspending the licence for one month/three months; if the

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breach is repeated twice, the Market Committee may pass an order cancelling the licence altogether. Under sub-rule (v), appeal is provided against the orders passed by the Secretary or the Chairman and the provision for any appeal against an order passed by the Market Committee is conspicuous by its omission. In view of this analysis of the various sub-rules of Rule 129, the submissions made by Mr. Singh appear to be well founded.

13. Mr. Mahto submitted that although the Chairman might appear to have acted under Rule 129(v) of the Rules, the order passed by him cannot be said to be lacking in competence or jurisdiction in case a legitimate statutory source can be found to sustain the order. In this regard, learned Counsel submitted that the provisions of Section 33J of the Act clothed the Chairman with ample jurisdiction to pass the impugned order. In support of his submission Mr. Mahto also relied upon a decision in the case of Dhirendra Kumar Akela v. The Bihar State Agriculture Marketing Board, 1984 PLJB 974.

14. I find it difficult to accept the submissions advanced by Mr. Mahto and I fail to see how the provisions of Section 33J of the Act can be of any help for defending the impugned order passed by the Board. In the first place, it is to be noted that Section 33J lays down the powers and functions of the Board; in terms of that section the Board has the power of superintendence and control over the working of Market Committees and the provisions of the section empower the Board, inter alia, to give directions etc. to Market Committees in general or to a Market Committee in particular with a view to ensure their efficiency. It is well-established that the power of superintendence and control is not the same as the right to interfere in the day to day administration of the authority put under superintendence and control. It is also well-established that the power of superintendence and control is not the same as sitting in appeal over all and sundry orders passed by the authority under control; more so when a provision for appeal has been specially provided for in the Act or the Rules. The reliance placed by Mr. Mahto on the decision in Dhirendra Kumar Akela's case (supra) also appears to me of not much help to him. In that decision this Court upheld the Board's exercise of control over the employees of the Market Committee. But the exercise of control over the employees as an administrative function is one thing and that cannot be equated with sitting in appeal over the orders passed by the Market Committee and thus undertaking quasi-judicial adjudications on matters affecting rights of third parties.

15. However, all this is not to say that in no case of grant of a licence or refusal to grant a licence the Board can interfere in exercise of its powers under Section 33J. In the facts and circumstances of a given case the order passed by a Market Committee granting or refusing to grant a licence may pertain to issues of general policy and in such a case the Board may legitimately exercise its power of general superintendence and control. It is needless to say that such cases would be few and far between and the power under Section 33J cannot be used by the Board to entertain appeals against orders passed by the Market Committee on a regular and routine basis.

16. Coming back to this case, it is to be noted that the question whether in the facts and circumstances of this case, it would have been legitimate for the Board to examine the grant of licence to the petitioner by the Market Committee is not quite relevant and need not be gone into. This is for the reason that the impugned order has been passed by the Chairman of the Board and Section 33J of the Act deals not with the powers and functions of the Chairman but with the powers and functions of the Marketing Board which is an independent and distinct statutory body. For this simple reason, the impugned order cannot be defended on the basis of the provisions contained in Section 33J of the Act.

17. For the reasons stated above, I find that the submissions made by Mr. Shiv Kriti Singh are well-founded and the impugned order has to be struck down on the ground that it was passed by the Chairman without any statutory competence or authority. The impugned order is accordingly quashed and the writ petition is allowed. In the facts and circumstances of the case, however, there shall be no order as to costs.

Petition allowed.

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AIR 1998 PATNA 58 "Lipton India Ltd., Calcutta v. Bihar State Agri. Marketing Board"

PATNA HIGH COURT

Coram : 1 A. K. GANGULY, J. ( Single Bench )

Lipton India Ltd., Calcutta and etc. Petitioners v. Bihar State Agricultural Marketing Board, Patna and others, Respondents.

C.W.J.C. Nos. 6411 and 8820 of 1989, D/- 16 -5 -1997.

Bihar Agricultural Produce Markets Act (16 of 1960), S.2(1)(a) - AGRICULTURAL PRODUCE - Agricultural produce -- What is - Articles with brand names 'Tree top, "Frooti" and "Appy' - Being processed items from mango and apple which are items in schedule, are agricultural produce - Liable to market fee.

Case law discussed. (Paras 10, 16)

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Cases Referred : Chronological Paras

AIR 1997 SC 188 : (1996) 2 Pat LJR 170 : 1997 AIR SCW 4355 8, 12, 14, 15

AIR 1996 SC 2179 : 1996 AIR SCW 2797 8, 12

1995 AIR SCW 115 : (1995) 2 Pat LJR 7 12

(1995) 1 Pat LJR 30 11

(1995) 2 Pat LJR 64 11

1993 AIR SCW 762 : 1993 Supp (3) SCC 361 (2) 12

AIR 1993 Pat 43 : (1992) 2 Pat LJR 253 10

1988 Pat LJR 830 8, 9, 11

1986 Pat LJR 172 : 1986 BLJ 636 8, 9, 11

AIR 1971 SC 530 13, 14

Ram Balak Mahto, Sr. Advocate, N. K. Agrawal, A. K. Jain and K. C. K. Sinha, for Petitioners; Rajeshwar Prasad, for the Board, S. K. Mishra, for the Committee.

Judgement

ORDER :- Both these writ petitions were heard together as the question of law which is involved in both of them is common. The factual aspects, save and except some minor differences, indicated herein below, are also common. In C.W.J.C. No. 6411 of 1989, the subject-matter of challenge is a communication bearing No. 370 dated 19th April, 1989, and No. 687 dated 7th July, 1989, issued by the Secretary of the Agricultural Produce Market Committee, Patna City. By those communications, the Secretary of the Agricultural Produce Market Committee demanded from the petitioner payment of market fee on its products 'ready to serve beverages' under the brand name "Tree-Top" and on the failure to pay the market-fee actions under Sections 31-B and 31-C of the Bihar Agricultural Produce Market Act, 1960 (hereinafter to be referred to as 'the Act') will be taken.

2. In C.W.J.C. No. 8820 of 1989, the subject-matter of challenge is a communication dated 28th March, 1989, issued by the Secretary of the Agricultural Produce Market Committee, Musalehpur, Patna, by which the petitioner has been directed to pay market-fees on its products which is ready to serve beverages under the brand name FROOTI AND APPY. It was also said that on petitioner's failure to pay the market fees, actions will be taken under the said Act. In this petition the petitioner had also filed an appeal to the Bihar State Agricultural Marketing Board being appeal No. 2 of 1989 against the said order of the Secretary. But the appeal was dismissed, Prayer has also been made to quash the appellate order dated 19th June, 1989.

3. The primary question which falls for decision in these two writ applications is whether Tree Top, Frooti and Appy which are ready-made beverages are agricultural produce within the meaning of Sections 2(1) (a) of the said Act.

4. There are certain admitted factual positions, which are noted herein below: Section 2(1)(a) of the Act defines what is agricultural produce and refers to a schedule which is appended to the said Act. It is admitted that none of these items, namely, Tree Top, Frooti and Appy is included in the schedule, which is appended to the said Act. It is, however, admitted that Tree Top, Frooti and Appy are manufactured items. Mango pulp and apple juice are their necessary ingredients and both mango and apple are included within the said Schedule. The petitioners in their writ petitions have claimed that apart from the contents of mango pulp and apple juice in both the items there are various other contents like sugar, water, Citric Acid, Vitamin C. Therefore these products the petitioners claim are neither mango nor apple.

5. The definition of Agricultural produce under the said Act has been substituted as a result of amendment introduced by Act 60 of 1982. The definition of Agricultural produce which existed prior to the amendment is set out below :

"Agricultural produce includes all produce, whether processed or non-processed of agriculture, horticulture, animal husbandry and forest specified in the schedule."

After the introduction of the aforesaid amending Act, the amended definition is also set out herein below :

"Agricultural produce" means all produce whether processed or non-processed, manufactured or not, of agriculture, horticulture, plantation, animal husbandry, forest, sericulture, pisciculture and includes livestock or poultry as specified in the schedule."

6. The main argument of the learned counsel appearing for the writ petitioners is that since neither Tree-Top, nor Frooti nor Appy is included in the schedule referred to in the said amendment, it cannot become an agricultural produce.

Learned counsel submitted that from a perusal of the schedule it will appear that mango pickle

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has been included in the said schedule. This, according to learned counsel, shows that if a processed item from mango is required to be included in the schedule then this should have been specifically mentioned as in the case of mango pickle. The very fact of non-mentioning of any of these items in the schedule in question, shows that these items are not agricultural produce. Learned counsel, however, conceded that there is some element of mango and apple in the products under consideration but that by itself will not make them agricultrual produce. Learned counsel further submitted that in order to become agricultural produce it must be either mentioned in the schedule or it must be an item which has some close nexus with or resemblance in character to what is mentioned in the schedule. If the processed item becomes altogether different from one which is mentioned in the schedule then it cannot be an agricultural produce. Learned counsel submitted that Section 39 of the Act, which is an independent Section from Sections 3 and 4 of the Act must be given due importance. Section 39 of the Act vests the State Government with the powers by notification to add, amend or cancel any of the items of agricultural produce specified in the schedule. Therefore, it is open to the State Government to include in the schedule the items in question. But in the instant case without the items being mentioned in the Schedule, the items in question cannot be treated as agricultural produce. That will make the provisions of Section 39 of the Act redundant and the Court may not adopt this principle of interpretation.

7. Learned Counsel for the respondents, however, has contended that one of the ingredients of Tree-top, Frooti and Appy is either mango or apple, which are admittedly mentioned as agricultural produce in the schedule. Therefore, these beverages are nothing but processed items of mango and apple. These items are so processed by addition of various other materials for preservation of the same for a longer time and by undergrowing the same process, the items do not acquire a character which is other than items of agricultural produce mentioned in the schedule of the Act. Learned Counsel further submitted that the items retain entire basic character of agricultural produce, namely, mango and apple and are meant for human consumption. Similarly Tree top and Frooti are also meant for human consumption. Therefore, there is no change in the basic ingredients of products. Therefore, both these items Frooti and Tree Top as also Appy come under the definition of Agricultural produce are subject to levy of market-fees.

8. In support of the rival contentions, learned Counsel for the parties have relied upon various reported judgments on the point and the matter, therefore, requires some serious consideration. Learned counsel for the respondents is relying very much on a Division Bench Judgment of this Court in the case of Tata Oil Mills Co. Ltd. v. Director, Marketing Bihar State Agricultural Board, Patna reported in 1986 Pat LJR 172. The said judgment is also reported in 1986 BLJ at p. 636. Learned Counsel also relied upon a Division Bench Judgement of this Court in the case of M/s. Raptakos Brett and Company Ltd. v. Bihar State Agricultural Marketing Board reported in 1988 Pat LJR at page 830 and also on latest Supreme Court decision in the case of State of Rajasthan v. Rajasthan Agricultural Input Dealers Association reported in AIR 1996 SC at page 2179 and also another decision of the Supreme Court in the case of Sasa Musa Sugar Works v. State of Bihar and others etc. etc. reported in 1996 (2) Pat LJR (SC) at page 170 : (AIR 1997 SC 188). In the case of Raptakos, Brett and Company Ltd. (supra), learned Counsel has relied upon an observation occuring in paragraph No. 25 of the said judgment from which it appears that the tomato is mentioned against item No. 8 in the schedule of the Act. But the Court held that Tomato Ketchup does not come within the purview of agricultural produce under the said Act. The ratio of coming to the said decision has been given in para 25 of the judgment, wherein the learned Judges have held that items of agricultural produce if after being processed become totally different items the same cannot be called agricultural produce even though there may be some basic ingredients of items of agricultural produce. The said ratio is as follows :

The petitioner in C.W.J.C. No. 4138 of 1986 M/s. Patliputra Cands in Agent of M/s. Food Specialities Limited. It deals in products like Milkmaid which is sweetened and condensed milk in sealed tins with contents milk and sugar. Condensed Milkmaid is not milk in liquid form.

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It thus falls squarely within item 9 in Part VIII of the Schedule to the Act. Lactogen is nothing but milk in powder form with some minerals and vitamins super added. Nespray as described by the petitioner himself is Milk powder and, therefore, this also falls within the mischief of the Agricultural Market Act. This petitioner also deals in Nestum Baby Cereal commonly known as 'N.B.C.' It is baby food in flake form prepared from rice, flour, sucrose and iron salt with added vitamins. Similarly Cerelac is also a food prepared for children after mixing grains, milk, oil etc. I have some difficulty in branding them as Agricultural produce. It is true that they are made out of Agricultural items, but after being processed they become entirely different items. They are neither wheat, nor flour, nor skimmed milk nor rice etc. In my view, therefore Nestum Baby Cereal and Cerelac are not agricultural produce. Tomato Ketchup another produce of this company is not 'tomato'. This item also cannot be held to be agricultural produce. Tomato is mentioned against Item 8 in Part VI of the Schedule to the Act. Thus barring Nestum, Cerelac and Tomato Ketchup, company would be liable to pay market fee on all its products mentioned in the petition."

9. Unfortunately the said Division Bench judgment has not taken into consideration the previous Division Bench Judgment on the point delivered in the case of Tata Oil Mills Co. Ltd. v. Director, Marketing Bihar State Agricultural Board, Patna reported in 1986 Pat LJR at page 172, which is also reported in 1986 BLJ at page 636. The subsequent judgment which has been cited before this Court will show that the Division Bench decision in the case of Tata Oil Mills (supra) has been repeatedly referred to and relied upon whereas the decision of the Division Bench in the case of M/s. Raptakos Brett and Company Limited (1988 Pat LJR 830) (supra) has been subsequently distinguished by another Division Bench Judgment. The decision of the Division Bench in the case of Tata Oil Mills (supra) has affirmatively held that the definition of agricultural produce has been changed by the Amendment Act 60 of 1982 and it has become very wide and inclusive in nature. The learned Judges of the Division Bench have held that the present definition says in clear and unambiguous term that 'agricultural produce' shall mean not only the product of agriculture, horticulture, animal husbandry, forest etc. in its original form, but also what has been processed and manufactured from such original products. According to the learned Judges the definition has to a great extent delinked "agricultural produce" from the Schedule of the Act. According to learned Judges reference to the Schedule of the Act is only in the context of livestock and poultry and now agricultural produce shall mean all produce of agriculture, horticulture, plantation, animal husbandry, forest, sericulture, pisciculture, livestock or poultry including the processed and manufactured products of such produce. The said position has further been elaborated by following words : "In my view, under the new definition whether a produce or product thereof has been specified in the schedule is not of such consequence for being held as an agricultural produce. The only thing which has to be established is as to whether the item in question is a processed or non-processed or manufactured product of agriculture, horticulture, plantation, animal husbandry, forest, sericulture, piscicul-ture, livestock or poultry." Relying on the aforesaid interpretation, the learned Judges came to the conclusion that even though coconut oil is not mentioned in the schedule should be treated as an agricultural produce in view of the fact that coconut is an agricultural produce and so any derivative through processing shall also be an agricultural produce.

10. Therefore, going by the aforesaid ratio, which is a Division Bench Judgment of this Court, it is difficult for this Court to hold that Tree-top, Frooti or Appy which are admittedly processed items from mango and apple, which are items in the Schedule are not agricultural produce. Subsequent judgment of the Division Bench in the case of Delhi Cloth and General Mills Co. Ltd. v. Agricultural Produce Market Committee reported in 1992 (2) Pat LJR at page 253 : (AIR 1993 Patna 43) was delivered on a different question relating to legislative competence. But in that judgment also at para 50 (page 292) (of Pat LJR) : (at p. 79 of AIR) the learned Judges of the Division Bench held that since Vanaspati is the processed form of the vegetable oil and such vanaspati is fully covered by the definition of 'Agricultural produce'. But the aforesaid findings are also against the

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contention advanced by the learned Counsel for the petitioner.

11. In a subsequent decision of this Court in the case of M/s. Durga Mills v. Agriculture Produce Marketing Board reported in 1995 (1) Pat LJR at page 30, a Division Bench of this Court has affirmed the previous judgment of the Division Bench in the case of Tata Oil Mills (1986 Pat LJR 172) (supra). Again in another subsequent Division Bench Judgment of this Court in the case of Agriculture Produce Market Committee, Ranchi v. State of Bihar reported in 1995 (2) Pat LJR at page 64 the ratio of Tata Oil Mills (supra) was affirmed and the judgment of the Division Bench in the case of Raptakos, Brett and Co. Ltd. (1988 Pat LJR 830) (supra) was distinguished by clarifying that in Raptakos Brett case (supra) this Court held that if a notified agricultural produce is not the essential nature or base of a product and such product is not mentioned in the Schedule specifically, only then the market fee is not liable to be paid for the same. This has been construed to be the ratio of Raptakos (supra). So by applying the ratio of subsequent judgment in the case Agriculture Produce Market Committee (supra), this Court cannot hold that 'Tree-top', or 'Frooti' or 'Appy' does not have the base either of mango or apple. In fact these are fruit drinks from mango or apple. Therefore, it cannot be said that essential nature of mango or apple is absent in either of these items i.e. Frooti, Tree-Top or Appy. Therefore, this Court is constrained to hold that market-fee is leviable on Frooti, Tree Top and Appy.

12. Apart from the aforesaid decisions, several decisions of Supreme Court have been referred, which are now being discussed herein below. First of such judgment is in the case of Krishi Utpadan Mandi Samiti v. M/s. Shankar Industries reported in 1993 Supp (3) SCC at page 361 (II) : (1993 AIR SCW 762). The Supreme Court while considering the definition of 'agricultural produce' as given under Section 2(a) of the relevant Act held that where the legislature uses the words 'means' and 'includes' in the definition such definition is to be given a wider meaning and is not exhaustive or restricted to the items contained or included in such definition. In the definition under the present Act also expressions 'means' and 'includes' have been used. Therefore, following the said ratio of the Supreme Court the present definition of 'agricultural produce' under the said Act must also be given wider meaning and it must be construed that such definition is not exhaustive or restricted to the items contained or included in such definition. Thereby the said judgment is an authority for the proposition that the schedule of the said Act which is a part of the definition clause does not exhaust the list of items which are covered within the sweep of 'agricultural produce' as defined under the said Act. In a subsequent judgment of the Supreme Court the unamended definition of 'agricultural produce' under the said Act came up for consideration. Said judgment was delivered in the case of Smt. Sita Devi (dead) by LRs. v. State of Bihar reported in 1995 (2) Pat LJR (SC) at page 7 : (1995 AIR SCW 115). In the said judgment the Apex Court while considering the definition of 'agricultural produce' came to the conclusion that definition is an inclusive one and so of wide import. It goes without saying that after the amendment as pointed out earlier the definition of 'agricultural produce' has become much wider. Therefore the ratio of the aforesaid two judgments of the Supreme Court in no way supports the contention of the petitioners. Counsel for the petitioner has also relied upon strongly a decision of the Supreme Court in the case of State of Rajasthan v. Rajasthan Agricultural Input Dealers Association reported in AIR 1996 SC at page 2179. In this case the question which came up for consideration before the Supreme Court was whether seeds which are notified not human consumption can be considered as foodgrains and, therefore, agricultural produce. The learned Judges of the Supreme Court held that by process of coating and applying insecticides, other chemicals and poisonous substances to the foodgrains meant to be utilised as seeds, one of its basic character, i.e. its consumption as food by human beings or animals or for extraction for the like purpose, gets irretrievably lost and such procecessed seeds become a commodity distinct from foodgrains as commonly understood. Therefore, relying on this distinction between foodgrains and seeds, the learned Judges of the Supreme Court came to the conclusion that seeds cannot be considered as agricultural produce. Here the aforesaid ratio has no application. Even after processing mango and apple fruit drink which is produced is meant for human

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consumption and, therefore, the basic fruits do not change its basic character as the same are meant for human consumption. Therefore after being processed the end product is not some-thing totally different from the basic ingredients. Therefore, the ratio in the said State of Rajasthan case (supra) in no way helps the submission of learned Counsel for the petitioner. The other judgment of the Supreme Court on which very strong reliance was placed by the learned Counsel for the petitioner is in the case of Sasa Musa Sugar Works etc. etc. v. The State of Bihar reported in 1966 (2) Pat LJR (SC) page 170 : (AIR 1997 SC 188). Reliance was placed on an observation of the Supreme Court at para 28 (page 190) (of Pat LJR) : (para 35 at p. 205 of AIR) of the report. In the said para the learned Judges of the Supreme Court held that after giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned Counsel for the parties that unless agricultural produce is included in the schedule to the Markets Act, the provisions of the Act have no application to such produce. Learned Counsel submitted that since Frooti or Tree Top or Appy is not mentioned in the Schedule of the Act they cannot be held to be agricultural produce in view of observation of the Supreme Court. This Court is not in a position to uphold the said submission. The question which came for consideration before the Supreme Court in Sasa Musa case is not what is an agricultural produce and what is not an agricultural produce rather the question was with regard to validity of Sections 4A of the said Act and the matter relating to interpretation of Sections 3, 4, 15 and 39 and Schedule in the context of deletion of sugar from the schedule by legislative power under Section 39. The width and ambit of the definition under Section 2(1)(a) of the Act and whether processed items can be included in the schedule or not is not the question which came for consideration before the Court. It may be stated here that sugar is an item which is specifically mentioned in the schedule and not as a processed item. Therefore, those observations must be understood in the context of the items mentioned in the schedule and not in respect of such items which are not mentioned in the schedule. The entire discussion in the case before the Supreme Court, referred to above, is on the question of exclusion of an item mentioned in the schedule which is not the question in the case before this Court. Therefore, the aforementioned observation of the Supreme Court must be understood in the context of that case.

13. In a Constitution Bench Judgment of the Supreme Court in the case of H. H. Maharajadhiraja Madhav Rao and Jivaji Rao Scindia Bahadur v. Union of India reported in AIR 1971 SC at page 530, it has been held in para 138 at page 578, "it is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment."

14. Applying the aforesaid ratio of the Constitution Bench judgment in Madhavrao Scindia case (AIR 1971 SC 530) this Court holds that the observations made in Sasa Musa case (AIR 1997 SC 188) (supra) cannot be regarded as an exposition of the law on the question, which is relevant here. The said question does not even fall for consideration in that case. Therefore, those observations cannot be applied to the facts of the present case.

15. If the aforesaid observation of the Supreme Court is to be accepted as laying down the law on the point in that case all processed and manufactured items from the agricultural produce mentioned in the schedule will have to be excluded. This will be contrary to the express provision of Section 2(1)(a) of the Act and also the various decision of the Apex Court discussed above. Therefore, the Court must accept that those observations in Sasa Musa (AIR 1997 SC 188) (supra) do not relate to either processed or manufactured items but were made in the context of deletion of 'sugar' an agricultural produce specifically mentioned in the schedule.

16. For the reasons and discussions aforesaid this Court is of the view that a proper interpretation of definition of agricultural produce under Section 2(1)(a) of the Act will include within its sweep 'Tree-Top', 'Frooti' and 'Appy'. Therefore, this Court holds that 'Tree-Top', 'Frooti' and 'Appy' are agricultural produce and exigible to the levy of market fee under the said Act. Both the writ

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petitions are, therefore, dismissed. Interim orders are necessarily vacated. There shall be no order as to costs.

Petitions dismissed.

AIR 1998 PATNA 164 "Rameshwar Jute Mills Ltd., M/s. v. State of Bihar"

PATNA HIGH COURT

Coram : 2 BISHESHWAR PRASAD SINGH AND P. K. SARKAR, JJ. ( Division Bench )

M/s. Rameshwar Jute Mills Ltd., Petitioner v. State of Bihar and others, Respondents.

Civil Writ Jurn. Case Nos. 1196 with 1975 of 1986, D/- 9 -4 -1998.

(A) INTERPRETATION OF STATUTES - - Interpretation of Statutes - Meaning of words - Seeking of meaning of words in one statute in definition clause of another statute - Not sound rule of interpretation. (Para 3)

(B) Bihar Agricultural Produce Markets Act (16 of 1960), Part 12, Item 6 and Item 7 - AGRICULTURAL PRODUCE - Jute and Mesta - Both items find separate mention under two different heads, 6 and 7 - If mesta was included in jute, separate mention thereof, was not necessary - Mesta is not derivative of jute nor is it by product of jute. (Para 6)

Cases Referred : Chronological Paras

AIR 1985 SC 76 : (1985) 1 SCC 51 3

AIR 1981 SC 951 : 1981 Lab IC 498 3

1910 AC 220 : 102 LT 82 : 79 LJKB 376, Macbeth and Co. v. Chislett 3

Ramesh Kumar Agrawal and Subhas Kishore Verma, for Petitioner; K. P. Yadav and Suresh Prasad, for Respondents.

Judgement

ORDER :- In these two writ petitions identical question is involved and, therefore, they have been heard together and are being disposed of by this common order. In C.W.J.C. No. 1196 of 1986 the year in question is 1978-79 while in C.W.J.C. No. 1075 of 1986 the year in question is 1977-78. In both the years the respondent-Market Committee has imposed market fee on the sale of the item 'Mesta' treating it to be the same as 'Jute.'

2. The submission urged on behalf of the petitioner is that 'Jute' and 'Mesta' are two different items and Mesta is neither a derivative nor processed form of jute. These two items are botanically different and so known in the commercial world by persons dealing with these items.

On the other hand, the contention of the respondents is that in the Jute (Licensing and Control Order) 1961 issued under the Essential Commodities Act, 1955, 'raw jute' has been defined as fibre of jute as also known as pat, kosta, nalita, bimli or mesta and, therefore, jute must include mesta. This is the reasoning which has found favour with the revisional authority also, as is apparent from its order dated 24-8-1985 (Annexure-7) dismissing the revision petitions filed by the petitioner.

3. At the very threshold counsel for the petitioner submitted that the approach of the respondents is errneous in law. It is dangerous in the matter of construction to adopt a definition of a commodity given in a different statute for a different purpose. The licensing order to which reference has been made in the revisional order was meant for licensing jute industry, and for that purpose jute was understood to include mesta. The purpose under the Market Act is not to licence any industry but to impose market fee on the agricultural produce enumerated in the Schedule to the Act, as it stood in the relevant years. Counsel for the petitioner places reliance upon a passage appearing in (1985) 1 SCC 51 : (AIR 1985 SC 76); (M/s. M.S.C.O. Pvt. Ltd. v. Union of India). The Supreme Court held (at p. 78 of AIR) :

"The expression 'industry' has many meanings. It means 'skill,' 'ingenuity,' 'desterity,' 'diligence,' 'systematic work or labour,' 'habitual employment in the productive arts,' 'manufacturing establishment' etc. But while construing a word which occurs in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject-matter of the statute or statutory instrument understand it. It is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute or statutory instrument is not dealing with any cognate subject. Craies on Statute Laws (Sixth Edn.) says thus at page 164 :

In construing a word in an Act caution is necessary in adopting the meaning ascribed to the word in other Acts." It would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not

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incorporated or referred to such an interpretation is given to it for the purposes of that Act alone (Macbeth and Co. v. Chislett) (1910 AC 220)."

To the same effect are the observations of the Supreme Court in AIR 1981 SC 951 (Union of India v. R. C. Jain) wherein it was observed that it is not a sound rule of interpretation to seek the meaning of words used in an Act, in the definition clause of other statutes. The definition of an expression in one Act must not be imported into another. We, therefore, entertain no doubt that the reasoning adopted by the revisional authority and reiterated before us by counsel for the respondents, that jute must include Mesta because it is so defined under a licensing order issued by the Central Government in connection with the licensing of jute industry under the Essential Commodities Act, cannot be sustained.

4. We have then to consider how the framers of the statute understood the matter, and if there is anything in the Act to show that the framers of the statute understood 'Jute' to include 'Mesta,' that intention must be given its full effect. If not, we will have to find out as to how 'Mesta' is understood in the commercial world by persons dealing with the commodity, whether it is derivative of jute or just another name for jute or it is distinct commodity so understood by them. Under the Schedule to the Bihar Agricultural Produce Markets Act, 1960, the agricultural produces are arranged under Part XII. Part VII deals with fibres, and the second item under this part is 'jute.' There is no mention of 'Mesta' in this part of the Schedule. Under Part XII with the heading 'Miscellaneous,' item No. 6 is 'Jute Seed' and item No. 7 'Mesta Seed.' There are as many as 33 items under Part XII of the Schedule. Apparently, the framers of the Act were aware of the distinction between 'Jute' and 'Mesta' and that is why under Part XII 'Jute Seed' and 'Mesta Seed' have been separately mentioned under item Nos. 6 and 7 respectively. Counsel for the petitioner rightly submitted that if 'Jute' includes 'Mesta,' it was enough to mention 'Jute seed' which would have naturally included 'Mesta seed,' if that was the understanding of the framers of the law. Since that is not so, it must be held that the framers of the law understood 'Jute' and 'Mesta' to be two different agricultural produces. We find considerable force in the submission, which is also supported by the material placed before us, that these two items are understood as distinct separate items in the commercial world by persons dealing with these items. Annexure-1 is a letter written to the petitioner by the Indian Jute Mills Association after the matter had been considered by the concerned Division of the Association, the comments offered are as follows :

"Plantwise mesta is different from Jute, Mesta fibres are generally coarser than jute fibres. However, mesta fibres can be and are often mixed in different proportions with jute fibres for manufacturing jute yarns and fabrics."

5. Annexure 2 is a note prepared by the Indian Jute Industries' Research Association dealing with jute, its property and uses. In Annexure 2 the fineness and mechanical properties of jute has been compared with those of other fibres, such as Cotton, Ramie, Hemp, Mesta, Silk, Wool etc. The table deals with the fineness of the fibres concerned, their breaking strength, their breaking elongation, stiffness, toughness etc. Jute and Mesta have been dealt with as two distinct fibres. Annexure 3 is the notification issued by the Government of India, Ministry of Textiles and Supply dated 10th July, 1985. The notification mentions the minimum prices at which 'Jute' and 'Mesta' of different varieties and grades specified in the said schedule shall be purchased or sold in Calcutta during the year July, 1985 to June, 1986. Different varieties of 'Jute' and different varieties of 'Mesta' have been enumerated. Their prices are also different. A similar notification has been annexed as Annexure 4 dated 10th July, 1984.

6. Counsel for the petitioner relied upon 1996 Edition of Words and Phrases of Central Excise and Customs by Sri S. B. Sarkar, M.Sc., retired member of Central Board of Excise and Customs. Mesta fibre has been described as follows in the said book :

"Mesta fibre is obtained from Hibiscus spp. Used in place of jute, and mixed with jute. (See 'Jute-Bimlipatam Jute')."

From the material placed before us it is evident that botanically Jute plant and Mesta plant are two different plants. Mesta is not a derivative of jute nor is it a by-product of jute. The commercial world, including the Indian Jute Mills Association, as also the Indian Jute Industries' Research Association treat jute as different from Mesta. No doubt the jute yarn or fibres and Mesta fibres may be mixed in certain proportion but that does

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not make it the same commodity. Even the Government of India has fixed different prices for Jute fibre and Mesta fibre. Apart from all these, in the Schedule to the Act itself there is intrinsic material to show that the framers of the law themselves understood 'Jute' as different from 'Mesta', and that is why in Part XII of the Schedule, both Jute seeds and Mesta seeds have been separately included. We are, therefore, satisfied that market fee cannot be levied on Mesta treating as covered by the item 'jute'. Though similar, they are distinct and so known to the commercial world.

7. In these circumstances, these writ petitions are allowed and the impugned orders of assessment as well as the appellate and revisional orders are set aside. There will be no order as to costs.

Petitions allowed.

AIR 1993 PATNA 43 "Delhi Cloth and General Mills, Co. Ltd. v. Agricultural Produce Market Committee"

PATNA HIGH COURT

Coram : 2 B.C.BASAK C.J. AND AFTAB ALAM, J. ( Division Bench )

Delhi Cloth and General Mills, Co. Ltd. and others, Petitioners v. The Agricultural Produce Market Committee, and others, Respondents.

C.W.J. Nos. 432/83, 3914/85, 3920/85, 633/86, 1201/86, 3930/86, 1222/87, 1228,/87, 1272/87, 1273/87, 1333/87, 1926/87, 3810/87, 4278/87, 4289/87, 5159/87, 5831/87, 7912/88, 2354/88, 3863/88, 4497/88, 4623/88, 4803/88, 5974/88, 7502/88, 7508/88, 7510/88, 8705/88 and 5187/89, D/- 30 -3 -1992.

(A) Bihar Agricultural Produce Markets Act (16 of 1960), S.1, S.27 - LEGISLATIVE COMPETENCE - AGRICULTURAL PRODUCE - Act is within legislative competence of State Government - Pith and substance of State Act is 'markets and fairs' which is a State subject - Merely because State Act also applies to industries covered by Central Acts such as Industries (D and R) Act 1951, Essential Commodities Act 1955, National Oilseeds and Vegetable Oils Development Boards Act etc., it cannot be said to be beyond States' legislative power.

Constitution of India, Art.254.

Legislative competence - Determination - Pith and substance rule.

The State Act of 1960 is a valid and competent piece of legislation. It cannot be said that State legislature was not competent to make a legislation and impose a levy in respect of industries which are scheduled industries under I.D.R. Act - a Central Act or in respect of industries covered by Essential Commodities Act, NOSVODAS Act and VOC Act. Merely because a Central Act contains a declaration within the meaning of Entry 52 List I, the State does not totally lose its power to legislate on the subject. It is the question of application of the doctrine of Pith and substance. A State legislation falls entirely within the scope, of an entry within. the competence of State Legislature, the State Act will not be struck down. If in pith and substance, the State Legislation falls within

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one entry or the other of the State List, then it must be held to be valid in its entirety, even though it might incidentally trench upon and enter a field in the Union List. If such entrenchment is minimal and that does not affect the dominant part which is within the competence of the State Legislature, the State Act must be upheld as constitutionally valid. Unless the field is completely occupied by List I, the State Legislature is not incompetent to legislate. On the contrary, if the field is not wholly occupied, a mere minimal encroachment or entrenchment would not affect the validity of the State Legislation. In the present case, having regard to scope and object of the State Act it cannot but be held that the pith and substance of the State Act is "Markets and Fairs" which is a State subject. The State Act is essentially an Act to regulate the marketing of agricultural produce. The pith and substance of the Central Acts are quite different. Even if there is some encroachment by the State Act in the Union field, that is purely incidental and indirect and the same cannot and does not alter the pith and substance of the State Act and it does not affect the validity of the State Act. (Para 26)

(B) Constitution of India, Art.265 - WORDS AND PHRASES - Fee - General characteristics.

A 'fee' is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases. If a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should on the face of the legislative provision, be correlated to the expenses incurred by Government in rendering the services. It is not necessary that the services must be to the payers of the fees individually nor can the co-relation between the payment of fees and the services rendered, be established with mathematical exactitude. If the primary and essential purpose of the imposition be service of some special kind to the users of the market or payers of fees, even if there are other consequences or other benefits to others, these do not in the least affect the position. Any incidental benefit to those other than the payers of the fee is not decisive of the fact whether it is a 'tax' or a 'fee'. The concept of benefit to the users of market must be looked at from a broad commonsense point of view, taking an integrated view. A fee must have relation to the services rendered, or the advantages conferred. Such relation need not be direct but a mere casual relation may be enough. Further, neither incidence of the fee nor the service rendered need be uniform. Special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. The cost of services rendered etc. against the amount of fee collected so as to evenly balance the two is neither necessary nor expedient. A broad correlationship is all that is necessary. (Paras 30, 34)

(C) Bihar Agricultural Produce Markets Act (16 of 1960), S.27 - AGRICULTURAL PRODUCE - Fee imposed under - Is in reality and substance a 'fee' - There exists reasonable correlation between services rendered and amount of fee imposed.

Constitution of India, Art.265.

Under S. 29 of the State Act all the money received by the market committee is to be paid into a fund and all the expenditure incurred by the market committee for the purpose of this Act shall be defrayed out of the said amount. The fund may be utilised for the purpose specified in S. 30. An examination of the relevant provisions of the State Act and particularly purposes specified in S. 30, make it clear that the utilisation of the fund is substantially for the purpose of rendering service to the persons from whom funds are being collected. Moreover, a Board has been constituted under S. 33A for the purpose of exercising superintendence over the control of market committee. Every market committee

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has to pay, out of its fund, to the Board as contribution, such percentage of its income derived from the licence fees and market fees as may be prescribed to meet expenses of the establishment of the Board and also those incurred in the interest of the market committee. These provisions of the State Act, clearly show that there is relationship between the fee collected and the services intended to be rendered under the State Act. There is no attempt to impose any tax by the said Act. It is not only expressed as 'fee' but in reality and substance also it is a 'fee'. (Para 36)

(D) Bihar Agricultural Produce Markets Act (16 of 1960), S.27 - AGRICULTURAL PRODUCE - Market fee - Plea of multi point taxation - Fee paid by flour mill on purchase of wheat - Realisation of fee again from flour mill on sale of Atta, Maida, Suji and bran - Does not amount to multi point taxation because Act treats wheat, maida, suji as independent items of agricultural produce.

Under the charging Section market fee is leviable on buying or selling of any agriculture produce only once in the same market area. In case, however, a commodity, which is an agriculture produce, undergoes certain manufacturing process and the resultant produce is another commodity, which is also an agriculture produce by itself, the question of multiple taxation cannot and does not arise. The State Act treats the two commodities as different and separate items of agriculture produce for the purpose of levy of fee. Wheat is one of the items of agriculture produce. Atta and Maida are separate items of agriculture produce. Once market fee is levied on transaction of wheat in a particular market area, no further fee can be levied on subsequent transaction of the wheat itself in the same market area. However, where wheat is subjected to a process with the result that another agriculture produce comes into existence, e.g. Suji, fee can be levied on such ultimate produce, irrespective of the question of levy on wheat from which such produce is brought into existence.

75 STC 47, Disting. (Paras 29, 41, 42)

(E) Bihar Agricultural Produce Markets Act (16 of 1960), S.2(a) (before amendment in 1982) - AGRICULTURAL PRODUCE - Agricultural produce - Vanaspati - Only a processed form of vegetable oil - Covered by definition of 'agricultural produce' as it stood before amendment.

AIR 1961 SC 412, Foll. (Para 50)

(F) Bihar Agricultural Produce Markets Act (16 of 1960), S.39, S.2(a), S.3, S.4 - AGRICULTURAL PRODUCE - Agricultural produce - Sugar - Deletion of, by Govt. notification from list of agricultural produce - Subsequent cancellation of Govt. notification - Does not have effect of reintroducing sugar as scheduled commodity - This could only be done by notification under S.39 - Moreover no market fee could be levied on sugar in absence of notifications under S.3,S.4 in respect of sugar. (Paras 55, 56)

Cases Referred: Chronological Paras

(1991) 4 SCC 139 24

(1990) 3 SCC 645 33

(1991) 3 SCC 358 25

AIR 1990 SC 1927:(1990) 1 SCC 109 24

AIR 1990 SC 2072:(1990) 2 SCC 562 22

(1990) 2 SCC 682 23

AIR 1990 SC 781:(1990) 2 SCC 71 11

AIR 1990 SC 261:(1989) 3 SCC 396 16

AIR 1989 SC 516:(1989) 3 SCC 491 10

(1989) Pat LJR 285 14

1989 (75) STC 47 (Pat) (Disting) 38

1989 Pat LJR 616 43

AIR 1988 SC 1365 16

(1988) Pat LJR 830 13

AIR 1987 SC 2323 16

AIR 1985 Pat 241 47

(1985) SCC (Suppl) 476 13,21,25

AIR 1983 SC 617 31

AIR 1983 SC 1246 43

AIR 1983 SC 937:1983 4 SCC 166:1983 Tax LR 2584 21

AIR 1983 SC 1019:(1983) 4 SCC 45 9

AIR 1981 SC 1863:1981 Tax LR 2838 8

AIR 1981 SC 1863 30

AIR 1980 SC 1955:1980 All LJ 950 20

AIR 1980 SC 1124:1980 All LJ 490 38,43

AIR 1980 SC 1008 29

AIR 1977 Pat 136:1977 Pat LJR 8 12

1977 BBCJ 339 (HC) 47

(1973) BBCJ 1 12

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AIR 1972 SC 2301 19

AIR 1970 SC 1880:1970 All LJ 1903 16

AIR 1964 SC 1284 13

AIR 1964 SC 136 16

AIR 1963 SC 791 48

AIR 1961 SC 412 (Foll.) 49

AIR 1960 SC 936 16

AIR 1960 SC 1118 16

AIR 1954 SC 400 30

AIR 1954 SC 282 30

AIR 1954 SC 388 30

M/s.S.K.Mishra and B.K.Bariar and M/s. Pawan Kumar and Ramesh Kumar Agrawal and M/s. Basudev Prasad, Sr. Advocate N.P.Singh and Ramesh Kumar Agrawal, for Petitioners; M/s. Alakh Raj Pandey and Ramesh Jha and Mr. Brajeshwar Mallick and Mrs. Nilima Thakur, for Respondents.

Judgement

B.C.BASAK, C.J.:- These series of 28 writ petitions involve similar facts and common questions of law so far as the main submissions are concerned and for this reason they have been heard together and are being disposed of by this common judgement. In some of these writ petitions some additional points are urged which were special to them. These writ petitions relate to the following "agricultural produce", namely, (1) Wheat and wheat products e.g., Atta, Maida, Suji and bran, (ii) oil seeds, edible oil mustard oil, (iii) sugar and (iv) Vanaspati.

2. (a) C.W.J.C. Nos. 3920/85, 1201/86, 3930/86, 1222/87, 1228/87, 1272/87, 1273/87, 1333/87, 1926/87, 3810/87, 4278/87, 4289/87, 5831/87, 2354/88, 3863/88, 4497/88, 4623/88, 4803/88, 7912/88, 8705/88 and 5187/89.

Excepting in CWJC 3920/85 all these applications are at the instance of flour mills which have been set up either by a Company incorporated under the Companies Act or by a partnership firm. They carry on the business of manufacturing different products, namely, Atta, Maida, Suji etc.

(b) CWJC Nos. 3920/85, 5974/88, 7502/88, 7508/88 and 7510/88.

Three of these applications (CWJC Nos. 7502/88, 7508/88 and 7510/88) are on behalf of several partnership firms manufacturing edible oil from oil seeds. CWJC Nos. 3920/85, 3920/85 and 5974/88 are on behalf of either proprietary firm or a partnership firm carrying on wholesale business in edible oil/mustard oil.

(c) CWJC Nos. 432/83, 3914/85 and 5159/87.

These three petitions concern Vanaspati. In this group of three, the first two are on behalf of the petitioners who are manufacturers of this commodity. In the third case of this group, the petitioner is a proprietary concern, carrying on business in Vanaspati.

(d) CWJC Nos. 3920/85 and 5974/88.

These two petitions are at the instance of the petitioners carrying on business in sugar.

3. These cases arise out of the enforcement of the provisions of the Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as 'the State Act') which is challenged in these proceedings. Before we deal with the respective contentions raised in support of these petitions, it would be fit and proper if we set out the relevant provisions relating to the State Act and some Central Acts, viz. the Industries (Development and Regulation) Act, 1951 (hereinafter referred to a 'the IDR Act'), the Essential Commodities Act, 1955 (hereinafter referred to as 'the E. C. Act'), the National Oilseeds and Vegetable Oils Development Board Act, 1983 (hereinafter referred to as the "NOSVODB Act') and the Vegetable Oils Cess Act, 1983.

A. The State Act

Statement of Objects and Reasons

"The importance of properly organised markets of agricultural and allied commodities, though long recognised, has once again been emphasised by the Planning Commission. They have recommended that all the States which have not done so should review the present position and draw up suitable programmes for regulating all important wholesale markets during the Second Plan. The need for legislation for regulating markets is all the greater in Bihar where the

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agriculturists have to depend in a large measure on the mercy of middlemen to whom they are obliged to sell their produce as soon as the harvesting season is over. The Arhatiyas and wholesale buyers enter into a secret understanding to exploit the unwary agriculturists and they prevent him from having correct information as to the current sale prices of agricultural produce with the result that the agriculturist seldom gets a fair share of the price paid by the consumer for his produce. The main object of having regulated markets is to secure to the cultivator better prices, fair weightment and freedom from illegal deductions. A fair deal for his produce is a good incentive for an agriculturist to adopt improved agricultural programme.

The question of regulation of markets was first taken up in Bihar in 1939. A Bill called the Bihar Market and Dealers Bill, 1939 was introduced in the Legislature in 1939, but it could not be passed as the then Ministry went out of office. It was again taken up in 1944, but it was considered that the Bill, which had been prepared in 1939, required modifications and redrafting in view of the changed conditions. It was then decided that the question of regulating markets should be taken up after the war. The States of Andhra, Bombay, Madras, Madhya Pradesh, Mysore and the Punjab have already enacted such legislation and conditions of agricultural marketing in those States have improved appreciably by virtue of legislation. The main objects of the Bill are :-

(1) Creation of market areas and markets with a view to ensuring fair trade transactions in agricultural and allied commodities.

(2) Appointment of Market Committees fully representative of growers, traders, local authorities and Govt. to supervise the working of regulated markets.

(3) Regulation of market charges and prohibition of realisation of excess charges.

(4) Regulation of market practices.

(5) Licensing of market functionaries.

(6) Arrangement for conciliation of disputes regarding quality, weighment, deductions etc.

(7) Sale by open auction.

(8) Arrangement for the display of reliable and up-to-date market information in the market yard.

(9) Improving generally the conditions of agricultural Marketing."

The recital Clause of the Act is as follows :-

"To provide for the better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Bihar and for matters connected therewith."

"S. 3(1) Notwithstanding anything to the contrary contained in any other Act for the time being in force, the State Government may, by notification, declare its intention of regulating the purchase, sale, storage and processing of such agricultural produce and in such area, as may be specified in the notification.

(2) A notification under Sub-Section (1) shall state that any objection or suggestion which may be received by the State Government within a period of not less than two months to be specified in the notification, shall be considered by the State Government."

S. 4. (1) After the expiry of the period specified in the notification issued under Section 3 and after considering such objection and suggestion as may be received before such expiry and after holding such enquiry as it may consider necessary, the State Government may by notifications, declare the area specified in the notification under Section 3 or any portion thereof to be a market area for the purposes of this Act, in respect of all or any of the kinds of agricultural produce specified in the notification under Section 3.

(2) On and after the date of publication of the notification under Sub-Section (1), or such later date as may be specified therein, no municipality or other local authority, or other person, notwithstanding anything contained in any law for the time being in force, shall,

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within the market area, or within a distance thereof to be notified in the official Gazette in this behalf, set up, establish, or continue, or allow to be set up, established or continued, any place for the purchase, sale, storage or processing of any agricultural produce so notified, except in accordance with the provisions of this Act, the rules and bye-laws.

Explanation - A municipality or other legal authority or any other person shall not be deemed to set up, establish or continue or allow to be set up, established or continued a place as a place for the purchase, sale, storage or processing of agricultural produce within the meaning of this Section, if the quantity is as may be prescribed and the seller is himself the producer of the agricultural produce offered for sale at such place or any person employed by such producer to transport the same and the buyer is a person who purchases such produce for his own use or if the agricultural produce is sold by retail sale to a person who purchases such produce for his own use.

(3) Subject to the provisions of Section 3, the State Government may at any time, by notification exclude from a market area or any agricultural produce specified therein or include in any market area any area or agricultural produce included in a notification issued under Sub-Section (1).

(4) Nothing in this Act shall apply to a trader whose daily or annual turnover does not exceed such amount as may be prescribed."

S. 18. "(1) It shall be the duty of a Market Committee to implement the provisions of this Act, the rule and bye-laws made thereunder in the market areas to provide such facilities for marketing of agricultural produce therein as the Board may from time to time, direct, and do such other acts as may be required in relation to the superintendence, direction and control of market, or for regulating the marketing of agricultural produce in any place in the market area, and for purposes connected with the matters aforesaid, and for that purpose the Market Committee may exercise such powers and perform such functions and discharge such duties as may be provided by or under this Act.

(2) Without prejudice to the generality of the foregoing provision, a Market Committee may :-

(i) When so required by the State Government, to establish a market for the market area providing for such facilities as the State Government may, from time to time, direct in connection with the purchase and sale of the agricultural produce concerned;

(ii) Where a market is established under sub-clause (i), to issue licences in accordance with the rules to traders, brokers, weighmen, measurers, surveyors, warehousemen and other persons, including persons or firms engaged in the processing, storing or pressing of agricultural produce concerned operating in the market area;

(iii) to maintain and manage the principal market yard and sub-market yards and to control, regulate and run the market in the interest of the agriculturists and licensees in accordance with the provisions of this Act and the bye-laws made thereunder;

(iv) to act in the prescribed manner as mediator, arbitrator or surveyor in all matters of differences, disputes, claims, etc., between licensees inter se or between them and persons making use of the market as sellers of agricultural produce;

(v) to control and regulate the admission of persons and vehicular traffic to the principal market yard or sub-market yards, to determine the conditions for the use of market and to check and prosecute persons trading without a valid licence in the market area;

(vi) to bring, prosecute or defend, or to aid in bringing, prosecuting or defending and suit, action, proceeding, application, or arbitration in regard to any matter on behalf of the committee, or otherwise when directed by the Board.

(vii) to enforce the provisions of this Act, the rules and bye-laws; and

(viii) to perform such other duties and

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exercise such other powers as are imposed or conferred upon it by or under this Act, the rules or the bye-laws."

Section 27 of the State Act in its original form was as follows :

(1) The Market Committee shall levy and collect market fees on the agricultural product bought in the market area, at such rate not proceeding fifty may paise per Rs. 100 worth of agricultural produce, as may be prescribed.

(2) The fee realised from the buyer under Sub-Section (1) shall be recoverable by the buyer from the seller as a market charge.

Section 27 after its amendment by Act, 60 of 1982 is as follows :

Section 29 - "All moneys received by a Market Committee shall be paid into a fund to be called the market Committee Fund and all expenditure incurred by the Market Committee under or for the purposes of this Act shall be defrayed out of the said fund and any surplus remaining with the Market Committee after such expenditure has been met shall be invested in such manner as may be prescribed in this behalf."

Section 30 - "Subject to the provision of Section 29, the Market Committee Fund may be applied to the following purposes only namely :-

(i) the acquisition of a site or site for the market;

(ii) the maintenance and improvement of the market;

(iii) the provision and maintenance of standard weights;

(iv) the construction and repair of buildings (check posts, market gates and other fixtures) necessary for the purpose of such market and for the healthy convenience and safety of the persons using it;

(v) the pay, pensions, leave allowances, gratuities, compensations for injuries resulting from accidents, compassionate allowances and contributions towards leave allowances, pensions or provident fund of the officers and servants employed by it;

(vi) the payment of interest on the loans that may be raised for the purposes of the market and the provision of a sinking fund in respect of such loans;

(vii) the expense of and incidental to elections;

(viii) the construction, repair and maintenance of means of communication which are useful for the purposes of (regulation, control and) development of a market or for the convenience and safety of the persons using it;

(ix) the planting and rearing of trees, and making arrangement for providing water to the persons and cattle coming to a market and like purposes;

(x) with the previous sanction of the Director or any other officer specially empowered in this behalf by the Board and other purpose whereon the expenditure of the market fund is in the public interest;

(xi) such travelling and other allowances of the members of the Market Committee as may be prescribed; and

(xii) any other purposes which the State Government may notify by special order."

Section 33A. "(1) For the purposes of exercising superintendence and control over Market Committees, and for exercising such other powers and performing such functions as are conferred or entrusted under this Act, the State Government shall, by notification in the Official Gazette, establish a Board called the Bihar Agricultural Marketing Board."

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Section 33C. Board's Fund - "(1) Every Market Committee shall, out of its fund, pay to the Board as contribution, such percentage of its income derived from license fees and market fees as may be prescribed to meet expenses of the establishment of the Board and also those incurred in the interest of the Market Committee.

(2) The Board may from time to time, with the previous sanction of the State Government and subject to the provisions of this Act and to such conditions as the State Government may by general or special order determine, borrow any sum required for the purposes of this Act, whether by issue of bond or stocks.

(3) The Board may at any time have on loan under Sub-Section (1), apart from the amount of loans from the State Government an amount excluding such amount as the State Government may from time to time fix in that behalf.

(4) Stock issued by the Board under this Section shall be issued, transferred, dealt with and redeemed, in such manner as the State Government may by general or special order direct.

(5) All moneys received by or on behalf of the Board shall constitute the "Marketing Development Fund".

Section 33J. Powers and functions of the Board - "(1) The Board shall subject to the provisions of this Act, perform the following functions and shall have power to do such thing as may be necessary or expedient for carrying out those functions

(i) superintendence and control over the working of the market committees and other affairs thereof including programmes undertaken by such market committees for the development of markets and market areas;

(ii) giving direction to market committees in general or any market committee in particular with a view to ensure efficiency thereof;

(iii) any other function specifically entrusted to it by this Act;

(iv) such other functions of like nature as may be entrusted to the Board by the State Government.

(2) Without prejudice to the generality of the foregoing provision, such power of the Board shall include the power -

(i) to approve proposal for selection of new sites by the market committee for development of market;

(ii) to supervise and guide the market committees in the preparation of plans and estimate of construction programme under- taken by the market committee;

(iii) to execute all works chargeable to the Board's fund;

(iv) to maintain accounts in such forms as may be prescribed and get the same audited in such manner as may be laid down in the regulation of the Board;

(v) to publish annually at the close of the year, its progress report, balance sheet, and statement of assets and liabilities and send copies thereof to each member of the Board;

(vi) to make necessary arrangement for propaganda and publicity on matters related to regulated marketing of an agricultural produce;

(vii) to provide facilities for the training of officers and servants of the market committees;

(viii) to prepare and adopt budget for the ensuing year;

(ix) to grant subventions to market committees, for the purposes of this Act on such terms and conditions as Board may determine;

(x) to do such other things as may be of general interest to market committees or considered necessary for the efficient functioning of the Board."

Section 39. "Power to amend the Schedule. - The State Government may, by notification, add, to amend or cancel any of the items of agricultural produce specified in the Schedule."

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B.I.D.R. Act Section 2 -" Declaration as to expediency of control by the Union - It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule."

Section 3(i) - "Scheduled industry" means any of the industries specified in the First Schedule;

18-G. Power to control, supply, distribution, price, etc., of certain articles. - (1) The Central Government, so far as it appears to it to be necessary or expedient for securing the equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry may, notwithstanding anything contained in any other provision of this Act, by notified order, provide for regulating the supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by Sub-Section (1), a notified order made thereunder may provide -

(a) for controlling the prices at which any such article or class thereof may be bought or sold;

(b) for regulating by licences, permits or otherwise the distribution, transport, disposal, acquisition, possession; use or consumption of any such article or class thereof;

(c) for prohibiting the withholding from sale of any such article or class thereof ordinarily kept for sale;

(d) for requiring any person manufacturing, producing or holding in stock such article or class thereof to sell the whole or the part of the articles so manufactured or produced during a specified period or to sell the whole or a part of the article so held in stock to such person or class of persons and in such circumstances as may be specified in the order;

(e) for regulating or prohibiting any class of commercial or financial transactions relating to such article or class thereof which in the opinion of the authority making the order, or if unregulated are likely to be, detrimental to public interest;

(f) for requiring persons engaged in the distribution and trade and commerce in any such article or class thereof to mark the articles exposed or intended for sale with the sale price or to exhibit at some easily accessible place on the premises the price-lists of articles held for sale and also to similarly exhibit on the first day of every month, at such other time as may be prescribed a statement of the total quantities of any such articles in stock;

(g) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matter; and

(h) for any incidental or supplementary matters, including in particular, the grant of issue of licences, permits, or other documents and charging of fees therefor.

(3) Where in pursuance of any order made with reference to clause (d) of Sub-Section (2), any person sells any article, there shall be paid to him the price therefore -

(a) where the price can consistently with the controlled price, if any, be fixed by agreement, the price so agreed upon;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any, fixed under this Section;

(c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

(4) No order made in exercise of any power conferred by this Section shall be called in question in any Court.

(5) Where an order purports to have been made and signed by an authority in exercise of any power conferred by this Section, a Court shah, within the meaning of the Indian Evidence Act, 1872 (1 of 1872), presume that such order was so made by that authority.

C. N.O.S.V.O.D. Act, 1983.

Section 2. - "Declaration as to expediency of

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control by the Union - It is hereby declared that it is expedient in the public interest that the Union should take under its control the oilseeds industry."

Section 9. Functions of the Board. - (1) It shall be the duty of the Board to promote, by such measures as it thinks fit, the development under the control of the Central Government of the oilseeds industry and the vegetable oils industry.

(2) Without prejudice to the generality of the provisions contained in Sub-Section (1), the measures referred to there in may provide for -

(a) taking such measures for the development of the oilseeds industry and the vegetable oils industry as would enable farmers, particularly small farmers, to become participants in, and beneficiaries of, the development and growth of the oilseeds industry and the vegetable oils industry;

(b) recommending measures for improving the marketing of oilseeds, products of oilseeds and vegetable oils and for their quality control in India;

(c) imparting technical advice to any person who is engaged in the cultivation of oilseeds of the processing or marketing of oilseeds and its products;

(d) providing for, or recommending, financial or other assistance for the production and development of adequate quantity of breeders' seeds, foundation seeds and certified seeds of high quality, arranging supply of inputs for the oilseeds growers, adoption of improved methods of cultivation of oilseeds and modern technology for processing of oilseeds, extension of areas under oilseeds cultivation with a view to developing the oilseeds industry and the vegetable oils industry :

(e) recommending such measures as may be practicable for assisting oilseeds growers to get incentive prices, including recommending, as and when necessary, after consultation with the Agricultural Prices Commission, minimum and maximum prices for oilseeds and products of oilseeds and vegetable oils;

(f) recommending and taking such measures as may be necessary for collection, procurement and maintenance of buffer stocks of oilseeds for establishing the price situation and market conditions in respect of oilseeds, products of oilseeds and vegetable oils;

(g) recommending and taking such measures as may be necessary for the -

(i) promotion and development of storage facilities;

(ii) establishment of processing units, in respect of oilseeds, and rendering such financial or other assistance as may be considered necessary for such purposes;

(iii) promotion of oilseeds growers' co-operatives and other appropriate agencies, with a view to achieving integration between production, processing and marketing of oilseeds;

(h) recommending measures for regulating import, export or distribution of oilseeds or products of oilseeds or vegetable oils in the context of an integrated policy and programme of development of oilseeds and vegetable oils;

(i) collecting statistics from growers of oilseeds, dealers in oilseeds, manufacturers of products of oilseeds and vegetable oils and such other persons and institutions as may be necessary on any matter relating to the oilseeds industry or vegetable oil industry and publishing the statistics so collected or portions thereof or extracts therefrom;

(j) recommending the setting up and adoption of grade standards for oilseeds and their products and vegetable oils;

(k) financing suitable schemes in consultation with the Central Government and the Governments of the States where oilseeds are grown on a large scale, so as to increase the production of oilseeds and to improve their quality and yields; and for this purpose evolving schemes for the award of prizes or grant of incentives to growers of oilseeds and the manufacturers of oilseeds products and vegetable oils and for providing marketing facilities

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for oilseeds products and vegetable oils;

(1) assisting, encouraging, promoting, co-ordinating and financing agricultural, technological, industrial or economic research on oilseeds, their products and vegetable oils in such manner as the Board may deem fit by making use of available institutions;

(m) undertaking publicity work on the research and development of the oilseeds industry and the vegetable oils industry;

(n) setting up of regional offices and other agencies for the promotion and development of production, processing, grading and marketing of oilseeds and its products and vegetable oils in different States and Union Territories for the efficient discharge of the functions of the Board.

(o) such other matters as may be considered necessary for the purpose of carrying out the functions of the Board or as may be prescribed.

(3) The Board shall perform its functions under this Section in accordance with, and subject to, such rules as may be made by the Central Government in this behalf."

D. The Vegetable Oils Cess Act, 1983

Sec. 3. Levy and collection of cess on vegetable oils. - (1) There shall be levied and collected by way of cess for the purposes of the National Oilseeds and Vegetable Oils Development Board Act, 1983, a duty of excise on vegetable oils produced in any mill in India at such rate not exceeding five rupees per quintal of vegetable oil, as the Central Government may, from time to time, specify by notification in the Official Gazette :

Provided that until such rate is specified by the Central Government, the duty of excise shall be levied and collected at the rate of one rupee per quintal of vegetable oil.

(2) The duty of excise levied under Sub-Section (1) shall be in addition to the duty of excise leviable on vegetable oils under the Central Excises and Salt Act, 1944 (1 of 1944), or any other law for the time being in force.

(3) The duty of excise levied under Sub-Section (1) shall be payable by the occupier of the mill in which the vegetable oil is produced.

(4) The provisions of the Central Excises and Salt Act, 1944 (1 of 1944), and the rules made thereunder, including those relating to refunds and exemptions from duty, shall so far as may be, apply in relation to the levy and collection of the said duty of excise as they apply in relation to the levy and collection of the duty of excise on vegetable oils under that Act.

Sec. 4. Crediting proceeds of duty to the consolidated fund of India :- The proceeds of the duty of excise levied under Sub-Section (1) of S. 3 shall first be credited to the consolidated fund of India and the Central Government may, if Parliament, by appropriation made by law in this behalf, so provides, pay to the Board, from time to time, from out of such proceeds (after deducting the cost of collection) such sums of money as it may think fit for being utilised for the purposes of the National Oilseeds and Vegetable Oils Development Board Act, 1983.

D.E.E.C. Act

Section 3 - "(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by Sub-Section (1), an order made thereunder may provide -

(a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;

(b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of foodcrops generally or of specified foodcrops and for otherwise maintaining or

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increasing the cultivation of food-crops generally or of specified food-crops;

(c) for controlling the price at which an essential commodity may be bought or sold;

(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity;

(e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;

(f) for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity, -

(a) to sell the whole or a specified part of the quantity held in stock or produced or received by him, or

(b) in the case of any such commodity which is likely to be produced or received by him to sell the whole or a specified part of such commodity when produced or received by him,

to the Central Government or a State Government or to an Officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other person or class of persons and in such circumstances as may be specified in the order,

Explanation l. - An order made under this clause in relation to food-grains, edible oilseeds or edible oils may, having regard to the estimated production, in the concerned area, of such foodgrains, edible oilseeds and edible oils, fix the quantity to be sold by the producers in such area and may also fix, or provide for the fixation of, such quantity on a graded basis, having regard to the aggregate of the area held by, or under the cultivation of, the producers.

Explanation 2. - For the purpose of this clause, "production" with its grammatical variations and cognate expressions includes manufacture of edible oils and sugar.

(g) for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs or cotton textiles which, in the opinion of the authority making the order, are, or, if unregulated, are likely to be, detrimental to the public interest;

(h) for collecting any information or statistics with a view to regulating or prohibiting of the aforesaid matters;

(i) for requiring persons engaged in the production, supply or distribution of, or trade and commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order;

(j) for any incidental and supplementary matters, including, in particular, the entry, search or examination of premises, aircraft, vessels, vehicles or other conveyances and animals, and the seizure by a person authorised to make such entry, search or examination, -

(i) of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being, or is about to be, committed and any packages, coverings or receptacles in which such articles are found,

(ii) of any aircraft, vessel, vehicle or other conveyance or animal used in carrying such articles, if such person has reason to believe that such aircraft, vessel vehicle or other conveyance or animal is liable to be forfeited under the provisions of this Act;

(iii) of any books of accounts and documents which in the opinion of such person, may be useful for or relevant to, any proceeding under this Act and the person from whose custody such books of accounts or documents are seized shall be entitled to make copies thereof or to take extracts therefrom in the presence of an officer having the custody of such books of accounts of documents.

(3) Where any person sells any essential commodity in compliance with an order made with reference to clause (f) of Sub-Section (2), there shall be paid to him the price therefor as

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hereinafter provided :-

(a) where the price can consistently with the controlled price, if any, fixed under this Section be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any.

(c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

(3-A) (i) If the Central Government is of opinion that it is necessary so to do for controlling the rise in price, or preventing the hoarding, of any foodstuff in any locality, it may, by notification in the Official Gazette, direct that notwithstanding anything contained in Sub-Section (3), the price at which the foodstuff shall be sold in the locality in compliance with an order made with reference to clause (f) of Sub-Section (2) shall be regulated in accordance with the provisions of this Sub-Section.

(ii) Any notification issued under this Sub-Section shall remain in force for such period not exceeding three months as may be specified in the notification.

(iii) Where, after the issue of a notification under this Sub-Section any person sells foodstuff of the kind specified therein and in the locality so specified, in compliance with an order made with reference to clause (f), of Sub-Section (2), there shall be paid to the seller as the price-therefor -

(a) where the price can, consistently with the controlled price of the foodstuff, if any, fixed under this Section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any.

(c) where neither clause (a) nor clause (b) applies the price calculated with reference to the average market rate prevailing in the locality during the period of three months immediately preceding the date of the notification.

(iv) For the purposes of sub-clause (iii), the average market rate prevailing in the locality shall be determined by an officer authorised by the Central Government in this behalf, with reference to the prevailing market rates for which published figures are available in respect of that locality or of a neighbouring locality, and the average market rate so determined shall be final and shall not be called in questions in any Court.

(3-B) Where any person is required, by an order made with reference to clause (f) of Sub-Section (2), to sell to the Central Government or a State Government or to an officer of agent of such Government or to a Corporation owned, or controlled by such Government, any grade or variety of food grains edible oilseeds or edible oils in relation to which no notification has been issued under Sub-Section (3-A) or such notification having been issued, has ceased to be in force, there shall be paid to the person concerned notwithstanding anything to the contained contained in Sub-Section (3), an amount equal to the procurement price of such foodgrains, edible oilseeds or edible oils, as the case may be, specified by the State Government, with the previous approval of the Central Government having regard to -

(a) the controlled price, if any, fixed under this Section or by or under any other law for the time being in force for such grade or variety of foodgrains, edible oilseeds or edible oils;

(b) the general crop prospects;

(c) the need for making such grade or variety of foodgrains, edible oilseeds or edible oils available at reasonable prices to the consumers, particularly the vulnerable Sections of the consumers; and

(d) the recommendations, if any, of the Agricultural prices commission with regard to the price of the concerned grade or variety of foodgrains, edible oilseeds or edible oils.

(3-C) Where any producer is required by an order made with reference to clause (f) of Sub-Section (2) to sell any kind of sugar (whether to the Central Government or a

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State Government or to an officer or agent of such Government or to any other person or class of persons) and either no notification in respect of such sugar has been issued under Sub-Section (3-A) or any such notification, having been issued, has ceased to remain in force by efflux of time, notwithstanding anything contained in Sub-Section (3), there shall be paid to that producer an amount therefor which shall be calculated with reference to such price of sugar as the Central Government may, by order, determine, having regard to -

(a) the minimum price, if any, fixed for sugarcane by the Central Government under this Section;

(b) the manufacturing cost of sugar;

(c) the duty of tax, if any, paid or payable thereon; and

(d) the securing of a reasonable return on the capital employed in the business of manufacturing sugar, and different prices may be determined from time to time for different areas or for different factories or for different kinds of sugar.

Explanation for the purposes of this Sub-Section "producer" means a person carrying on the business of manufacturing sugar.

(4) If the Central Government is of opinion that it is necessary so to do for maintaining or increasing the production and supply of an essential commodity, it may, by order, authorise any person (hereinafter referred to as an authorised controller) to exercise, with respect to the whole or any part of any such undertaking engaged in the production and supply of the commodity as may be specified in the order, such functions of control as may be provided therein and so long as such order is in force with respect to any undertaking or part thereof. -

(a) the authorised controller shall exercise his functions in accordance with any instructions given to him by the Central Government, so however, that he shall not have any power to give any direction inconsistent with the provisions of any enactment or any instrument determining the functions of the persons in charge of the management of the undertaking, except in so far as may be specifically provided by the order; and

(b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller under the provisions of the order, and any person having any functions of management in relation to the undertaking or part shall comply with any such directions.

(5) An order made under this Section shall, -

(a)in the case of an order of a general nature or affecting a class of persons, be notified in the Official Gazette; and

(b)in the case of an order directed to a specified individual be served on such individual -

(i) by delivering or tendering it to that individual, or

(ii) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report thereof shall be prepared and witnessed by two persons living in the neighbourhood.

(6) Every order made under this Section by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made."

4. It is contended that the IDR Act is an Act enacted under Entry 52, List I of Schedule VII of the Constitution which provides as following :-

"Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest."

In this context reference may be made to the declaration contained in Section 2 of the IDR Act quoted above. It was submitted that accordingly no such levy by State Act was authorised or competent. It is contended that all the industries, which are the subject matter of the writ petitions, being scheduled industries within the meaning of the IDR Act and

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particularly having regard to Section 18-G of the IDR Act, the State Legislature was not competent to make any enactment in relation to any of the said industries and particularly impose any levy in respect thereof. It was contended that the declared industries within the meaning of IDR Act would be within the exclusive jurisdiction of the parliament. It was submitted that Section 18-G of IDR Act specifically legislates in respect of supply, distribution, marketing, etc. The IDR Act was extended to cover the entire field of marketing including charges of fees

5. Similar argument was made with reference to the E. C. Act, NOSVODS Act and VOC Act which are all Central Acts. It is submitted that in view of the said Central Acts, the State legislature had no legislative competency to enact the impugned provisions of the State Act.

6. The next main point, which is also common to all these cases, is that what is sought to impose under Section 27 of the State Act is 'Fee'. This being a 'Fee' there must be an element of quid pro quo. It was argued that the services must be of some special nature rendered to the payers and that there must be a reasonable correlation or existence of quid pro quo between the services rendered and the amount of fee. In the present case, the imposition is challenged on the ground that the Market Committee does not render any service commensurate to the 'Fee' realised from the petitioners and according such levy is not 'Fee' and realisation of such 'Fee' is unauthorised and illegal.

7. Before I deal with the question of legislative competency of the State Act. I shall first refer to some of the decisions relating to general principles of interpretation in connection with this question.

8. In the case of Southern Pharmaceuticals and Chemicals v. State of Kerala, AIR 1981 SC 1863 : (1981 Tax LR 2838) it was observed (at page 1869) :

"In determining whether an enactment is a legislation 'with respect to' a given power what is relevant is not the consequences of the enactment on the subject matter or whether it affects, it, but whether in its pith and substance, it is a law upon the subject matter in question. The Central and the State Legislations operate on two different and distinct fields. The Central Rules, to some extent, trench upon the field reserved to the State Legislature, but that is merely incidental to the main purpose, that is, to levy duties of excise on medicinal and toilet preparations containing alcohol. Similarly, some of the impugned provisions may be almost similar to some of the provisions of the Central Rules, but that does not imply that the State Legislature had no competence to enact the provisions."

9. In the case of Hoechest Pharmaceuticals Ltd. v. State of Bihar (1983) 4 SCC 45 : (AIR 1983 SC 1019) on the question of interpretation of entries in the lists of the Seventh Schedule the Supreme Court observed as follows :

"The words" notwithstanding anything contained in clauses (2) and (3) "An Article 246(1) and the words "subject to clauses (1) and (2)" in Article 246 (3) lay down the principle of federal supremacy viz. that in case of inevitable conflict between Union and State powers, the Union power as enumerated in List I shall prevail over the State Power as enumerated in Lists II and III, and in case of overlapping between Lists II and III, the former shall prevail. But the principle of federal supremacy laid down in Article 246 of the Constitution cannot be resorted to unless there is an "irreconcilable" conflict between the entries in the Union and State Lists. In the case of a seeming conflict between the entries in the two Lists, the entries should be read together without giving a narrow and restricted sense to either of them. Secondly an attempt should be made to see whether the two entries cannot be reconciled so as to avoid a conflict of jurisdiction. It should be considered whether a fair reconciliation can be achieved by giving to the language of the Union Legislative List a meaning which, if less wide than it might in another context bear, it yet one that can properly be given to it and equally giving to the language of the State Legislative list a meaning which it can

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properly bear. The non obstinate clause in Article 246(1) must operate only if such reconciliation should prove impossible. Thirdly, no question of conflict between the two Lists will arise if the impugned legislation, by the application of the doctrine of 'pith and substance' appears to fall exclusively under one List, and the encroachment upon another List is only incidental.

"It may be added at a corollary of the pith and substance rule that once it is found that in pith and substance an impugned Act is a law on a permitted field, any incidental encroachment on a forbidden field does not affect the competence of the legislature to enact that Act.

It is well settled that the validity of an Act is not affected if it incidentally trenches upon matter outside the authorised field and therefore it is necessary to inquire in each case what is the pith and substance of the Act impugned. If the Act, when so viewed, substantially falls within the powers expressly conferred upon the Legislature which enacted it, then it cannot be held to be invalid merely because it incidentally encroaches on matters which have been assigned to another Legislature.

It is equally well settled that the various entries in the three Lists are not 'powers' of legislation, but 'fields' of legislation. The power to legislate is given by Article 246 and other Articles of the Constitution.".

10. In the case of Ujagar Prints v. Union of India, (1989) 3 SCC 491 : (AIR 1989 SC 516) it was observed as follows (at page 529) :

"Entries to the legislative Lists are not sources of the legislative power but are merely topics or fields of legislation and must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The expression "with respect to" in Article 246 brings in the doctrine or "pith and substance" in the understanding of the exertion of the legislative power and wherever the question of legislative competence is raised the test is whether the legislation, looked at as a whole, is substantially 'with respect to' the particular topic of legislation. If the legislation has a substantial and not merely a remote connection with the entry, the matter may well be taken to be legislation on the topic".

11. In the case of Goodyear India Ltd. v. State of Haryana, (1990) 2 SCC 71 : (AIR 1990 SC 781) the Supreme Court observed as follows (at page 791) :-

"...It is well to remember that in construing the expressions of the Constitution to judge whether the provisions like Section 9(1)(b) of the Act, are within the competence of the State legislature, one must bear in mind that the Constitution is to be construed not in a narrow or pedantic sense. Constitution is not to be construed as mere law but as the machinery by which laws are to be made, It was observed by Lord Wright in James v. Commonwealth of Australia, that the rules which apply to the interpretation of other statutes however apply equally to the interpretation of a constitutional enactment. In this context, Lord Wright referred. to the observations of the Australian High Court in Attorney General for the State of New South Wales v. Brewery Employees Union, where it was observed that the words of the Constitution must be interpreted on the same principles as any ordinary law, and these principles compel us to consider the nature and scope of the Act, and to remember that the Constitution is a mechanism under which laws are to be made, and not a mere Act which declares what the law is to be. Hence such mechanism should be interpreted broadly, bearing in mind in appropriate cases, that a Supreme Court like ours is a nice balance of jurisdiction. A Constitutional Court, one must bear in mind, will not strengthen, but only derogate from its position if it seeks to do anything but declare the law; but it may rightly reflect that a Constitution is a living and organic thing, which of all instruments has the greatest claim to be construed broadly and liberally".

12. On the first point, that is, the legislative competency of the State Act, I shall first consider some of the cases already decided by this Court. In the case of Belsund Sugar Co. Ltd. v. State of Bihar, (1977) PLJR 8 : (AIR 1977 Pat 136), the subject matter before a Division Bench of this Court were two writ

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applications, wherein the petitioners were two sugar factories. In those writ petitions the authority of the respondents, Agricultural Produce Market Committees to issue directions to the petitioner companies to obtain licences in accordance with the provisions of the State Act and the Rules made thereunder was challenged on the ground that the provisions of the State Act and the Rules are not applicable to sugar factories, and, if they are applicable, they are ultra vires. The main contention urged therein was that sugar industry was an industry under the control of the Union and in view of Entry 52 of the Union List, Parliament had exclusive jurisdiction over the industries, the control of which by the Union has been declared by Parliament by law to be expedient in the public interest, and, as such, the State Legislature was not competent to legislate and make provisions in connection with such industries and any such provisions made in respect of such industries have to be declared as void. This is the very same submission urged before us. Dealing with the same the Division Bench held that it was difficult to hold that the Act, in pith and substance, deal with industries as such. It was pointed out that the object of the State Act was to regulate buying and selling of agricultural produce by establishing markets in the State of Bihar, and, while doing so, its incidentally making the purchaser of sugar cane or sugar liable to pay market fee cannot be said to be an act concerning an industry. Reference was made in this connection to the decision in M/s. B. K. Traders v. State of Bihar, (1973) B.B.C.J. l, wherein it was held that the said State Act was covered by Entry No. 28 'Markets and Fairs'. Accordingly the Division Bench held that there was no question of legislative incompetency on the part of the State Legislature in enacting the State Act. It was further urged therein that the provisions of the State Act read with the Rules were repugnant with the provisions of the Control Orders made in exercise of the powers conferred by Section 3 of the Essential Commodities Act which is a Central Act. In this connection reference was made to Article 254 of the Constitution and it was pointed out that the said Article had no application to cases where the conflict is between two Acts made by Parliament and the State Legislature having competence to legislate the same on the pith and substance. It was rightly pointed out that. the repugnancy referred to an (in) Article 254 of the Constitution was in connection with Acts when Parliament and the State Legislature both are legislating in respect of any of the entries in the concurrent List (List III).

13. In the case of Raptakos, Bret and Company Limited v. Bihar State Agricultural Marketing Board, (1988) BLJR 830, another Division Bench judgement of this Court, various submissions were advanced, one of which was whether the State Marketing Act was ultra vires the powers of the State Legislature to the extent it had been made applicable to products of industry declared to be under the control of the Union under Entry 52, List, I to the Seventh Schedule of the Constitution of India, particularly in view of Section 8 of the Industries Regulation Act, 1951, and Section 3 of the Essential Commodities Act, 1955, read with the orders framed thereunder. In this connection, reference was made to different Entries in the different Lists of Seventh Schedule, the object of the State Act and the Central Act respectively, and the scope of the State Act, the Industries (Development and Regulation) Act and Essential Commodities Act. It was observed in this context as follows :-

"As I said earlier, the Bihar Act (in short 'the Market Act') was enacted to provide for regulation of buying and selling of agricultural. produce and for establishment of markets for agricultural produce. Marketing legislation has now for long been considered as essential feature in the commercial world. Markets have been set up all over the world. The object of such legislation is to protect the producers of commercial crops for being exploited by middle men and profiteers, so that they secure fair rent for their produce. The concept of establishment of agricultural market has found acceptance in this country as well. The Bihar Legislature took the hint to establish agricultural markets from Bombay legislation. In its objects and reasons for the

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enactment of the Bihar Act, it was stated 'the establishment of regulated market must form an essential part of any ordered plan of agricultural development in this country'. While the Bombay Act was limited to cotton markets the Bihar Legislature considered it expedient to cover other crops as well. The key note to the system of marketing agricultural produce in the State is the predominant part played by middlemen. It is the cultivator's chronic shortage of money that has allowed the intermediary to achieve the prominent position he now occupies.' The relevance of agricultural markets in that behalf cannot be called in question. The various Acts in the country have been subject to scrutiny by various Courts, including the Supreme Court, from time to time. The vires of such legislation has firmly found favour in the judicial ferment. A Bench of this Court in M/s. Mahabir Tea Company v. State of Bihar, 1979 BLJR 560 observed that the Marketing Act will result in protecting the interest of the Agriculturists. Onslaughts have been made on the vires of the Agricultural Market Act, but without any success. We must, therefore, proceed on the assumption that although Agricultural Markets Act placed restrictions on buyers or sellers, they must be treated as being in the interest of the general weal."

It was contended therein that marketing was an integral aspect of industries and that once the Indian Parliament in its wisdom having taken infant food or Baby food' under its wings by declaring those items as industries' the control of which is expedient in public interest in terms of Section 18-G of I.D. R. Act, the field of legislation in respect of Baby food got occupied. In this connection reliance was placed on I.T.C. Ltd. v. State of Karnataka, (1985) SCC Suppl. 476. In this context it was observed as follows :

".....The question is, is the field of legislation for the Bihar Legislature occupied and whether in exercise of the powers under the Bihar Act a market fee can be levied on goods produced by industries which have been notified in terms of Section 18-G of the Industries Development and Regulation Act. It is now well settled that bar relating to agricultural produce markets fall within the ambit of Markets and Fairs' in Item 28 of List II. It is not doubted that if the food processing industries and Milk foods have not been notified in terms of Section 18-G of the Industries Development and Regulation Act, the challenge to levy market fee would be pointless. It must also be conceded that any legislation in regard to the items mentioned in the Schedule to the Industries Development and Regulation Act would prevail over any legislation by the Bihar Legislature. But the significant aspect is that although Milk foods and processed industries have been notified in terms of Section 18-G, the Central Government has not enacted any law in regard to Milk foods processing industries. If there had been a law it would be worth considering which law will prevail. But in absence of any law enacted by the parliament or by the Central Government, the question of field being occupied does not arise. The field is absolutely wide open. There can thus be no question of law made by the State Government being invalid on account of field being occupied ....."

The Division Bench of this Court, in this context, made a reference to the observations made by Mukharji, J. In his judgement in the I.T.C. case to the following effect :

"225. It was submitted on behalf of the appellants that the State Legislature lost its competence because the field was occupied by Parliament in view of the declaration under Section 2 of the Central Act. It was evident, it was urged, that the intention to cover the whole field has been expressed by the Central Act and as intended, the Central Act is a complete and exhaustive code in respect of tobacco. Consequently, the enactment of the subsequent State legislation was overborne on the ground of repugnancy. Reliance was placed on the decision in the case of State of Orissa v. M. A. Tulloch and Co. (1964) 4 SCR 461, 477 : AIR 1964 SC 1284".

In this context it was further observed as follows :-

"The submission that the Bihar Law was

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invalid on account of the declaration under Section 18-G of the Industries Development and Regulation Act is fallacious for still another reason. The Bihar Law does not pretend to control the licensing of industries in regard to production of goods. It is not a law in relation to 'Industry'. It only deals with marketing in a limited way. The Bihar Act only provides that with a view to protecting the agriculturists of this State every producer/trader must come to a particular place and buy/sell in a particular manner. In order to protect the producers the Market Committee has been authorised to charge l% as market fee. This cannot effect the industry in any manner. It does not entrench upon the power of the Parliament in regard to 'Industry'. On a superficial view it appears that the State Legislature and the State Government, while legislating under the head "Market" has entrenched upon the field of industry which may include marketing as well. But incidental entrenchment has not been banned by law.".

In this connection reference was made to the observations of Sabyasachi Mukharji, J. (at paragraphs 216 and 220) in the said judgement.

Accordingly, it was observed as follows :-

"In my view, therefore, the law relating to levy of market fee on Milk foods which must include Baby food or infant food or other processed foods cannot be held to be invalid as being beyond the competence of the State Legislature. The field was not occupied by any Central legislation. Even if it has been occupied, the question of clash could be resolved on the anvil of the doctrine of 'pith and Substance'. The Market Act, like the Bihar Act, would pass the test of competence on the footing that the Act did not regulate industry. The subjects enumerated in the three Lists are fields of legislations.".

The Division Bench rejected the contention of the petitioners that the law relating to Agricultural Market would fall within the ambit of Item 26 or 27 of List II and held that the State Act falls squarely within Item 28, List II.

Thereafter the question of any possible clash between the. Essential Commodities Act and the State Act was gone into and it was held that the clash must be resolved on the, basis of pattern of 'Pith and Substance'. In, this context it was held as follows :-

The object of the Essential Commodities Act and the Bihar Agricultural Produce Market Act are entirely divergent to each other. There is no meeting point. Whereas, the Essential Commodities Act was enacted in the interest of general public for the control of production, supply and distribution of any trade or commerce in certain commodities, the Bihar Act, on the other hand, was not meant to protect the citizens at large but only to protect the interest of the agricultural producers by regulating buying and selling of the agricultural produce or for matters of allied character. The Bihar Act regulates only the buying and selling operations in a limited way. The control there of the Essential Commodities Act is to ensure that every citizen is able to get foodstuffs and other essential commodities. With that object it visualises system of licensing of dealer with conditions of licence laying down their conducts. If a dealer fails in that behalf, the enforcing authorities may seize and confiscate the goods besides. booking up the delinquents by criminal prosecution. The intention of the Bihar Market Act is only to keep out the middle men, so that agricultural producers are not exploited. With that end the State Government has been empowered to make provisions for purchase, sale, storage and processing of agricultural produce as may be notified the object is to be achieved by publication of Notifications in terms of Section 3 of the Act and for declaration of a market area with a view to protecting the agriculturists. Section 15 provides that barring retail sales or sales for personal consumption agricultural produce shall not be sold except in Market Yard. With the same objective Section 16 prohibits making or recovery of any trade allowance in respect of agricultural produce. Section 26 of the Market Act empowers the Market Committee to levy fee of 1% on every transaction and to realise it from the buyers. Section 29 provides for creation for Market Committee fund, for meeting expenditure by the Market Committee generally in terms of Section 30 of the Act. There are provisions for establishing

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of check posts, for stoppage of vehicles for realisation of market fee and power to order production of accounts and power of entry. Section 52 is a rule making power in regard to State Government and making rules for carrying out the purpose of the Act. In my view, there is no inconsistency or clash between the provisions of the Essential Commodities Act and the provisions of the Agricultural Produce Market Act."

14. In the case of Food Corporation of India v. Bihar State Agricultural Marketing Board, (1989) P.L.J.R. 285 it was argued before a Division Bench of this High Court that if the State Act was applicable to purchase and sale of sugar, then the State Act was ultra vires because sugar is a product of industry declared to be under the control of the Union under Entry 52 List I to the VIIth Schedule of the Constitution. It was submitted that in view of the I.D.R. Act the Essential Commodities Act, 1955 and the Orders framed thereunder, the complete field in respect of production of sugar and distribution thereof was controlled by the Central Government. The field having been completely occupied by the Acts and Orders framed by the Parliament and the Central Government, there was no scope for the State Legislature to make the Act applicable to sugar industries. The Division Bench pointed out that it has been held by this Court in several judgements that the State Act has been framed, in pith and substance, under Item 28 of List II 'Markets and Fairs'. In this connection reference was made by the Division Bench to the case of Belsund Sugar Company Ltd. v. State of Bihar (supra) and it was pointed out that this very point which was urged was repelled by the earlier Division Bench. In this Context it was observed as follows :-

"No decision has been brought to our notice of this court or of the Supreme Court where any Act made by the State Legislature in respect of realisation of market fee over the sale and purchase of agricultural produce has been held to have been enacted under any other entry of the State List, except No. 28 "Market and Fairs" The matter would have been different if the Markets Act would have been held to have been enacted under Entry No. 24 of the State List, that is, an Act relating to an industry which in view of the declaration by the Parliament, referred to above, was not possible to be enacted by the State Legislature. But once it is held that the "Markets Act, in pith and substance, has been enacted under Entry No. 28 of the State List, there is no question of its being void merely because sugar industry is an industry which has been declared under the control of the Union and it is the Parliament which has exclusive jurisdiction over such industries in view of Entry No. 52 of the Union List." (Page 291).

With regard to the argument that the whole field in respect of production, sale and distribution of sugar was occupied by the enactments and orders framed by the Parliament and the Central Government, it was observed as follows :

".....nothing was pointed out from the Industries (Development and Regulation) Act to show that provision of that Act provides a specific procedure for purchase of sugar from the mills by the dealers/traders and then sale of such sugar to other dealers or consumers so as to make the provision of the Markets Act inapplicable in respect of Sugar".

Reference was also made to Levy Sugar Supply (Control) Order, 1979 framed under Section 3. of the Essential Commodities Act and it was observed as follows :-

"......The provisions of Levy Sugar Supply (Control) Order simply empowers the Central Government to "issue directions to any producer or recognised dealer to supply levy sugar to persons, organisation or State Government, as directed by the Central Government. None of the clauses of that order make any provision in respect of marketing of such levy sugar. The Markets Act is concerned only with the marketing of sugar, as an agricultural produce whether it is levy sugar or free sale sugar, in specified market areas. The provisions in respect of establishment of markets under the Markets Act have been made with an object to provide

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facilities to persons buying and selling agricultural produce including sugar. The Levy Supply (Control) Orders is not at all concerned with this aspect. As such there is no question of the field being completely occupied by the Essential Commodities Act and the Levy Sugar Supply (Control) Order so as to make the provisions of the Markets Act inapplicable so far sugar is concerned."

15. I have very carefully considered the aforesaid Division Bench decisions of this High Court. The very same contention was raised in the said decisions of this Court in its Division Bench. They are well considered judgements going into details the similar arguments made as it was made before us. I am in full agreement with the same and we do not hold any opinion to the contrary. There is no scope for differing with the same. Accordingly, in my opinion, this main point sought to be argued in the present case stands concluded by the aforesaid Division Bench judgements of this Court and cannot be allowed to be raised before us once again.

16. It is well settled by various decisions of the Supreme Court that in the hierarchical system of Courts, each lower tier, including the Court of Appeal, is bound by the decisions of the higher tiers. Particularly reference may be made in this connection to Shyamaraju v. U. V. Bhat, AIR 1987 SC 2323. It is also well settled that a Bench cannot differ from a coordinate Bench. A single Judge is bound by the decision of another single Judge, similarly, a Division Bench judgement is also binding on another Division Bench of the same High Court. If the subsequent co-ordinate Bench does not hold the same viers (sic) it is not open to the subsequent co-ordinate Bench to differ from the earlier judgement of the co-ordinate Bench, but it must refer the same to a larger Bench. Reference may be made in this connection to the following : Mahadeolal Kanodia v. The Administrator General of West Bengal, AIR 1960 SC 936; Jai Kaur v. Sher Singh, AIR 1960 SC 1118; A. Raghavamma v. A. Chenchamma, AIR 1964 SC 136; Budhan Singh v. Babi Bux, AIR 1970 SC 1880 : (1970 All LJ 903); Mohar Singh v. Devi Charan, AIR 1988 SC 1365 and Sundarias Kanyalai Bhatia v. Collector, Thana, Maharashtra, (1989) 3 SCC 396 : (AIR 1990 SC 261).

17. Had the matter rested there, that would have been end of the same so far as the main points are concerned. This position is not disputed before us. However, that is sought to be argued before us was that in view of the law laid down by the Supreme Court in its decisions, some of which are subsequent to the Division Bench judgements of this Court, the aforesaid Division Bench decisions of this Court are not binding on us as they are not good law.

18. In that view of the matter we shall discuss some of the judgements of the Supreme Court, particularly judgements subsequent to the decisions of the Division Bench of this Court indicated above, to ascertain whether such Division Bench decisions had directly been overruled by the Supreme Court or whether by necessary implications those Division Bench judgements had become unsustainable as pointed out in the Shyamaraju v. U. V. Bhat (ibid) and other decisions of Supreme Court.

19. In the case of the Kannan Devan Hills Produce Company Ltd. v. State of Kerala, AIR 1972 SC 2301, a five-Judge Bench of the Supreme Court considered the question of the legislative competency of the State Legislature in enacting Kanan Devan (Resumption of Land) Act. The Court held that in pith and substance it was a law dealing with Entry 18 of List II and Entry 42 of List III. The Court further held that the State had legislative competence to legislate on Entry 18, List II and Entry 42, List III. This power cannot be denied on the ground that it has some effect on an industry controlled under Entry 52, List I. Effect is not the same thing as subject matter. If a State Act otherwise valid, has effect on a matter in List I, it does not cease to be a legislation with respect to an entry in List II or List III.

20. In the case of Ishwari Khatan Sugar Mills v. State of U.P., AIR 1980 SC 1955 : (1980 All LJ 950) a five-Judges' Bench of Supreme Court held with reference to I.D.R. Act that it was not correct to say that once

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a declaration is made in respect of an industry, that industry as a whole is taken out of Entry 24, List II, Schedule 7 of the Constitution of India. In this connection it was observed that before the State Legislature is denuded of power to legislate under Entry 24, List II in respect of a declared industry, the scope of declaration and consequent control assumed by the Union must be demarcated with precision and then proceeded to ascertain whether the impugned State Legislation trenches upon the excepted field. It was further observed :-

"The declaration for assuming control is to be found in the same Act which provides for the limit of Control. The deducible inference is that Parliament made the declaration for assuming control in respect of declared industries set out in the Schedule to the Act to the extent mentioned in the Act. It is difficult to accept the submission that S. 2 has to be read dehors the Act and not forming part of the Act. This would be doing violence to the art of legislative draftmanship."

"As the declaration trenches upon the State Legislative power it has to be construed strictly. Therefore, even though the Act enacted under Entry 54 which is to some extent in pari materia with Entry 52 and in a parallel and cognate statute while making the declaration the Parliament did use the further expression "to the extent herein provided." while assuming control, the absence of such words in the declaration in S. 2 would not lead to the conclusion that the control assumed was to be something in abstract, total and unfettered and not as per various provisions of the I.D.R. Act. The lacuna, if any, is made good by hedging the power of making declaration to be made by law. Legislative intention has to be made by law. Legislative intention has to be gathered from the Act as a whole and not by piecemeal examination of its provisions. It would, therefore, be reasonable to hold that to the extent Union acquired control by virtue of declaration in S. 2 of the I.D.R. Act as amended from time to time, the power of the State Legislature under Entry 24, List II to enact any legislation in respect of declared industry so as to encroach upon the field of control occupied by the I.D.R. Act would be taken away." (Para 10)

"When validity of a legislation is challenged on the ground of want of legislative competence and it becomes necessary to ascertain to which entry in the three lists the legislation is referable to, the Court has evolved the theory of pith and substance. If in pith and substance a legislation falls within one entry on the other but some portion of the subject matter of the legislation incidentally trenches upon and might enter a field under another life, the Act as a whole would be valid notwithstanding such incidental trenching" (Para 12).

In this context is was observed as follows :-

"It can, therefore, be said with a measure of confidence that legislative power of the State under Entry 24, List II is eroded only to the extent control is assumed by the Union pursuant to a declaration made by the Parliament in respect of declared industry as spelt out by legislative enactment and the field occupied by such enactment is the measure of erosion. Subject to such erosion, on the remainder the State legislature will have power to legislate in respect of declared industry without in any way trenching upon the occupied field. State legislature which is otherwise competent to deal with industry under Entry 24, List II, can deal with that industry in exercise of other powers enabling it to legislate under different heads set out in Lists II and III and this power cannot be denied to the State" (Para 22).

21. In I.T.C. Ltd. v. State of Karnataka, 1985 (Supp) SCC 476 the Court was concerned with the question of interpretation of Entry 52 of List I of the Constitution with reference to the Tobacco Board Act, 1975, enacted by the Parliament. Under the Parliamentary Act there was similar declaration as contemplated by Entry 52 of List I, Karnataka State started levying fee on tobacco on its products. The question was whether or not the field was fully occupied and there could be any encroachment of the

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field by the Karnataka State. Fazal Ali, J. laid down the cardinal principles justifying the competency of the respective Legislatures with respect to the entries concerned as follows :-

"(1) Entries in each of the list must be given the most liberal and widest possible interpretation and no attempt should be made to narrow or whittle down the scope of entries. This is a well settled principle of law and was reiterated in a recent decision of this court in S. P. Mittal v. Union of India where this Court observed thus (SCC p. 80, para 64) :

It may be pointed out at the very outset that the function of the Lists is not to confer powers. They merely demarcate the legislative fields. The entries in the three Lists are only legislative heads or fields of legislation and the power to legislate is given to appropriate Legislature by Articles 245 and 248 (sic 246) of the Constitution.

(2) The application of the doctrine of pith and substance really means that where a legislation falls entirely within the scope of an entry within the competence of a State Legislature then this doctrine will apply and the Act will not be struck down. The doctrine of pith and substance has been summarised in the case of Delhi Cloth and General Mills Co. Ltd. v. Union of India, 1983 4 SCC 166 : (AIR 1983 SC 937). Where Desai, J. speaking for the Court made the following observations (SCC p. 192, para 33)

To resolve the controversy if it becomes necessary to ascertain to which entry in the three Lists, the legislation is referable, the Court has evolved the doctrine of pith and substance. If in pith and substance, the legislation falls within one entry or the other but some portion of the subject matter of the legislation incidentally trenches upon and might enter a field under another List, then it must be held to be valid in its entirety, even though it might incidentally trench on matters which are beyond its competence.

(3) The consideration of encroachment or entrenchment of one List in another and the extent thereof is also well established. If the entrenchment is minimal and does not affect the dominant part of some other entry, which is not within the competence of the State Legislature, the Act may be upheld as constitutionally valid.

(4) The nature and character of the scope of the entries having regard to the touchstone of the provisions of Arts. 245 and 246.

(5) The doctrine of occupied field has a great place in the interpretation as to whether or not a particular Legislature is competent to legislate on a particular entry. This means that when the field is completely occupied by List I, as in this case, then the State Legislature is wholly incompetent, to legislate and no entrenchment or encroachment, minimal or otherwise, by a State Legislature is permitted. In other words, where the field is not wholly occupied, then a mere minimal encroachment or entrenchment would not affect the validity of the State Legislation (Para 17).

In this connection Mukherji, J. observed as follows :-

It appears that the principles of repugnancy in Indian Constitution are well settled. These are as follows :-

(1) A legislation, which in its pith and substance falls within any of the entries of List I of the Seventh Schedule to the Constitution, would be exclusively within the competence of the Parliament.

(2) A legislation falling exclusively, in its pith and substance, within any of the entries in List II of the Seventh Schedule, would be within the exclusive competence of the State Legislature.

(3) A Central law which in its pith and substance, falls within any entry in List I would be valid even though it might contain incidental provisions in List II which may contain ancillary provisions which might touch on an entry of List I incidentally.

(4) A State law, which in its pith and substance, within any entry in List II would be valid even though it might incidentally touch upon a subject falling within List I.

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(5) A Central Law, which in its pith and substance dealt with a subject falling within List II would be bad and ultra vires the Constitution. Similarly, a State law which in its pith and substance dealt with a matter falling within List I would be invalid and ultra vires the Constitution.

(6) The concept of repugnancy arises only with regard to laws dealing with subjects covered by the entries falling in List III, in respect of which both Parliament and State Legislature are competent to legislate. Under Art. 254 of the Constitution, a State law passed in respect of a subject-matter comprised in List III would be invalid if its provisions were repugnant to a law passed on the same subject by Parliament. The repugnancy arose only if both the laws could not exist together. Repugnancy does not arise simply because Parliament and the States pass law on the same subject. There cannot be any repugnancy in respect of State laws passed in respect of matters falling in pith and substance in List II or in respect of Central laws passed on subjects falling in List I. Parliament cannot legislate on a State subject and State cannot legislate on a Central subject. If either trenches upon the field of the other, the law will be ultra vires. See in this connection Hoechst Pharmaceuticals Ltd. v. State of Bihar (1983) 4 SCC 45, Ramesh Chandra v. State of U. P. (1980) 3 SCR 104 at page 135 and Calcutta Gas Company Proprietory Ltd. v. State of W. B. (1962) Supp 3 SCR l. Like Entry 25 of List II - Gas and Gas Works - without any limitation Entry 28 in List II - in respect of any legislation which is in substance and true nature deals with 'markets and fairs' read with Entry 66 of the said List has complete ascendency and there cannot be any intrusion of that field by another entry. See in this connection the discussion on 'Union and State Relation under the Indian Constitution' M. C. Setalvad pp. 48. 49. In Calcutta Gas Company case by comparison of Entry 7 and Entry 52 of List I with Entry 25 of List II, this Court upheld State legislation of take over of the Gas Industry in spite of declaration under Entry 52 (Para 230).

While it is true that in the spheres very carefully delineated the Parliament has supremacy over State Legislatures, supremacy in the sense that in those fields, Parliamentary legislation would hold the field and not the State legislation - but to denude that State Legislature of its power to legislate where the legislation in question is in pith and substance, i.e. in its true nature and character, belongs to the State field, one should be chary to denude the State of its powers to legislate and mobilise resources - because that would be destructive of the spirit and purpose of India being a Union of States. States must have power to raise and mobilise resources in their exclusive fields. In the instant case by complying with the State Act, the Central Act can function to serve the purpose and object of the Central Act, but if only the Central Act was to prevail, the State Act of marketing for coffee would become non est - wholly unnecessary and undesirable. The Marketing Act is essentially an Act to regulate the marketing of agricultural produce control of coffee industry would not be defeated if the marketing of coffee is done within the provisions of the Marketing Act. It must, therefore, be held that the State Act should prevail. One should avoid corroding the States ambit of powers of legislation which will ultimately lead to erosion of India being a Union of States (Para 237).

22. In the case of Vijay Kumar Sharma v. State of Karnataka (1990) 2 SCC 562 : (AIR 1990 SC 2072) it was held that so far as Art. 254 is concerned, the question of repugnancy can arise only in respect of legislations under the concurrent list. It was pointed out that in interpreting Art. 254 it has to be kept in mind that clause (1) thereof lays down the general rule and clause (2) was an exception thereto and the proviso qualifies the exception. It was further held that when repugnancy is alleged between the two statutes, it was necessary to examine whether the two laws occupy the same field, whether the new or the later statute covers the entire subject matter of the old, whether Legislature intended to lay down an exhaustive code in respect of the subject matter covered by the earlier law so as to replace it in its entirety and whether the earlier special statute can be construed as remaining in effect as a qualification

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of or exception to the later general law, since the new statute is enacted knowing fully well the existence of the earlier law and yet it has not repealed it expressly. For examining whether the two statutes cover the same subject matter, what is necessary to examine is the scope and the Subject of the two enactments, and that has to be done by ascertaining the intention in the usual way and what is meant by the usual way is nothing more or less than the ascertainment of the dominant object of the two legislations. It was Further held in that case that if it is open to resolve the conflict between two entries in different Lists, viz. the Union and the State List by examining the dominant purpose and, therefore, the pith and substance of the two legislations, there is no reason why the repugnancy between the provisions of the two legislations under different entries in the same List, viz., the concurrent list, should not be resolved by scrutinising the same by the same touchstone. What is to be ascertained in each case is whether the legislations are on the same subject matter or not. In both the cases the cause of conflict is the apparent identity of the subject matter.

23. In the case of Government of Andhra Pradesh v. M. Hayagreev Sarma (1990) 2 SCC 682, it was observed by the Supreme Court that it is well settled that the question of repugnancy cannot arise if the State makes law in exercise of its legislative powers in respect of an entry specified in List II of the seventh Schedule, even though it may incidentally trench upon a law made by the Union in respect of a matter referable to an entry in Union List of the Seventh Schedule. It was held that Rule 5 of the A. P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984, and Section 9 of Births, Deaths and Marriages Registration Act, 1886, operate in different areas and, accordingly, there was no question of conflict in the two provisions.

24. In the case of State of U. P. v. Synthetics and Chemicals Ltd. (1991) 4 SCC 139, the Supreme Court was considering the question of validity of U. P. Sales of Motor Spirit, Diesel Oil and Alcohol Taxation (Amendment) Act, 1976, which was declared to be null and void by the High Court of Allahabad in so far as it purported to levy purchase tax on industrial alcohol. By the said impugned U. P. Act levy of a tax at the first point of purchase of alcohol in the State was imposed. This levy was sought to be justified by the State, when challenged in the writ proceeding, as a valid exercise of its legislative power on a matter falling under Entry 54 of List II of the Seventh Schedule of the Constitution. The writ petitioners, challenging the levy, contended that the State Legislature was incompetent to levy tax with reference to Entry 54 of List II in respect of industrial alcohol in so far as that article was the subject of regulation by the Central Government in exercise of its power under S. 18-G of the IDR Act and that the price of that article was regulated by the relevant Price Control Orders made by the Central Government under the said Act. Any levy of sales tax or purchase tax by the State by recourse to Entry 54 of List II, it was contended, would come into direct conflict with the law made by Parliament and the control exercised by the Central Government under that law in regard to an industry falling under Entry 52 of List I read with Entry 33 of List III. The writ petitioner, relying upon the decision of a Constitution Bench of this Court in Synthetics and Chemicals Ltd. v. State of U. P. (1990) 1 SCC 109 : (AIR 1990 SC 1927) (hereinafter referred to as the second Synthetics and Chemicals case) contended before the High Court that, in so far as industrial alcohol was concerned, the State was incompetent to levy sales tax by reason of the operation of the Ethyl Alcohol (Price Control) Orders made by the Central Government in exercise of its power under Section 18-G of the IDR Act. The State contended before the High Court that the aforesaid decision of this Court did not deal with any levy of tax falling under Entry 54 of List II. The power of the State to levy taxes on the sale or purchase of goods was not the subject of consideration in that decision. What was considered was the power of the State to collect vend fee or transport fee or the like by recourse to Entry 8 or 51 of List II with reference to the production, manufacture,

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possession, transport, purchase and sale of industrial alcohol during the operation of the IDR Act and the Rules made thereunder. The High Court accepted the contention of the writ petitioners and held that the impugned purchase tax, if allowed to be levied on industrial alcohol, would have the effect of raising its price beyond the limit prescribed under the Price Control Orders made by the Central Government in relation to industrial alcohol in exercise of its power under the IDR Act. The High Court accordingly declared that the impugned levy of purchase tax on industrial alcohol was, during the operation of the Price Control orders of the Central Government, beyond the legislative competence of the State.

The Supreme Court referred to the second Synthetics and Chemicals case wherein it was held that vend fee, transport fee and the like levied by Uttar Pradesh, Maharashtra and certain other States by recourse to Entry 8 or Entry 51 of List II were null and void in so far as such impost came into direct conflict with the exercise of power by the Central Govt. for the control of supply, distribution, price, etc. of industrial alcohol under S. 18-G of the IDR Act and the Rules or Orders made thereunder.

The Supreme Court quoted extensively from the judgement of the second Synthetic Chemical case with a view to show that the Court was concerned with only one question, and that was whether the States could levy excise duty or vend fee or transport fee and the like by recourse to Entry 51 or 8 in List II in respect of industrial alcohol. With reference to that case, it was pointed out that the States had no such power under either entry in respect of non-potable or industrial alcohol. It was pointed out that in that earlier judgement the Supreme Court did not deal with the taxing power of the State under Entry 54 of List II, which deals the taxes on the sale or purchase of goods other than newspapers subject to the provisions of Entry 92-A of List I. The power of the State to levy taxes on sale or purchase of goods under that entry was not the subject matter of discussion by the Supreme Court, although in paragraph 86 of the leading judgement of Sabyasachi Mukharji, J. as he then was, there was a reference to sales tax. In this connection the Supreme Court stated as follows :-

"Industry as a subject of legislation falls under Entry 24 of List II. But this provision is subject to Entries 7 and 52 of List I dealing respectively with "industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of the War" and 'Industries the control of which by the Union is declared by Parliament by law to be expedient in the public interest'. It is Entry 52 of List I that is relevant for the present purpose for it is in respect of that entry that Parliament enacted the IDR Act, 1951, to provide for the development and regulation of certain industries. This Act contains a declaration by Parliament that 'it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule.' Fermentation Industries' (i.e. alcohol and other products of fermentation industries) in Item 26 of the First Schedule. Section 18-G of the IDR Act confers upon the Central Government the power of control of supply, distribution, price, etc. of the articles mentioned in the First Schedule of the Act. All powers vested in the Central Government under S. 18-G of the IDR Act are referable to Entry 52 of List I dealing with 'controlled' industries, read with Entry 33 of List III which pertains to 'Trade and commerce in, and production, supply and distribution of the products of controlled industries' (Para 21).

"None of the entries in the concurrent List deals with tax but general subjects of legislation. No conflict can, therefore, arise between the taxing powers of the Union and the States. Parliament has the power to legislate in respect of a 'controlled' industry falling under Entry 52 of List I, and both Parliament and the States have the power to legislate in respect of the trade and commerce, in, and the production, supply and distribution of, the products of a 'controlled' industry (Entry 33 of List III). These are not taxing entries and do not, therefore, relate to taxes, but powers of regulation and control. The power to

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control industry being thus vested in Parliament (Entry 52 of List I) and the legislative power in respect of trade and commerce in such industry being concurrently vested in the Union and the States (Entry 33 of List III) any exercise of control by the State must be subject to the legislative power of Parliament and the power conferred on the Central Government by such legislation (Article 246). Any exercise of power by the State which transgresses upon the power of Parliament or of the Central Government, as its delegate, is to the extent of such transgression null and void." (Para 22)

"The power of regulation and control is separate and distinct from the power of taxation. Legislative exercise of regulation or control referable to Entry 52 of List I or Entry 8 of List II is distinct and different from a taxing power attributable to Entry 54 of List II or Entry 92-A or 92-B of List I. The power to levy taxes on sale or purchase or consignment is referable to these entries, and subject to the other provisions of the Constitution the taxing power of the State is not cut down by the general legislative control vested in Parliament and referable to the general topic of legislation." (Para 25)

On the question of doctrine of pith and substance the Supreme Court held :

"The control exercised by the Central Government by virtue of Section 18-G of the IDR Act is in a field far removed from the taxing power of the State under Entry 54 of List II. So long as the impugned legislation falls in pith and substance within the taxing field of the State, the control of the Central Government in exercise of its power under the IDR Act in respect of a controlled industry falling under Entry 52 of List I cannot in any manner prevent the State from imposing taxes on the sale or purchase of goods which are the products of such industry and which are referable to Entry 33 of List III. As seen above, the taxing power of the State Entry 54 of List II cannot be cut down by the General legislative power of control of the Central Govt. (Para 33).

"The levy of fee, whether called vend fee or transport fee or duty or charge, whether levied by rules purportedly made under the Excise Act or the Prohibition Act or any other statute, otherwise than as a proper levy falling in pith and substance under a taxing entry, was not valid, to the extent that it lacked quid pro quo and applied to industrial alcohol. Any such fee or charge can be justified as a mode of control falling in pith and substance under Entry 8 read with Entry 66 of List II only to the extent that it remains within the bounds of the concerned subject matter, namely 'intoxicating liquors', which must necessarily exclude industrial alcohol." (Para 34).

"We see no substance in the contention that the price control orders made by the Central Government in exercise of its power under the IDR Act fettered the legislative power of the State on a matter falling under Entry 54 of List II. Taxes on sale or purchase are not governed by the Price Control Orders, for the purpose of the latter is to prevent the seller from pricing his goods beyond the limit prescribed by the orders. That is a fetter on the free play of demand and supply. When supply is scarce, the prices are bound to rise and it is that price which is controlled by fixing the maximum price. But that does not in any manner curtail the power of the State to levy taxes on the sale or purchase of goods. It is no doubt true that the consumer of the article must, in addition to the price, pay purchase tax due in respect of them. But that is by reason of a valid levy which is within the constitutional power of every State and is dehors the price, though often referable to it." (Para 35).

Accordingly, it was held that the High Court was clearly in error in striking down the impugned provision which undoubtedly falls within the legislative competence of the State, being referable to Entry 54 of List II. It was made clear that in the second Synthetics and Chemicals case (supra) the Court had not and could not have intended to say that the Price Control Orders made by the Central Government under the IDR Act imposed a fetter on the legislative power of the State under Entry 54 of List II to levy taxes on the sale or purchase of goods.

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This decision not only clarifies the scope of the second Synthetic Chemicals case. Judgement of the Supreme Court which was strongly relied upon in support of the contention before us, but also makes it clear the scope and effect of the IDR Act. It also makes clear that where the pith and substance of a State Act comes within any of the entries of the State list, the IDR Act or any regulatory order made under the IDR Act, does not affect the question of legislative competency of any such State Act.

25. In the case of B. Vishwanathiah and Company v. State of Karnataka, (1991) 3 SCC 358 the question involved was regarding the interpretation of Entry 27 of List II in that case, the scope of declaration as to the expediency of Union control made under Section 2 of the Central Silk Board Act in terms of Entry 52 of List I, was under consideration. In that case the validity of the provisions of Mysore Silkworm Seed and Cocoon (Regulation of Production, Supply and Distribution) Act, 1959 (5 of 1960) was in question. The challenge to the said Act was repelled by the Karnataka High Court. Thereafter that matter came before the Supreme Court. It was argued on behalf of the petitioners that any legislation in respect of silk industry can be enacted only by the Parliament and the State Legislature was incompetent to legislate in this matter in view of Section 2 of the Central Silk Board Act, which provided that it was expedient in the public interest that the Union should bring within its ambit the silk industry. This was a declaration in terms of Entry 52 of List I. It was argued that this declaration removed the silk industry from the purview of the State Legislature, which was incompetent to legislate in respect thereof. The High Court held that it was well settled by a series of pronouncements of the Supreme Court that merely because an industry is a controlled industry, as declared by the Parliament under Entry 52 of List, the State is not deprived of its legitimate power to legislate within its own power in respect of such industry. It was held that all aspects of the industry did not fall within the scope of Entry 52 of List I. It was only one aspect of the industry, that is, process of manufacturing and produce, that falls under Entry 52 of List I. The Supreme Court pointed that an industry comprises of three important aspects :

(I) raw materials;

(II) the process of manufacture or production; and

(III) the distribution of the products of the industry.

In this context it was observed that legislation in regard to raw materials would be permissible under Entry 26 of List II, notwithstanding declaration of the Industry under Entry 52 to be one within the purview of Parliamentary legislation. The process of manufacture or production can be legislated by States under Entry 24 of List II so long as the industry is not a controlled industry within the meaning of Entry 7 or Entry 52 of List I. So far as the third spect viz. the distribution of the products of the industry are concerned, the State Legislature would be quite competent to legislate in regard thereto under Entry 27 of List II. However, when the industry is also a controlled industry, legislation in regard to the products of the industry would be permissible by both the Central and the State Legislatures by virtue of Entry 33 of List III. The Supreme Court held that the decision in I.T.C. Ltd. v. State of Karnataka, (1985) Suppl SCC 476 was of limited effect. The Supreme Court supported the reasons of the Karnataka High Court and held that the control of the industry vested in Parliament was only restricted to the aspect of production and manufacture of silk yarn or silk and it did not obviously take in the earlier stages of the industry, namely, the supply of raw materials. The Supreme Court affirmed the judgement of the High Court. It held that the third aspect. i.e. the distribution of products of the industry, falls outside the purview of the control postulated under Entry 52. It was pointed out that though the production and manufacture of raw silk cannot be legislated upon by the State Legislature in view of the provisions of the Central Act and the declaration in Section 2 thereof, that declaration and Entry 52 do not in any way limit the powers of the State Legislature to legislate in respect of the goods

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produced by the silk industry. To interpret entry 52 otherwise would render Entry 33 in List III of the Seventh Schedule to the Constitution otiose and meaningless. Accordingly, it was held that the limitation contained in Entry 52 does not affect the validity of the impugned legislation. Accordingly, it was held that the State legislation would be quite valid unless it is repugnant to the provisions of a Central legislation on the subject. It was held that a perusal of the Central. Act made it clear that the pith and substance of the legislation is the constitution of a silk Board for research into the scientific, technological and economic aspects covered by Entry 33 in List III.

This decision of the Supreme Court explains the scope of the earlier decision in I.T.C. case (supra) which was strongly relied upon on behalf of the petitioners in support of their contention. The scopes and effect of Entry 52, List I, was clearly laid down in this Judgement. The impugned State legislation before us does not deal with the process of manufacture and production. It relates to the distribution of the products of the industry which, as indicated by this Supreme Court decision, falls outside the purview of Entry 52, List I. The pith and substance of the impugned State Act is covered by the relevant Entry in List II.

26. I have considered all the aspects of the matter very carefully. The Division Bench decisions of this Court, while upholding the validity of the State Act had carefully considered various decisions of the Supreme Court. Further, in our opinion, there is nothing in any of the subsequent judgements of the Supreme Court which either directly or by necessary implication nullify the decisions of the Division Bench of this Court. On the other hand, not only the earlier but also the subsequent judgements of the Supreme Court, support the decisions of the Division Bench on the question involved. Upon independent application of mind also. I hold the same view.

Merely because a Central Act contains a declaration within the meaning of Entry 52 List I, the State does not totally lose its power to legislate on the subject. It is the question of application of the doctrine of pith and substance. If a State Legislation falls entirely within the scope of an entry within the competence of State Legislature, the State Act will not be struck down. If in pith and substance, the State Legislation falls within one entry or the other of the State List, then it must be held to be valid in its entirety, even though it might incidentally trench upon and enter a field in the Union List. If such entrenchment is minimal and that does not affect the dominant part which is within the competence of the State Legislature, the State Act must be upheld as constitutionally valid. Unless the field is completely occupied by List I, the State Legislature is not incompetent to legislate. On the contrary, if the field is not wholly occupied, a mere minimal encroachment or entrenchment would not affect the validity of the State Legislation. In the present case, having examined the scope and object of the State Act, I have no hesitation in holding that the pith and substance of the State Act is "Markets and Fairs "which is a State subject. The State Act is essentially an Act to regulate the marketing of agricultural produce. The pith and substance of the Central Acts are quite different even if it be held, which I do not hold, that there is some encroachment by the State Act in the Union field, that is purely incidental and indirect and the same cannot and does not alter the pith and substance of the State Act and it does not affect the validity of the State Act. Accordingly, I reject the first main contention regarding the legislative competency of the State Act. I hold that the same is a valid and competent piece of legislation by the State Legislature.

27. On the question of quid pro quo in the Belsand Sugar case (supra) it was contended before the Division Bench of this Court that there was no relationship between the amount realised as market fee and the service rendered by the Market Committee to the petitioner. In this connection the Division Bench held as follows :-

"It is well settled that fee is a sort of return or consideration for services rendered and as such there has to be an element of quid pro

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quo in the imposition of fee and if necessary the authority realising the fee may be called upon to show the correlationship between the fee levied and the services rendered by it to the person who is required to pay the fee and in this respect it differs from 'tax' where the amount realised merges into the general fund. However, it is not possible to show with mathematical exactitude the correlationship between the amount realised as fee from one particular person and the services rendered to him. Fee is realised from hundreds and thousands of persons and corresponding services are also rendered to hundreds and thousands. In that situation in many cases it may be impossible to show any direct correlationship except that the person who has paid the fee has derived benefit in return."

28. In the case of Raptokos Brett (supra), on the question of fee and quid pro quo it was argued before the Division Bench of this court that in order to levy the market fee the Market Committee was bound to render special services to the dealers in contradistinction to general services. In this context the Division Bench held as follows :-

"In my view, not much can be spun out from the expression 'special services'. It would only mean that services rendered to dealers must be different from Municipal services rendered by the Government or by Municipal Corporation. Every service rendered by a Market Yard must be held to be special service."

It was further held that the Act and Orders thereunder cannot be held to be void for want of quid pro quo. Quid pro quo must exist but it need not be in mathematical proportion to the levy. A general relationship between the fee and the services rendered is enough to pass the test of validity. Accordingly, the contention on this point was also rejected, and it was held as follows :-

"The Market Committee does render some services to the producers. It may be that no service is being rendered to the petitioners but that is because they are not prepared to come within the umbrella of the Market Committees. If they had spelt out what facilities or services they require, we would have endeavoured to find out their feasibility and how far services could be rendered to them, but the petitioners did not consider it appropriate, may be for a legal strategy to spell them out."

29. In the case of Kewal Krishan v. State of Punjab, AIR 1980 SC 1008, a five Judges' Bench of Supreme Court considered the imposition of fee under Punjab Agricultural Produce Markets Act. In this context it was observed as follows :-

"From a conspectus of the various authorities of this Court we deduce the following principles for satisfying the tests for a valid levy of market fees on the agricultural produce bought or sold by licensees in a notified market area :

(1) That the amount of fee realised must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for this purpose.

(2) That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the agricultural produce.

(3) That while rendering services in the market area for the purpose of facilitating the transactions of purchase and sale with a view to achieve the objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and reasonable correlation between the licensees and the transactions.

(4) That while conferring some special benefits on the licensee; it is permissible to render such service in the market which may be in the general interest of all concerned with transactions taking place in the market.

(5) That spending the amount of market fees for the purpose of augmenting the agricultural produce its facility of transport in villages and to provide other facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground

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that such services in the long run go to increase the volume of transactions in the market ultimately benefiting the traders also. Such an indirect and remote benefit to the traders is in no sense a special benefit to them.

6. That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.

7. At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above."

30. In the case of Sourthern Pharmaceuticals and Chemicals v. State of Kerala, AIR 1981 SC 1863, the Supreme Court vent into the question of the distinction between "Fee and Tax" and the concept of the execution fee and observed as follows :

"The distinction between a 'Tax' and a 'Fee' is well settled. The question came up for consideration for the first time in this Court in the Commissioner, H. R. E. Madras v. Lakhshmindra Thirtha Swamiar of Shirur Mutt, 1954 SCR 1005 : (AIR 1954 SC 282). Therein, the Court speaking through Mukherjee, J. quoted with approval the definition of 'tax' given by Latham, C. J. in Mathews v. Chicory Marketing Board, 60 Comm LR 263 (Aus.). In that case, the learned Chief Justice observed :

A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered.

Dealing with distinction between Tax and Fee the learned Judge observed, 1954 SCR 1005 at pp. 1040-2 : (AIR 1954 SC 282 at pp. 295, 296) :-

It is said that the essence of taxation is compulsion that is to say, it is imposed under statutory power without the tax-payer's consent and the payment is enforced by law. The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is as it is said, no element of quid pro quo between the tax payer and the public authority. Another feature of taxation is that as it is a part of the common burden the quantum of imposition upon the tax payer depends generally upon his capacity to pay."

Coming now to fees, a 'fee' is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases.

If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should on the face of the legislative provision, be correlated to the expenses incurred by Government in rendering the services.

The same view was reiterated by this Court in Jagannath Ramanuj Das v. The State of Orissa, 1954 SCR 1046 : (AIR 1954 SC 400) and in Ratilal Panachand Gandhi v. The State of Bombay, 1954 SCR 1055 : (AIR 1954 SC 388) (Para 24).

" 'Fees' are the amounts paid for a privilege, and are not an obligation, but the payment is voluntary. Fees are distinguished from taxes in that the chief purpose of a tax is to raise funds for the support of the Government or for a public purpose, while a fee may be charged for the privilege or benefit conferred,

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or service rendered or to meet the expenses connected therewith. Thus, fees are nothing but payment for some special privilege granted or service rendered. Taxes and taxation are, therefore, distinguishable from various other contributions, charges, or burdens paid or imposed for particular purposes and under particular powers or functions of the Government. It is now increasingly realised that merely because the collections for the services rendered or grant of a privilege or licence, are taken to the consolidated fund of the State and are not separately appropriated towards the expenditure for rendering the service is not by itself decisive. That is because the Constitution did not contemplate it to be an essential element of a fee that it should be credited to a separate fund and not to the consolidated fund. It is also increasingly realised that the element of quid pro quo stricto senso is not always a sine qua non of a fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax.

The element of quid pro quo must be established between the payer of the fee and the authority charging it. It may not be the exact equivalent of the fee by a mathematical precision, yet, by and large or predominantly, the authority collecting the fee must show that the service which they are rendering in lieu of fee is for some special benefit of the payer of the fee.

It seems that the Court proceeded on the assumption that the element of quid pro quo must always be present in a fee. The traditional concept of quid pro quo is undergoing a transformation." (Para 25)

31. In the case of Municipal Corporation of Delhi v. Mohd. Yasin, AIR 1983 SC 617, it was held (at page 620) :

"There is no generic difference between a tax and a fee, though broadly a tax is a compulsory exaction as part of a common burden, without promise of any special advantages to classes of tax payers whereas a fee is a payment for services rendered, benefit provided or privilege conferred. Compulsion is not the hallmark of the distinction between tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax. Though, a fee must have relation to the services rendered, or the advantage conferred, such relation need not be direct; a mere casual relation may be enough. Further neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the fees are also benefitted does not detract from the character of the fee. In fact the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. Nor is the Court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc., against the amount of fees collected so as to evenly balance the two. A broad correlationship is all that is necessary. Quid pro quo in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax." (Para 9)

32. On the question of "Fee" it was observed by Mukherji, J. in the case of I.T.C. Ltd. v. State of Karnataka (supra) as follows :-

Even on the basis of traditional concept it is well-settled that though there must be some special services to the payers of the fees, to be a fee it is not necessary that all the services must be to the payers of the fees nor can the correlation between payment of fee and services rendered be established with mathematical exactitude. It is permissible in the modern set up to take into account projections into future and not only the present services can be utilised for justifying the imposition of fee. All planning, projects into the future for its existence and survival. (Para 176).

Any incidental benefit to those other than the payers of the fee is not decisive of the fact whether it is a 'tax' or 'fee'. It is necessary to find out the primary object and essential purpose of the imposition. If the primary object and essential purpose of the imposition be service of some special kind to the users of

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the market or payers of fee, other consequences or other benefits to others do not in the least affect the position. The concept of benefit to the users of market must be looked at from a broad common sense point of view, taking an integrated view. In today's world you cannot build a good market if the accesses through which the produce comes to the market are not maintained. However, at what point the roads will begin and at what point the roads will end to be able to justify the roads necessary to maintain solely the market, appears to be highly theoretical and unreal question in the modern concept of integrated development. (Para 177)

33. A recent decision of the Supreme Court in the case of Sri Krishna Das v. Town Area Committee, Chirgaon (1990) 3 SCC 645, has also made the position clear. In that case the Supreme Court held as follows :-

"A fee is paid for performing a function. A fee is not ordinarily considered to be a tax. If the fee is merely to compensate an authority for services performed or as compensation for the services rendered, it can hardly be called a tax. However, if the object of the fee is to provide general revenue of the authority rather than to compensate it, and the amount of the fee has no relation to the value of the services, the fee will amount to a tax. In the words of Cooley, 'A charge fixed by statute for the service to be performed by an officer, where the charge has no relation to the value of the services performed and where the amount collected eventually finds its way into the treasury of the branch of the Government whose officer or officers collect the charge is not a fee but a tax." (Para 22)

"Under the Indain Constitution the State Government's power to levy a tax is not identical with that of its power to levy a fee. While the powers to levy taxes is conferred on the State Legislatures by the various entries in List II, in it there is Entry 66 relating to fees, empowering the State Government to levy fees in respect of any of the matters in this list, but not including fees taken in any court. The result is that each State Legislature has the power, to levy fees, which is co-extensive with its powers to legislate with respect to sub-stantive matters and it may levy a fee with reference to the services that would be rendered by the State under such law. The State may also delegate such a power to a local authority. When a levy or an imposition is questioned, the court has to enquire into its real nature inasmuch as though an imposition is labelled as a fee, in reality it may not be a fee but a tax, and vice versa. The question to be determined is whether the power to levy the tax or fee is conferred on that authority and if it falls beyond, to declare it ultra vires." (Para 23)

"We have seen that a fee is a payment levied by an authority in respect of services performed by it for the common benefits conferred by the authority on all tax payers. A fee is a payment made for some special benefit enjoyed by the payer and the payment is proportional to such benefit. Money raised by fee is appropriated for the performance of the service and does not merge in the general revenue. Where, however, the service is indistinguishable from the public services and forms part of the latter it is necessary to inquire what is the primary object of the levy and the essential purpose which it is intended to achieve. While there is no quid pro quo between a tax payer and the authority in case of a tax, there is a necessary correlation between fee collected and the service intended to be rendered. Of course the quid pro quo need not be understood in mathematical equivalence but only in a fair correspondence between the two. A broad correlationship is all that is necessary." (Para 24)

"Where it appears that under the guise of levying a fee the authority is attempting to impose a tax, the court has to scrutinise the scheme to find out whether there is a real correlation between the services and the levy whether it is co-extensive as to be a pretence of a fee but in reality a tax, and whether a substantial portion of the fee collected is spent in rendering the services." (Para 25)

34. The law in this regard is now well settled. It is not necessary that the services must be to the payers of the fees individually nor can the correlation between the payment of fees and the services rendered, be established

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with mathematical exactitude. If the primary and essential purpose of the imposition be service of some special kind to the users of the market or payers of fees, even if there are other consequences or other benefits to others, these do not in the least affect the position. Any incidental benefit to those other than the payers of the fee, is not decisive of the fact whether it is a 'tax' or a 'fee'. The concept of benefit to the users of market must be looked at from a broad commonsense point of view, taking an intergrated view. A fee must have relation to the services rendered, or the advantage conferred. Such relation need not be direct but a mere casual relation may be enough. Further, neither incidence of the fee nor the service rendered need be uniform. Special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. The cost of services rendered etc. against the amount of fee collected so as to evenly balance the two is neither necessary nor expedient. A broad correlationship is all that is necessary.

35. Under Section 29 of the State Act all the money received by the Market Committee is to be paid into a fund and all the expenditure incurred by the Market Committee for the purpose of this Act shall be defrayed out of the said amount. The fund may be utilised for the purpose specified in Section 30 of the State Act quoted above. An examination of the relevant provisions of the State Act and particularly purposes specified in S. 30, make it clear that the utilisation of the fund is substantially for the purpose of rendering service to the persons from whom funds are being collected. Moreover, a Board has been constituted under S. 33A of the State Act for the purpose of exercising superintendence over the control of Market Committee. Every Market Committee has to pay, out of its fund, to the Board as contribution, such percentage of its income derived from the licence fees and market fees as may be prescribed to meet expenses of the establishment of the Board and also those incurred in the interest of the Market Committee.

36. Having regard to the aforesaid and particularly applying the test laid down by 5-Judges Bench in the case of Kewal Krishna v. State of Punjab (supra), I am of the opinion that the test of a 'Fee' has been fully satisfied in this particular case. I fully agree with the Division Bench decisions in Belsund Sugar case and Reptokose Brett (supra), which have dealt with this point and upheld the validity of the State Act on this question. I am of the opinion that there is relationship between the fee collected and the services intended to be rendered under the State Act. There is no attempt to impose any tax by the said Act. It is not only expressed as 'fee' but in reality and substance also it is a 'fee'. Accordingly, in my opinion, there is no merit in this contention and I reject the same.

37. Now we shall deal with some special points which were urged in some particular cases.

38. In CWJC Nos. 12227/87, 3863/88, 4623/88, 8705/88 and 5187/89 the petitioners are running some flour mills. Their case is that they purchased wheat which was ground in the mills to produce Atta, Maida, Suji and bran, which were sold by the petitioners. It was submitted that the petitioners were made to pay market fee on purchase of wheat and fee was again realised from them on the sale of wheat products, namely, Atta, Maida, Suji and bran. This, it was alleged, amounted to "double point" or "multi point" taxation, which was not authorised by the State Act. In this connection our attention has been drawn to Section 27(3) of the State Act, which provides that market fee shall be realised not more than once in any market area on any agricultural produce. In this connection, reliance is placed on a Supreme Court decision in the case of M/s. Ram Chandra Kailash Kumar and Company v. State of U. P., AIR 1980 SC 1124 : (1980 All LJ 490). It was further submitted that there is no difference between Atta, Maida, Suji and wheat which were the same commodity as 'wheat'; the only difference being that Atta, Maida and Suji were in crushed and ground form while wheat was in the form of grain. In this connection reliance was placed on the case of Dhanbad Roller Flour Mills v. State of Bihar, (1989) 75 STC 47 (Para 8).

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39. I am unable to accept this contention. In the Schedule to the State Act, wheat, Atta, Maida and Suji have been entered and listed as separate and independent items of agriculture produce. Accordingly, there is no question of any multiple taxation. They are treated as different produce under the Act.

40. In this connection reference may be made to Sections 2(a) and 27 of the State Act. The Schedule relating to cereals 'wheat' is listed at serial No. 3; wheat Atta is at serial No. 14 and Suji and Maida are at serials Nos. 15 and 16 respectively. The fee is leviable on transaction of any agriculture produce. The liability to pay is on the buyer. The recovery of fee is from the buyer if he is a licensee and in case the buyer is not a licensee, the seller is to realise the same from the buyer. In case, however, neither the buyer nor the seller is a licensee, the fee is to be recovered by the staff of the Market Committee or the agents appointed by the Market Committee.

41. Under the charging Section market fee is leviable on buying or selling of any agriculture produce only once in the same market area. In case, however, a commodity, which is an agriculture produce, undergoes certain manufacturing process and the resultant produce is another commodity, which is also an agriculture produce by itself, the question of multiple taxation cannot and does not arise. The State Act treats the two commodities as different and separate items of agriculture produce for the purpose of levy of fee.

42. Wheat is one of the items of agriculture produce. Atta and Maida are separate items of agriculture produce. Once market fee is levied on transaction of wheat in a particular market area, no further fee can be levied on subsequent transaction of the wheat itself in the same market area. However, where wheat is subjected to a process with the result that another agriculture produce comes into existence, e.g., Suji, fee can be levied on such ultimate produce, irrespective of the question of levy on wheat from which such produce is brought into existence.

43. In the case of M/s. Durgaji Rice Mills v. State of Bihar, 1989 PLJR 616, it was argued on behalf of the petitioners that rice being a product of paddy, which having already been subjected to levy of market fee, could not have further been made subject to payment of market fee as that would amount to imposition of double levy upon the same agricultural produce. This contention was rejected on the ground that the notification of paddy and rice are separately mentioned in the Schedule appended to the said Act and both paddy and rice are liable for levy as separate transaction within the market area. In that decision the Supreme Court's decision in M/s. Ram Chandra Kailash Kumar and Company, AIR 1980 SC 1124 : (1980 All LJ 490), on which strong reliance has been placed on behalf of the petitioners before us, was considered. The learned single Judge has also taken into consideration the subsequent decision of the Supreme Court in Srinivas General Traders v. State of Andhra Pradesh, AIR 1983 SC 1246 and the amendments brought about by Act No. 60 of 1982 in Sections 2(a) and 27 of the Act. The decision relied upon by the learned Counsel for the petitioners in Dhanbad Roller Flour Mills v. State of Bihar (supra) regarding wheat and its produce before the same commodity, came up for consideration not in connection with any Marketing Act but under the Central Sales Tax Act. These are two different types of Acts and they are not 'in pari materia' and, accordingly, a decision rendered under one Act can hardly be of any help insofar as the question of interpretation and scope of the other Act is concerned.

44. Accordingly, we reject this contention.

45. In C.W.J.C. No. 432 of 1983 another additional point has been taken. In this case the petitioner is a Company incorporated under the Indian Companies Act. The case of the petitioner-Company is as follows : The petitioner-Company is a manufacturer of Vanaspati and has a number of depots throughout the country, including one at Patna City, which serve as distribution points for the delivery of goods (Vanaspati) to the traders. The Agriculture Produce Market

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Committee, Patna City, (respondent No. 1) has raised a demand (vide Annexure '1') for payment of market fee on sales of Vanaspati made by the petitioner to dealers on or before May 31, 1976. This is challenged in this proceeding. The petitioner's appeal against the assessment order (Annexure 1) was also turned down by the Appellate Authority and the appellate order (Annexure '2') is also under challenge. It is contended on behalf of the petitioner-Company first that the demand of market fee on Vanaspati for the period 1975-76 was wholly unauthorised, unwarranted and unreasonable, as during the material time Vanaspati was not an item of agriculture produce within the meaning of the State Act and was, therefore, completely beyond the purview of the said Act. It is further submitted that a demand notice (Annexure 4) was initially issued by the respondent-Market Committee asking the petitioner to deposit a sum of Rs. 83,834.95 as market fee on sale of Vanaspati for the period 1-4-1975 to 31-3-1976. After consideration of the reply of the petitioner, an assessment order was passed on 3-6-1976 whereunder the petitioner was held liable to pay a sum of Rs. 27,283.72 as market fee for the period in question. The petitioner deposited this amount. Thereafter the respondent-Market Committee suo motu reopened the assessment proceeding and purported to pass an assessment order on December 13, 1976 (impugned Annexure '1') raising a further demand of a sum of Rs. 89,073.26 for the same period. According to the petitioner, the Market Committee has no power or legal authority to reopen an assessment proceeding or review an assessment order that had already been passed and had become final.

46. As regards the first point, it was pointed out that at the material time 'Vanaspati' was not included as an item of agriculture produce in the Schedule appended to the State Act. What was then stated in the Schedule was only 'all vegetable oil'. It was submitted that Vanaspati was neither vegetable oil nor even processed vegetable oil. In market and trade it was known and recognised as a completely different commodity. It was actually a produce manufactured from vegetable oil. In other words, 'Vanaspati' came into being when vegetable oil was subjected to certain manufacturing process. Such being the position it was contended that notwithstanding the inclusive definition of 'agriculture produce', which empowered the State Government to notify various other commodities which might not be produce of agriculture as understood in market or trade, it was necessary that the specific produce, in this case Vanaspati, must be defined as an agriculture produce by being specifically included in the Schedule. It was submitted that unless it was so done, Vanaspati would not attract the provisions of the State Act merely because vegetable oil, which was used in the manufacture of Vanaspati, was defined as an item of agriculture produce by its inclusion in the Schedule. It was submitted that this position was altered only in 1982 when the word 'manufactured' was added to Sec. 2(a) of the State Act by an amendment. In support of this contention reliance is placed upon two Division Bench decisions of this Court, namely, Vir Bhan alias Vir Bhan Nangia v. State of Bihar, 1977 BBCJ 339 and M/s. Prabhat Zarda Factory v. State of Bihar, AIR 1985 Pat 241.

47-48. It is admitted that the contention of the petitioner would only succeed if it is held that Vanaspati is not the processed form of vegetable oil but it is manufactured from vegetable oil. In case it is held that Vanaspati is only a processed form of vegetable oil, then there cannot be any doubt that it would be covered by the definition 'agriculture produce'. If, on the other hand, Vanaspati is held to be a manufactured produce from vegetable oil, then the contention of the petitioner would succeed. In support of the assertion that Vanaspati is not a processed form of vegetable oil but is a manufactured produce from vegetable oil, learned Counsel for the petitioner relies upon a decision in Union of India v. Delhi Cloth and General Mills Co. Ltd., AIR 1963 SC 791. In this decision the question that fell for consideration before the Supreme Court was whether in course of production of Vanaspati from raw groundnut oil there came into existence, as an intermediate product, 'vegetable oil', which

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could be separately taxed and subjected to excise duty under Item 23 of the First Schedule of the Central Excises Act. The Supreme Court answered the question in the negative but in this case it did not consider whether 'Vanaspati' was a manufactured produce or a processed form of vegetable oil. This case, in our opinion, does not support the petitioner's contention.

49. Reliance has been placed on behalf of the respondent-Market Committee on a decision in Messrs Tungabhadra Industries Ltd., Kurnool v. Commercial Taxes Officer, Kurnool, AIR 1961 SC 412. In this case the Supreme Court held that hydrogenated oil still continued to be groundnut oil notwithstanding the processing which was merely for the purpose of rendering the oil more stable thus improving its keeping qualities for those who desired to consume groundnut oil.

50. In view of the said Supreme Court decision in Tungabhadra Industries Ltd., Kurnool (ibid), in our opinion, 'Vanaspati' is the processed form of the vegetable oil and such Vanaspati was fully covered by the definition of 'agriculture produce' at the material time. Accordingly, the first contention is rejected.

51. As regards the second point, the same has been fully dealt with by the respondent-Committee in paragraphs 16 to 19 of the counter-affidavit on its behalf. In the counter-affidavit it is stated that the initial demand notice was not on the basis of any assessment order but was issued by the Secretary of the Market Committee as an interim demand. It was the assessment sub-Committee consisting of the Chairman, Vice-Chairman and the Secretary of the Market Committee which was the competent authority for passing the assessment order which was finally passed on 13-12-1976 for a sum of Rs. 1,11,356.98. Out of the assessed sum the amount already paid by the petitioner, that is, Rs. 27,283.00, was deducted and a final demand notice for a sum of Rs. 84,073.26 was issued on 23-12-1976. I accept this position and reject the second point raised.

52. An additional point was raised in C.W.J.C. No. 3920 of 1985 and in C.W.J.C. No. 5974/88 so far as sugar is concerned. It was submitted as follows. As the law stands today, no market fee can be levied on the sale or purchase of sugar. Sugar was originally listed in the Schedule to the State Act as an "agriculture produce" and was also covered by the relevant notifications issued under Sections 3 and 4 of the State Act. Under these circumstances the levy of market fee on the sale/purchase of sugar was justified. The situation was changed by the notification dated 2-5-1977 issued under Section 39 of the Act, whereby the Schedule to the State Act was amended by omitting 'sugar' as an item of agriculture produce. Shortly thereafter another notification was issued on 21-5-1977 which purported to rescind/cancel the aforesaid notification dated 2-5-1977. The subsequent notification dated 21-5-1977 was not in exercise of the powers conferred under Section. 39 of the State Act, and it did not seek to add 'sugar' again as one of the items of agricultural produce included in the Schedule. It only sought to cancel/rescind the earlier notification issued on 2-5-1977. Accordingly, there could not be any levy of sugar after 2-5-77 until sugar is properly included in the Schedule by a notification issued under Section 39 of the Act which has not yet been done. Alternatively it was submitted that even if it could be contended that the 21-5-1977 notification amounted to inclusion of sugar as an agriculture produce afresh, no fresh notification under Sections 3 and 4 of the State Act in relation to sugar having been issued after the subsequent notification dated 21-5-1977, there could not be any levy of sugar until that is done. It was submitted that the notification dated 2-5-1977 having excluded sugar from the list of agricultural produce within the meaning of the State Act, as a result of which sugar ceased to be an agricultural produce with effect from 2-5-1977, the earlier notifications issued under Ss. 3 and 4 of the State Act, so far as 'sugar' is concerned, also ceased to exist. Even assuming that the subsequent notification dated 21-5-1977 had the effect of re-introducing sugar as an item of agricultural produce, by no stretch of imagination it could be treated as

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revival of the earlier notifications issued under Sections 3 and 4 of the Act in relation to sugar while sugar was an agricultural produce. It was argued that notwithstanding that any particular commodity was an item of agriculture produce within the meaning of the Act, it will not attract levy of any market fee unless notification, as envisaged under Ss. 3 and 4 of the Act in respect of that commodity, was issued. It was submitted that the admitted position being that no fresh notification under Sections 3 and 4 of the State Act having been issued in relation to sugar, after issuance of the subsequent notification dated 21-5-1977. Even if the subsequent notification could be treated to have had the effect of reintroducing sugar as an item of agricultural produce, without such fresh notification under Sections 3 and 4 of the Act thereafter, no such levy on sugar could be made.

53. On behalf of the respondents reference was made to Section 24 of the Bihar and Orissa General Clauses Act (hereinafter referred to as 'G.C. At'), which is as follows :-

Sec. 24 : "Where, by any Bihar and Orissa Act (or Bihar Act) a power to make or issue notifications, orders, scheme, rules, bye-laws or forms is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, schemes, rules, bye-laws or forms so made or issued."

It was submitted that the State Government in exercise of this power had issued notification dated 21-5-1977 cancelling the earlier notification. The effect, according to him, was that the earlier notification become nonexistent, that is, as if it had never seen the light of the day. It was submitted that the notification dated 21-5-1977 restored the status quo ante as existing on 1-5-1977 and, thus, sugar continued to be an item of agriculture produce within the meaning of the State Act. It was further contended that the notifications issued earlier under Sections 3 and 4 continued to exist after cancellation of notification dated 2-5-77 by subsequent notification dated 21-5-1977 and that it was not necessary that once again the process of Sections 3 and 4 of the State Act should be gone through. According to him, the requirements of Sections 3 and 4 were one time requirement and once the powers were exercised and notifications were issued under Sections 3 and 4, the deletion and subsequent introduction of a particular commodity did not require that the procedure laid down under Sections 3 and 4 were to be followed again. In support of the same it was contended that as a matter of facts, even after the cancellation of notification dated 2-5-1977, all traders had been realising market fee and the fee was being paid to the Market Committee. Our attention was drawn in this connection to the counter-affidavit filed on behalf of the respondents. In this connection reliance was placed on two resolutions of the State Government in aid of his submission that what was actually intended had not been faithfully carried out in the notification dated 2-5-1977 and for that reason alone that notification should be deemed to be inoperative and not reflecting the decision of the State Government as the same was without any authority of law.

54. I am of the opinion that the conclusion made on behalf of the petitioners is sound, and that there is practically no answer to the same on behalf of the respondents. Section 24 of G.C. Act, even if applicable, does not support their contention regarding the effect of cancellation of the 2-5-77 notification by the notification dated 21-5-1977. Even if the 21-5-1977 notification attracted Section 24 of the G.C. Act, it did not revive the situation completely as sought to be argued on behalf of the respondents. Sugar having been excluded by the notification dated 2-5-1977 as an item of "agriculture produce" from the Schedule of the Act, the cancellation of the notification of 2-5-1977 did not have the effect of re-introducing 'sugar' as one of the item of agriculture produce. This is particularly so in view of the provisions of Section 39 of the State Act. Having regard to Section 39 of the State Act, Section 24 of the G.C. Act was not applicable and even if applicable, it did not have the desired effect of introducing 'sugar' as one of

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the scheduled commodities once again in view of 21-5-77 notification. Such intention could only be achieved by making a notification under Section 39 of the State Act and not by rescinding the earlier notification. Accordingly, in our opinion since 2-5-77, sugar not being in "agricultural produce" no levy could be imposed in respect of the same since 2-5-77.

55. In any view of the matter I am of the opinion that even if the notification dated 21-5-77 could be treated as re-introduction of sugar as an agricultural produce within the meaning of the State Act, that by itself, without anything further, did not permit levy of fee on sugar. The scheme of the State Act makes it clear that merely being an item of agricultural produce within the meaning of the said Act does not authorise realisation of market fee in respect of the same. A commodity may be an item of agriculture produce within the meaning of the Act but no market fee can be realised on the sale or purchase of this commodity, until and unless there are appropriate notifications under Sections 3 and 4 of the Act in respect of the same. It is not in dispute that originally sugar was listed as an item of agriculture produce in the Schedule. It is also admitted that originally there were notifications issued under Sections 3 and 4 of the Act in respect of sugar. According originally levy could be imposed on sugar. However, such notifications under Sections 3 and 4, insofar as sugar was concerned, ceased. to have any effect and the same came to an end, when sugar ceased to be an item of agriculture produce by virtue of the 2-5-1977 notification. As a result of the notification dated 2-5-1977, not only that sugar ceased to be an item of agriculture produce within the meaning of the State Act but the notifications issued under Sections 3 and 4 of the State Act, so far as Sugar was concerned, ceased to exist. Therefore, even if some time later sugar could again be sought to be related as an 'agriculture produce' by virtue of the notification dated 21-5-1977, no market fee could be realised solely on that basis, as there was no fresh notification under Sections 3 and 4 of the State Act to that effect. This being the position the mere fact that market fee on sugar was actually paid by the petitioners and collected by the authorities is, not of much relevance. In this connection, reference may be made to Section 4(3) of the State Act, which authorises the State Government to issue a notification to exclude in any market area any agricultural produce included in a notification issued under Sub-Section (1) of Section 4. No such notification was issue under. I am not in a position to accept the contention that the notification dated 2-5-1977 was of no effect for the reasons stated. A notification properly issued could not be nullified, by such alleged intention as propounded, by such purported resolutions.

56. Accordingly, I hold that since issue of notification dated 2-5-1977, no levy could be imposed under the said Act on 'sugar'.

57. In the result I find no substance or merit in any of the contention raised in any of the writ petitions before us, excepting one of the contentions raised in C.W.J.C. No. 3920 of 1985 and C.W.J.C. No. 5974 of 1988, as indicated above. All the contentions raised and submissions advanced in all these cases are accordingly rejected and ill the writ petitions, excepting C.W.J.C. Nos. 3920 of 1985 and 5974 of 1988, are dismissed.

58. So far as C.W.J.C. Nos. 3920 of 1985 and 5974 of 1988 are concerned, the only contention relating to the levy of market fee on sugar after 2-5-1977 is upheld I hold that after the issuance of the notification dated 2-5-1977, omitting sugar as an item of agricultural produce, no levy could be imposed under the State Act on the sale and purchase of sugar. These two applications are allowed only to this extent. No further order need be passed in these two applications as they do not merit any, having regard to the scope of the said two writ petitions and the facts and circumstances of the cases.

59. In the facts and circumstances at these cases, however there shall be no order as to costs in any of these applications.

59. AFTAB ALAM, J. :- I agree.

Order accordingly.

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AIR 1993 PATNA 82 "Swagat Stores., M/s. v. State"

PATNA HIGH COURT

Coram : 1 S. B. SINHA, J. ( Single Bench )

M/s. Swagat Stores and others, Petitioners v. The State of Bihar and others, Respondents.

C.W.J.C. No. 1423 of 1992, D/- 9 -5 -1992.

(A) Bihar Agricultural Produce Markets Act (16 of 1960), S.15(1) - AGRICULTURAL PRODUCE - Embargo on carrying on trade or business at place other than market yard - Limits prescribed in Sch. II of Bihar Agricultural Produce Market Rules, 1975 - Portion of Sch. II containing the words "or Rs. 100/- whichever is less" ultra vires S. 15(1) and R.94 of the Rules.

Bihar Agricultural Produce Markets Rules (1975), R.94, Sch.II.

The Act apparently has been enacted for control of the purchase and sale of agricultural produce. The price at which agricultural produces are brought or sold have no relevance except for the purpose of assessing the quantum of market fee. Rule 94 does not postulate fixing of the prescribed limit in terms of any amount in Schedule II. The limit of the quantity both of kg. and in money value might have been fixed keeping in view the price of the commodities prevailing at the point of time when the said rules had been framed in 1975. There is no doubt that there has been many fold increases in the prices of the commodities. Section 15(1) as also R. 94 postulate grant of exemption in terms of quantity of the agricultural produce and not in terms of monetary value thereof. By reason of Schedule II, therefore, the State could not have imposed further restrictions. In that view of the matter, that portion of rules containing the words" or Rs. 100/- whichever is less" is ultra vires S. 15(1) of the said Act and R. 94. (Paras 12, 13)

(B) Bihar Agricultural Produce Markets Act (16 of 1960), Pre. and S.4(4) - CONSTITUTIONALITY OF AN ACT - Provisions of Act not repugnant to any order made under Essential Commodities Act - Also not ultra vires Art.14 of the Constitution.

Essential Commodities Act (10 of 1955), S.3.

Constitution of India, Art.14.

Bihar Agricultural Produce Markets Rules (1975), R.94, R.98. (Para 15)

(C) Bihar Agricultural Produce Markets Act (16 of 1960), S.2(a) - AGRICULTURAL PRODUCE - "Agricultural produce" - Definition of - It is not only confined to agricultural produce but also industrial product by processing of agricultural produces. (Para 16)

(D) Bihar Agricultural Produce Markets Act (16 of 1960), S.5(2) - AGRICULTURAL PRODUCE - Declaration of market yards - Licensees under the Act have to comply with directions issued by Government - They cannot carry on any business at place other than principal market yard. (Para 24)

Cases Referred: Chronological Paras

C.W.J. C No. 1802 of 1991 (R), D/- 23-4-1992 (Pat) 25

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AIR 1981 SC 1127:1982 PLJR 32 (SC) 18

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1979 BLJR 560:ILR (1979) 58 Pat 345 17

AIR 1977 Pat 136:1976 BBCJ 453 7,17

AIR 1962 SC 1517 5,19

1919 (1) PLJR 446 5,22

Mr. Tara Kant Jha, Sr. Adv. and Mr. Amarendra Kumar Sinha, for Petitioners; Mr. Ram Balak Mahto, Advocate General, Mr. B. N. Singh, AAG 2 and Mr. Braj Kishore Singh, for Respondents.

Judgement

S.B.SINHA, J.:-The petitioners, who are said to be retail traders and carry on business in the town of Gaya, in this writ application, have questioned the legality and/or validity of the directions which are contained in memo No. 226/C, dated 19th January, 1992, as contained in Annexure 1 series to the writ application, whereby they have been directed by respondent No. 2 to shift their place of business to the market yard at Chandauti, as also the letter dated 7-2-1992, issued by respondent No. 3, as contained in Annexure 2 series to the writ application, whereby the petitioners have been

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asked to get the shops allotted in the name of the aforesaid market yard, as also sought for declaration that the provisions of Bihar Agricultural Produce Market Act, 1960 (hereinafter referred to as the said Act have no application in relation to the retail dealers and Schedule II of the Bihar Agricultural Produce Markets Rules, 1975 (hereinafter referred to 'as the said Rules') and/or R. 94 thereof are ultra vires S. 15(1) of the said Act as also Arts. 14, 19(1)(g) and 265 of the Constitution of India.

2. According to the petitioners, they hold retail licences under the Bihar Trade Articles (Licences Unification) Order, 1984, and deal with food grains etc. The town of Gaya being a Class B town the retail dealers in terms of the provisions of the said Order are entitled to hold stock of different commodities in the following manner :

Foodgrains- 100 quintals.

Edible Oilseeds- 150 quintals.

Edible Oil- 15 quintals.

Sugar- 5 quintals.

Khandsari- 5 quintals.

The petitioners by reason of the impugned orders have been directed to shift their respective places of business in the newly constructed market yard by the respondent No. 2 and have further been directed by respondent No. 3 to get shops allotted in their favour failing which it has been threatened that legal action would be taken against them and their respective licences would be cancelled.

3. The petitioners have, inter alia, contended that the respondents 2 and 3 are not the authorities and have no role to play in the matter of enforcement of the provisions of the said Act and the Rules framed thereunder and, as such, the impugned orders, as contained in Annexure 1 series and Annexure 2 are wholly illegal and without jurisdiction. It has further been contended that at present no agricultural produce market committee exists and in that view of the matter too, the direction of the respondents as contained in Annexure 1 series and Annexure 2 series must be held to be illegal and without jurisdiction.

4. In this case a counter affidavit and a supplementary counter affidavit have been filed on behalf of the respondent-market committee. In the said counter affidavit it has been asserted that the State of Bihar in exercise of its power conferred upon it under S. 37 of the said Act has appointed Shri K. K. Pathak, Deputy Development Commissioner, Gaya, to exercise all the powers and carry out all functions of the Market Committee and its sub-committees by a Notification dated 20th November, 1991, as contained in Annexure 'A' to the counter affidavit. It has been further asserted that by a Notification dated 31-12-86. Chandauti within Gaya Market Area has been declared to be the principal market yard in respect of food grains, pulses, oil seeds and edible oils. It has been further asserted that the petitioners have been granted licences under the provisions of the said Act and in terms of Cl. II thereof, they are bound to carry out all instructions as may be given by the authorities under the said Act from time to time. It has further been contended that all facilities have been provided in the principal market yard, Gaya, and the petitioners are under a legal obligation to shift their places of business in the newly constructed principal market yard.

5. Mr. Tara Kant Jha, learned counsel appearing on behalf of the petitioners has principally raised three contentions in support of this application. The learned counsel firstly submitted that second schedule appended to the rules is ultra vires S. 15(1) of the Act so far as it relates to the amount of Rs. 100/- mentioned therein, being the upper limit of the quantum of sale. It has been submitted that the prices of the commodities have increased many fold and thus the quantity of the agricultural produce and the price of Rs. 100/- fixed thereby have lost all relevances. It has also been submitted that as the market committee has become non-existent the impugned directions, as contained in Annexures 1 series and 2 Series are wholly illegal and without jurisdiction. The learned

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counsel is this connection has relied upon a Division Bench decision of this Court in Ramji Prasad v. State of Bihar, 1919 (1) PLJR 446. He has also placed reliance upon the decision in Muhammadbhai Khudabux Chippa v. The State of Gujarat, AIR 1962 SC 1517. It was further submitted that fixation of quantity for retail sale so far as retail dealers under Bihar Trade Articles (Licences Unification) Order are concerned, under the provisions of the said Act and the Rules is ultra vires Art. 14 of the Constitution.

6. It was next contended that the District Magistrate or the Sub-divisional officer being not authorities under the provisions of the said Act or the Rules framed thereunder, they had no jurisdiction to issue the impugned orders, particularly, in view of the fact that in terms of C1. 9 of the Bihar Trade Articles (Licenses Unification) Order, 1984, alteration or change of the site is permissible only at the instance of the trader. In. this connection it has been pointed out that the State of Bihar by a Notification issued in 1985 had deleted the words 'suo motu' occurring in Cl. 9 of the Unification Order as a result whereof the District Magistrate does not have the power to direct any change of place of business, so far as a dealer under the said. order is concerned suo motu.

7. Mr. Ram Balak Mahto, the learned Advocate General on the other hand, submitted R. 94 of the Rules being in consonance with the provisions of Sub-Sec. (1) of S. 15 of the said Act, the same must be held to be valid of the said Act, the same must be held to be valid. It was further submitted that the said Act not only controls the transactions of agricultural produces by the agriculturist but also brings within the sweep manufacturer, agricultural counsel in this connection placed reliance upon a Division Bench decision of this Court in Belsand Sugar Company Ltd. v. The State of Bihar, 1976 BBCJ 453 : (AIR 1976 Pat 136). The learned Advocate General further contended that the definition of 'wholesale traders' and 'retail dealers' as contained in the Unification order cannot be taken aid of for the purpose of construction of the word 'trader' and 'retail' dealers as contained in the Unification order cannot be taken aid of for the purpose of construction of the word 'trader' as defined in the said Act and thus the provisions relating to the control of business of retail traders under the provisions of the construction of the word 'trader' as defined in the said Act and thus the provisions relating to the control of business of retail traders under the provisions of the said order cannot have any relevance in relation to 'control of buying and selling of agricultural produce' by the Market Committee in terms of the provisions of the said Act and the Rules framed thereunder. It has further been submitted that the provisions of the said Act contains a penal provision and as upon publication of a notification under Sub-Sec. (2) of S. 5 of the said Act all traders tend prohibited from carrying on any business at any place other than the principal market yard or sub-market yards this Court will not allow any person to commit offence under the said Act.

8. According to the learned Advocate General, therefore, the action of the respondents 2 and 3 although may not be strictly under the provisions of the said Act but the same is for enforcement of the provisions of the said Act, the same must to be legal.

9. The said Act was enacted for the better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Bihar and for matters connected therewith. S. 3 of the said Act provides for issuance of notification by the State declaring its intention of regulating the purchase, sale, storage and processing of agricultural produce.

Sub-Sec. (1) of S. 4 provides for declaration of market area. Sub-Sec. (2) of S. 4 and the explanations appended thereto read as follows :-

"On and after the date of publication of the notification under Sub-Sec. (1), or such later date as may be specified therein, no municipality or other local authority, or other person, notwithstanding anything contained in any law for the time being in farce, shall within the market area, or within a distance thereof for notified in the official Gazette in this behalf, set up, establish, or continue, allow to be set up. established or continued, any place for the purchase, sale, storage or processing of any agricultural produce notified, except in accordance with the provisions of this Act, the rules and by-laws.

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Explanation - A municipality or other local authority or any other person shall not be deemed to set up, establish or continue or allow to be set up, established or continued a place as a place for the purchase, sale, storage or processing of agricultural produce within the meaning of this Section. If the quantity is as may be prescribed and the seller is himself the producer of the agricultural produce offered for the sale at such place or any person employed by such producer to transport the same and the buyer is a person who purchases such produce for his own use or if the agricultural produce is sold by retail sale to a person who purchases such produce for his own use."

Section 5 of the said Act provides for declaration of market yards. It is not in dispute that there has been a valid declaration of market area as provided for under S. 4 of the said Act as also a market yard as envisaged under S. 5 thereof.

10. It is also not in dispute that S. 15 of the said Act puts a complete embargo upon carrying an any trade or business by any trader at any place other than principal market yard or sub-market yard save and except a retail sale made by any person or for personal consumption to the limit prescribed by the rules. R. 94 of the said rules reads as follows :-

"94. Sale of agricultural produce - (i) All agricultural produce brought into or processed in the market area except such quantity for retail sale or consumption as per Schedule II of the rules or such description of agricultural produce exempted under S. 15 by the Board shall pass through the principal market yard or sub-market yard or yards, and shall not be bought or sold at any other place within the market area.

(ii) Such details of agricultural produce resold or re-bought in the market area shall also be reported to market committee in accordance with the provisions of bye-laws.

(iii) The price of agricultural produce intended for sale in the principal market yard or sub-market yard, shall be settled by open auction or tender system and not otherwise and no deduction shall be made from the agreed price of the consignment except for any authorised trade allowance as prescribed in the bye-laws."

The second schedule appended to the said rules limits the quantity of sale in amount, as for example, so far as cereals are concerned the limit has been fixed at 50 kg. or Rs. 100 whichever is less.

11. Section 15 of the said Act exempts as those persons from the applicability thereof who sells within the prescribed quantity of agricultural produce and/or for personal consumption. The dealers thus whose quantum of sale is confined to the limits prescribed by R. 94 are thus not required to carry on any business in the principal market yard or sub-market yard.

12. The said Act apparently has been enacted for control of the purchase and sale of agricultural produce. The price at which agricultural produces are brought or sold have no relevance except for the purpose of assessing the quantum of market fee provided for under S. 27 Act the said Act.

13. Even R. 94 of the said rules does not postulate fixing of the prescribed limit in terms of any amount. Learned Advocate General, when questioned, very fairly stated that in Schedule II the limit of the quantity both of kg. and in money value might have been fixed keeping in view the price of the commodities prevailing at the point of time when the said rules had been framed. The said rules were framed in 1975. There is no doubt that there has been many fold increase in the prices of the commodities. S. 15(1) of the said Act as also R. 94 postulate grant of exemption in terms of quantity of the. agricultural produce and not in terms of monetary value thereof. By reason of Schedule II, therefore, the State could not have imposed further restrictions. In that view of the matter, it must be held that that portion of rules containing the words "or Rs. 100/- whichever is less" is ultra vires S. 15(1) of the said Act and R. 94 of the said Rule.

14. It is true that in terms of the provisions of Bihar Trade Articles (LicensesUnification)

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Order, the quantities prescribed for retail sale are different than mentioned in the second Schedule of the said rules. The said Act as also the Essential Commodities Act, as is well known, operate in different fields. The definition of trader, as contained in S. 2(w) of the said Act is different than 'wholesale dealer' and 'retail dealer' as defined in Cls. 2(P) and 2(u) of the Unification Order. The definition of 'whole-sale dealer' or, retail dealer' in the said order, therefore, cannot be brought in aid of for the purpose of the said Act and the Rules framed thereunder.

15. In terms of Sub-Sec. (4) of S. 4 of the said Act, nothing in the said Act would apply to a trader whose daily or annual turnover does not exceed such amount as may be prescribed. Although no limit has been laid I down in S. 4(4) of the Act the same can clearly be inferred from R. 98 of the rules. Accordingly, in terms of the provisions of the said Act, whether a person is a retail dealer or not within the meaning of the said Act can be determined only with reference to S. 4(4) thereof read with R. 98(xi) of the said rules and not with reference to the definition of 'wholesale dealer' and 'retail trader' as envisaged under the Bihar Trade Articles (Licences Unification) Order. The provisions of the said Act are not repugnant to the provisions of the Essential Commodities Act and the orders made thereunder. The said Act has been enacted by the State in terms of Entries 26 and 27 of the State list whereas Essential Commodities Act has been enacted under Entry 33 of the concurrent list of VIIth Schedule of the Constitution of India. The provisions of the said Act cannot, therefore be held to be repugnant to any order made under Essential Commodities Act and, thus, they cannot also be held to be ultra vires. Art. 14 of the Constitution of India.

16. From a bare perusal of sub-rule (2) of R. 94 itself it would appear that the said Act brings within the sweep control not only in respect of the first sale of the agricultural produce i.e. from the agriculturists to trader but also controls transactions from trader to trader. R. 94(ii) merely puts an obligation upon the trader to inform the market committee when second sale takes place within the same market yard. It is, therefore, clear that even a second sale comes within the perview of the provisions of the said Act. The words 'agricultural produce' has been defined in S. 2(a) of the said Act which reads as follows :-

It is, therefore, not only confined to agricultural produce alone but also an industrial product by processing of agricultural produces.

17. This aspect of the matter has been considered by a Division Bench of this Court in M/s. Raptakos, Brett and Company Ltd. v. The Bihar State Agricultural Marketing Board, 1988 PLJR 830 wherein this Court held that even industrially produced goods are subjected to levy under the said Act. This Court in the aforementioned decision relied upon its earlier decision in Belsand Company v. State of Bihar, 1976 BBCJ 453 : (AIR 1977 Pat 136) and M/s. Mahabir Tea Company v. State of Bihar, 1979 BLJR 560.

18. In Rameshchandava Kachardas Porwal v. State of Maharashtra, 1982 PLJR 32 (SC) : (AIR 1981 SC 1 127) it has been held by the Supreme Court that regulation of marketing of notified agricultural produce and establishment of principal and subsidiary markets are among the prime objects of the Act. It was held that if for more effective regulation of marketing it is thought that all marketing operations in respect of declared agricultural produce should be carried out only in the principal and subsidiary markets established under the Act, it cannot be said that a rule made for that purpose is beyond the competence of the rule making authority under the Act. It has further been held that both the principal objects sought to be achieved by the Act is the securing of a fair price to the agriculturist for his produce, by the elimination of middlemen and other detracting factors. But it would be wholly

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incorrect to say that the only object of the Act is to ensure a fair price to the agriculturist.

The Supreme Court states the law thus :

"It is because of these and various other services performed by the market committee for the benefit of the trader that the trader is required to pay a fee. It is, therefore, clear that the regulation of marketing contemplated by the Act involves benefits to traders too in a large way. It is also clear to our mind that the regulation of marketing of agricultural produce, if confined to the sales by producers within the market area to traders, will very soon lead to its circumvention in the guise of sales by traders to traders or import of agricultural produce from outside the market area to within the market area."

19. The Supreme Court in the aforesaid decision took into consideration its earlier decisions in Mohammadbhai Khudabux Chhippa v. State of Gujarat, AIR 1962 SC 1517 and in Ram Chandra Kailash Kumar and Co. v. State of U.P., AIR 1980 SC 1124 : (1980 All LJ 490) and came to the conclusion that transactions between traders and traders have to be controlled, if the control in the interest of agricultural producers and the general public has to be effective. It is, therefore, clear that the said Act also is applicable in relation to transactions between traders to traders with regard to the object of transaction of business of agricultural produce at one place i.e. either at the Principal market yard or sub-market yard, the Supreme Court in Porwal's case (supra) has observed (at page 1139 (of AIR)) :

"One of the submissions strenuously pressed before us was that the statute itself imposed and provided for such stringent supervision and control sufficient and more, to regulate transactions between traders and traders, that it was superfluous to insist that such transactions do take place in the market only. We do not agree. Human ingenuity is such that vents and escapes will always be found in any system of controls. We are unable to say that the other supervisory measures for which there is provision in the Act are sufficient to make it unnecessary for the traders to move their places of business into the market. No amount of supervision may be as effective as when all the transactions take place within the market. Nor is effective supervision at all possible if traders are dispersed all over the market area."

The second contention raised on behalf of the petitioner, therefore, has to be rejected.

20. Constitution of the second and subsequent market committees is governed by S. 9 of the said Act. Section 37 provides that in absence of the market committee the Board has the power to make arrangement for the purpose of duties and functions of the market committee. However, in this case, the term of the market committee expired in 1986. The State of Bihar in exercise of its power under S. 9(5) of the said Act appointed one Sachchitanand Singh, Sub-divisional officer only to discharge the functions of the committee for the period 28-5-1986 to 27-5-1987. The assertion of the petitioners to the effect that thereafter no notification under S. 9(5) of the Act was issued has not been denied. It has also been accepted that by a notification dated 13-6-1990, Shri C. S. Choubey was conferred power by the Board for the period 5-5-1990 to 4-11-1991 (Annexure 4).

21. From Annexure A of the counter affidavit filed on behalf of the respondent Market Committee it appears that the Board in exercise of its power under S. 37 of the Act has made arrangements by directing that Shri K. K. Pathak, Deputy Development Commissioner, Gaya, shall carry out the duties and functions of Market Committee, Gaya, from 5-11-91 to 4-5-92.

22. This Court in Ramji Prasad v. State of Bihar reported in 1991 (1) PLJR 446 clearly held that the power under S. 37 of the Act can be exercised when a committee is in existence. After 1987, there was no committee. The Board, thus, had no power to issue the notifications as contained in Annexure 4 to the writ application as also Annexure A to the counter-affidavit.

In this view of the matter it must be held that no person is now authorised to carry out the functions of the Agricultural Produce Market Committee, Gaya.

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23. There cannot be may doubt, as it is well settled, that the provisions of the said Act and the Essential Commodities Act operate in different fields. Respondents 2 and 3, therefore, in their capacities as authorities under the provisions of Trade Articles (Licenses Unification) Order may not be entitled to enforce the provisions of the said Act. However, in terms of the provisions of the Essential Commodities Act as also the provisions of the said order, it becomes the duty of the Licensing authority to see that the licensees under the said order carry out their business not only in accordance with the provisions of the essential Commodities Act or the orders made thereunder but also in terms of the provisions of the said Act. It seems that by reason of a Notification Clause (9) of the said order has been amended in terms whereof the worlds "suo motu" have been deleted. Thus, the respondent No. 2 or for that matter the respondent No. 3 may not have any power to make corrections in the situs of the business of the licensees in terms of Cl. (g) of the said order. However, in my opinion, such n direction is permissible in law in terms of condition No. 10 of the licenses granted to the licensee which reads :

"10. The licensee shall comply with any direction that may be given to him by the State Government or the Collector or the Licensing Authority with regard to the purchase, sale and storage for sale, of these trade articles and in regard to the language in which the registers, returns, receipts of invoice shall be written and in regard to the authentication and maintenance of the register in paragraph 3 above."

Such a residuary power of the licensing authority has been preserved for its exercise only in an appropriate case like the present one. The licensing authority, therefore, although do not have any power to direct change of place of business so far as the licensee under the said order is concerned in terms of clause 9 thereof, but in a given situation, in my opinion, he can exercise such a power under Cl. 10 of the said order. Only, if such a construction is put, provisions of both the Act and rules, in my opinion, can be given effect to.

24. Further S. 48 of the said Act contains a penal provision in terms where of any person who violates the provisions of the Act, Rules or orders passed thereunder will be punished to the extent of imprisonment for one year or fine, of Rs. 1,000/- (one thousand) or both. It has not been disputed that the petitioners are licensees under the said Act. The petitioners in terms of the provisions of licence and particularly clause II thereof (Annexure C) are also bound to comply with such directions as may be given by the State from time to time. In terms of the aforementioned Notification issued under Sub-Sec. (2) of S. 5 of the Act, the principal market yard has been declared. The petitioners who are licenced traders, thus, are bound to comply with the said direction of the State of Bihar and thus they can not carry on any business at a. place other than the principal market yard.

However, only a market committee or a person authorised in this behalf by the State of Bihar by reason of notification under S. 9(5) of the Act could carry the functions of the committee. Such committee being not in existence, the petitioners could not be directed by the respondents 2 and 3 to shift their places of business ac the principal market yard. Respondents Nos. 2 and 3 could issue the directions only in the event the market committee existed but not otherwise. From a perusal of Annexure 1 it appears that a meeting has been held with the traders on 12-1-92 and in the said meeting it has been decided that shifting to the market yard would be completed by 31-1-92. Despite the agreement of the traders to shift their place of business by the said period, they did not do so and file this application on 17-2-92. Under ordinary circumstances the petitioners, therefore, would not have been entitled to enforcement of any equity in their favour but in absence of the market committee, the respondent No. 2 could not have held any negotiations with the traders at all. The impugned orders, therefore, cannot be sustained. It is, however, made clear that steps for shifting of the placed of business by the traders can be undertaken as and when a regular market committee is constituted.

25. Before parting with the case I may,

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however, reiterate the observations of a Bench of this Court in Keshoram Agarwala v. The State of Bihar (C.W.J.C. No. 1802 of 1991)(R)), disposed of an 25-4-1992 which are to the following effect :

"However, we feel that in the interest of general public and particularly the consumers, it is desirable that the State should make necessary amendments in the Act and as also in the notifications, so that the retail dealers may be allowed to continue their place of business within the market area and not at the principal market yard. If it is so done, the same would not only facilitate the market committee to carry out their functions properly but also thereby consumers would be saved from being put in a disadvantageous position to go to the principal market yard which in some cases would require the consumers to cover more than 20 k.m. for purchasing the essential articles for their consumption. This purpose in our opinion may also be achieved by amending the second schedule of the Rules suitably for the present."

26. It may be observed that although the petitioners being the licensees are not exempted from the purview of the said Act. However, it can be demonstrated by any of the traders that their transactions are limited to the extent as, mentioned in R. 94 of the said Rules read with Schedule II of the Rules, as has been interpreted hereinbefore. It would, thus, be open to any trader to file an application in that regard before the committee as and when the same comes in existence and authorities of the said committee may thereupon verify the same and pass appropriate orders in accordance with law.

27. In the result, this writ application is, therefore, allowed with the aforementioned observations, but without any order as to costs.

28. I. P. SINGH, J. :- I agree.

Petition allowed.

AlR 1992 PATNA 59 "Ramji Prasad v. State"

PATNA HIGH COURT

Coram : 2 S. ALI AHMAD AND R.N. PRASAD, JJ. ( Division Bench )

Ramji Prasad, Petitioner v. State of Bihar and others, Respondents.

Civil Writ Jurisdiction Case No. 7232 of 1988, D/- 18 -1 -1991.

Bihar Agricultural Produce Markets Act (16 of 1960), S.9(5), S.27A and S.37 - AGRICULTURAL PRODUCE - Order of assessment - Competency of officer Market Committee not in existence - Person who is conferred powers of Chairman of Board and who is not empowered under S. 9(5) cannot make order of assessment.

Section 37 of the Act gives power to the Board to make arrangements for the performance of the duties and functions of the Market Committee and the Chairman in certain cases, but it comes into play where Market Committee is in existence and is unable or not competent due to any order or decision of a Court or any other reasons to perform his duties. This section does not contemplate the situation where the Market Committee is not in existence at all. In a situation where Committee is not in existence then the only persons who can exercise powers under S. 27A of the Act is person, who is notified for the purpose under S. 9(5l of the Act. (Para 1)

Further, in the instant case, by a notification only powers of Chairman of Board were conferred on the officer, and not of the Committee. Therefore, order of assessment passed by him was without jurisdiction. (Para 1)

Ramesh Kumar Agrawal, for Petitioner; Smt. Seema Ali Khan, SC 7 and Binod Kumar Ambastha, J. C. to S. C. 7, for State; Smt. Nilima Thakur, for Committee.

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Judgement

ORDER :- Prayer in this application is to quash the assessment orders passed on 17-5-1988 vide Annexures 3, 3 /A and 3/ B for the years 1982-83, 1983-84 and 1984-85 respectively. The assessment orders were passed by Mr. R. K. Srivastava, I.A.S., Special Officer of respondent-Market Committee. They have been challenged inter alia on the ground that Sri Srivastava, who was the special officer of the respondent-Market Committee was not empowered under S. 9(5) of the Bihar Agricultural Produce Markets Act, 1960 to make any order of assessment. It is said that Market committee was constituted by Annexure-5 dated 12-3-1983 and on account of lapse of lime it ceased to exist on 12-9-1986. Thereafter one Sudhir Kumar Rakesh, Sub-Divisional Officer, Bettiah was appointed as Special officer of the Committee for the period beginning from 6-10-1986 to 11-3-1987 vide Annexure-5A. There was another notification issued appointing the same officer for the period beginning from 12-3-1987 to 11-9-1987 Vide Annexure-5B. The third notification issued under S. 9(5) of the Bihar Agriculture Produce Market Act (hereinafter to be referred to as th Act appointing Mr. Ravindra Kumar, Sub-Divisional Officer, Bettiah as special officer for the period beginning from 22-9-1987 to 21-3-1988 vide Annexure-5/C. It is said that thereafter there was no notification under S. 9(5) of the Act to enable any person to make order of assessment under S. 27A of the Act. On these facts prayer is to quash Annexures-3, 3A and 38. No counter-affidavit has been filed either on behalf of Market Committee or on behalf of State. A report, however, was called for from Mr. Srivastava regarding his competency to make orders of assessment. In his report it is said that a notification was issued under S. 37 of the Act conferring powers of the Chairman on Mr. Sudhir Kumar Rakesh, S.D.O., Bettiah for the period beginning from 12-9-1987 to 15-11-1988 and on Mr. Purn Chand Rai, S.D. O., Bettiah for the period beginning from 16-11-1988 to 11-3-1989. He has also annexed a photo copy of corrigendum stating that name of Mr. R. K. Srivastava should be read in the aforesaid notification in place of Mr. Sudhir Kumar Rakesh. On that basis it has been urged on behalf of respondents that Mr. R. K. Srivastava was competent to make orders of assessment. It is not possible to accept this contention. S. 37 of the Act gives power to the Board to make arrangements for the performance of the duties and functions of the Market Committee and the Chairman in certain cases, but S. 37 of the Act crimes into play where Market Committee is in existence and is unable or not competent due to any order or decision of a Court or any other reasons to perform hit duties. This section does not contemplate the situation where the Market Committee is not in existence at all. Here admittedly the Market Committee was not in existence. Therefore, there was no question of Committee being unable or being not competent to perform its duties. Further by this notification only powers of Chairman of the Board was conferred on Mr. Srivastava and not of the Committee. Admittedly the Chairman is not competent to make any order of assessment. Since no powers of the Committee was given to Mr. Srivastava, therefore, under this notification Mr. Srivastava was not competent to make any order of assessment. We may also add that in a situation where Committee is not in existence then the only persons who can exercise powers under S. 27A of the Act is a person, who is notified for the purpose under S. 9(5) of the Act. In that view of the matter we allow this application and quash Annexures-3, 3/A and 3/B. Admittedly the Committee is now in existence. It will now proceed to assess the petitioner for the years in question in accordance with law. It will not be necessary for the Committee to issue notice to the petitioner. He will appear before the Committee on 20th of March, 1991 with such documents on which he relies. On that date the committee may either make the assessment after hearing him or may adjourn to some future date.

Application allowed.

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AIR 1992 PATNA 93 "Kesho Singh v. State of Bihar"

PATNA HIGH COURT

Coram : 2 S. ALI AHMAD AND GOPI CHAND BHARUKA, JJ. ( Division Bench )

Kesho Singh, Petitioner v. State of Bihar and others, Respondents.

C.W.J.C. No. 2369 of 1991, D/- 5 -4 -1991.

Bihar Agricultural Produce Markets Act (16 of 1960), S.4, S.27 and S.48 - AGRICULTURAL PRODUCE - Bihar Agricultural Produce Market Rules (1960), R.129, R.82 - Right to hold cattle fair on raiyati land - It cannot be settled with person other than proprietor of land.

The right to hold cattle fair on raiyati lands is the exclusive right of the proprietor of the lands or persons claiming through the said proprietor. But the cattle fair for the purpose of sale and purchase of the cattles can be held by the said persons only if they hold the statutory licence granted under R. 129 of the Rules. On grant of the licence, as per condition No. 3 thereof, the licence alone can collect the market fee on behalf of the market Committee in respect of transactions held on his lands. Of course, it will be always open for the market Committee to make arrangements for collection of market fee through its own officers if it is found to be more expedient. The settlement made by the Market Committee in favour of other persons in respect of Cattle Fair would not be in accordance with law. (Paras 11, 12)

Neither raiyats nor persons claiming through them can set up cattle fair for the purpose of sale and purchase of cattles unless they obtain the licence as required under R. 129 of the Rules. It is also clear from the provisions of the Act that the Market Committee has no authority to either itself set up any cattle fair on the private land of the raiyats nor it can authorise any other person by any mode to set up any such cattle fair on such raiyati lands. (Para 6)

S.B.N. Singh and Sheo Nr. Singh, for Petitioner; R.B. Mahto and K.P. Singh, No. 2 (for No. 5) Uday Chand Prasad (for Nos. 2 to 4), H.N. Ojha, Raghubansh Singh and R.K. Singh, for Intervenors; Ram Balak Mahto, Advocate-General, U.K. Choudhary and P.N. Jha, Govt. Pleader IV, for the State.

Judgement

G.C. BHARUKA, J. :- The present writ application has been filed for quashing the decision of the Market Committee dated 7-31991 by which Ram Shahar Cattle Fair falling within the territorial jurisdiction of Arrah Market Committee has been challenged as illegal and without jurisdiction. The said Cattle Fair has been sought to be settled in favour of respondent No. 5, Subh Narain Singh, The settlement has been made pursuant to an auction conducted by the Committee on 7-3-1991 as per its public notice contained in Annexure-2.

2. According to the petitioner, he is a permanent resident of village Dewaria in the district of Bhojpur. Admittedly the land over which the aforesaid Ram Shahar Cattle Fair was being held in the past is the raiyati land of Arun Kumar Ojha and some others of village Ram Shahar, District Bhojpur. According to the petitioner on 20-11-1989 a registered partnership deed was executed between the said Arun Kumar Ojha and others and the petitioner, according to which the petitioner became entitled to hold cattle fair on the land for 15 years. Accordingly, the petitioner as per R. 129 of the Bihar Agricultural Produce Market Rules, 1960 (hereinafter referred to as the 'Rules' only) was granted licence for holding Mela on the said raiyati land for the year 1990-91. The licence has been filed as Annexure-5 to the writ application.

3. The main question that falls for

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consideration is whether with respect to the Cattle Fair held on a raiyati land the right to hold the cattle fair and/or to collect market fee can be entrusted by the concerned Market Committee to a person other than the proprietor of the land or any person claiming through him?

4. Section 4(2) of the Bihar Agricultural Produce Market Act, 1960 reads as follows:-

"On and after the date of publication of the notification under sub-sec. (1), or such later date as may be specified therein, no municipality or other local authority, or other person, notwithstanding anything contained in any law for the time being in force, shall, within the market area, or within a distance thereof to be notified in the official Gazette in this behalf, set up, establish, or continue, or allow to be set up, established or continued, any place for the purchase, sale, storage or proceeding of any agricultural produce so notified, except in accordance with the provisions of this Act, the rules and bye-laws."

5. Further, as is evident from the definition of Agricultural Produce given under S. 2(1)(a) of the Act read with Item No. 3 of Part VIII of the Schedule, cattle are also agricultural produce for the purpose of the Act and those have also been notified for the respondent Market Committee. Therefore, in view of S. 4(2) of the Act Cattle cannot be sold or purchased except in accordance with the provisions of the Act. Cattle Fairs are primarily held in villages and rural areas to facilitate agriculturists and the villagers to sell or purchase the Cattle. R. 29 of the Rules, inter alia, provides that no person within the market area can set up, establish or continue any place for the purchase and sale of notified agricultural produce except under and in accordance with the terms and conditions of the licence in Form XX issued in this behalf by the Market Committee.

6. Therefore, in view of the aforesaid legal provisions neither raiyats nor persons claiming through them can set up cattle fair for the purpose of sale and purchase of cattles unless they obtain the licence as required under R. 129 of the Rules. It is also clear from the provisions of the Act that the Market Committee has no authority to either itself set up any cattle fair on the private land of the raiyats nor it can authorise any other person by any mode to set up any such cattle fair on such raiyati lands.

7. The second important aspect is that under S. 27 of the Act the Market Committee has been authorised to levy and collect market fee at the rate of 1% on the sale-purchase of notified agricultural produce. Sub-sec. (2) of this section provides that the market fee shall be payable by the purchaser in the manner prescribed. The mode of payment of the market fee payable by the purchaser has been prescribed. under R. 82 of the Rules and for the present purpose Cl. (V) of R. 82 will be material which reads as under :

Rule 82(V)- "The Market Committee may authorise any of its officers or staff or any other person to collect market fee directly from the buyer or his agent."

8. Condition No. 3 of the licence in Form XX prescribed under the Rules for setting up of Hat, Bazar and Mela, inter alia, provides that :-

"The Market Committee do hereby permit and the licensees do hereby accept to set up or establish Hat, Bazar, Mela and to act as collection agent to collect market fee payable under S. 27 and R. 82 from the purchasers of notified agriculture produce operating in the Hat or Bazar or Mela and deposit the same with Market Committee within a week."

9. The above quoted condition statutory prescribes that the holder of the licence shall be the agent of the Market Committee for collecting the market fee as provided under S. 27 read with R. 82 of the Rules. If the licensee fails to discharge its duty to act as a collection agent then he will have to suffer the cancellation of his licence, thereby depriving him to set up any cattle fair on his land. He may also be liable to prosecution under S. 48 of the Act which provides that if any person voilates the provisions of the Act, Rules, Bye-laws or orders issued thereunder then he

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may be punished with imprisonment of one year or fine of 1,000/- rupees of both subject to the provisions under the proviso. Therefore, the provisions are mandatory and binds both the Market Committee as well as the licensee.

10. The counsel for the Interveners has drawn our attention to an order of this Court dated 18-1-1990 passed in C.W.J.C. No. 224 of 1990 to impress upon us that the right to collect market fee can be conferred on private persons or even on such persons who are not the proprietors of the raiyati lands. In my view this order has no bearing on the issues at hand because that order was passed as a measure of interim arrangement because of the pendency of a title suit in respect of the lands involved in that case.

11. In substance, the right to hold cattle fair on raiyati lands is the exclusive right of the proprietor of the lands or persons claiming through the said proprietor. But the cattle fair for the purpose of sale and purchase of the cattle can be held by the said persons only if they hold the statutory licence granted under R. 129 of the Rules. On grant of the licence, as per condition No. 3 thereof, the licence alone can collect the market fee on behalf of the Market Committee in respect of transactions held on his lands. Of course, it will be always open for the Market Committee to make arrangements for collection of market fee through its own officers if it is found to be more expedient.

12. Under the aforesaid facts and the attending legal provisions, it has to be held that the settlement made by the order as contained in Annexure-1 in favour of respondent No. 5 in respect of aforesaid Ram Sahar Cattle Fair is not in accordance with law and accordingly, it is quashed.

13. The writ application is allowed. There will be no order as to cost.

S. ALI AHMAD, J. :- 14. I agree.

Petition allowed.

AIR 1990 PATNA 146 "Steel Authority of India Ltd. v. Bihar Agrl Produce Market Board (FB)"

PATNA HIGH COURT

FULL BENCH

(RANCHI BENCH)

Coram : 3 SATYESHWAR ROY, B. P. SINGH AND S. B. SINHA, JJ.\* ( Full Bench )

Steel Authority of India Ltd., Petitioner v. Bihar Agricultural Produce Market Board and others, Respondents.

Civil Writ Jurn. Case No.1339 of 1988 (R), D/- 6 -4 -1990.

Bihar Agricultural Produce Markets Act (16 of 1960), S.2(i)(w), S.2(v) - INTERPRETATION OF STATUTES - AGRICULTURAL PRODUCE - Trader - Meaning of - Word "and" used in S.2(i)(w) - To be read as conjunctive and not as disjunctive -Petitioner, Steel Plant, a Consumer of wood, which it uses for incidental purpose and not for manufacturing purposes - Is not a "trader".

AIR 1978 Patna 16, Overruled.

Interpretation of Statutes - Strict construction - Trader - Meaning of - Consumer of wood, which it uses for incidental purpose and not for manufacturing purpose - Is not a trader.

In the definition of 'trader' the word 'and' has to be read as conjunctive and not as disjunctive. A trader is a person who may buy agricultural produce from the agriculturist and sale the same either in the same form or after processing the same to a customer or to another dealer. The intention of the legislature in directing the trader to obtain licence is absolutely clear and unambiguous in so far as it seeks to regulate the trade for purchase and sale. Thus a person who is not buying an agricultural produce for the purpose of selling it whether in the same form or in the transformed form, is merely a consumer, inasmuch as it is not using such agricultural produce directly for manufacturing purpose. In order to manufacture iron and steel in its steel plant, the petitioner is required to make purchase of various articles which may include such articles in respect whereof regulatory legislations, may exist. If the petitioner is called upon to obtain licences in respect of each and every commodity which may be the subject matter of one or the other regulatory legislation the same would lead to an absurd result. Therefore the petitioner would not require to obtain any licence as it is not a 'trader' within the meaning of S. 2(i)(w).

AIR 1978 Patna 16, Overruled.

AIR 1977 Patna 136, Disting. (Paras 28, 47, 54, 70)

If a person is not a 'trader' in a particular commodity, he cannot be held bound to obtain a licence which would go beyond the intention of the legislature so as to include a person, within its purview, who has not been intended to be included under the provisions of the statute by the legislature. Thus the statute being a penal one, the provision thereof must be strictly construed. In this view of the matter also, a person who is not otherwise required to obtain a licence under the provisions of the said Act and the rules framed thereunder cannot be held to come within the purview of the said Act, only for the alleged reason that if they are not so brought within the purview of the said Act, the Act itself may be held ultra vires. The said Act will not be rendered unconstitutional, if the buyers are not brought within the purview of the definition of 'trader'. A person is liable to pay fee when he buys an agricultural produce. The said Act and the rules fasten the liability upon the buyer to pay the market fee and if the buyer is not licensed, the seller has been authorised to realise market fee from him. Thus even if a person buys agricultural produce for any purpose whatsoever, the object of the said Act is not defeated by reason of the fact that the buyer is not required to take

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out such licence, inasmuch as the buyer has to pay the market fee and a licensed seller of the agricultural produce has been authorised to collect market fees from the buyer. The purpose of the Act being to regulate market and to realise market fees, so as to render services to the agriculturist and other persons, the question as to whether a buyer should obtain a licence or not is wholly immaterial for the purpose of carrying out the object of the said Act. (Paras 62, 65, 66, 67)

Per S. Roy, J. (agreeing) -- Both the words 'trade' and 'trader' signify trading activity and this activity means buying and selling of agricultural produce or processing for sale of agricultural produce. Consumption of agricultural produces by the petitioner is for incidental use in the plant and it can neither be 'trade' or business, nor the petitioner can be said to be a 'trader'. (Para 76)

Cases Referred : Chronological Paras

AIR 1989 SC 611 : (1989) 1 SCC 44 59

AIR 1989 SC 1024 : 1989 Tax LR 393 39

AIR 1989 SC 1247 : 1989 BBCJ 54 39

(1989) 2 BLJ 340 : 1989 BBCJ (HC) 606 59

AIR 1988 SC 132 : (1988) 1 SCC 145 39

AIR 1988 SC 1875 39

AIR 1988 SC 2223 : (1989) 1 SCC 150 59

AIR 1978 Pat 16 (Overruled) 11, 24, 31, 37, 62, 68, 69

AIR 1977 Pat 136 : 1976 BBCJ 453 (Disting.) 24, 31, 32, 35, 36, 69

AIR 1967 SC 973 24, 30, 42, 44, 52

AIR 1965 SC 531 24, 30, 40

AIR 1954 SC 496 : 1954 Cri LJ 1333 58

1946 AC 278 : (1946) 1 All ER 255 : 174 LT 151 London and North Eastern Railway Company v. Berriman 57

(1887) 19 QBD 629 : 56 LJQB 553 : 3 TLR 826 Tuck and Sons v. Priester 57

M.M. Banerjee, for Petitioner; Srideo Mishra and B. Kumar, for Respondents.

\* Against order of Asstt. Dist. Judge, Barpeta in Money Suit No. 11 of 1978, D/-16-3-1982.

Judgement

S. B. SINHA, J. :- This writ petition has been filed on behalf of the petitioner for issuance of a writ of or in the nature of mandamus directing the respondents to forbear from coerceing the petitioner to obtain licence in terms of the provisions of Bihar Agricultural Produce Market Act, 1970 (hereinafter to be referred to as 'the Act' for the sake of brevity), as also for issuance of appropriate writ for quashing the order dated 22-5-1987 as contained in Annexure-2 to the writ petition (wrongly mentioned as Annexure-1 in the writ petition) as also the order passed by the respondent No. 2 as incorporated in its letter dated 29-5-1988 written to the petitioner in Annexure-7 to the writ petition.

2. The petitioner is a Government Company within the meaning of section 617 of the Companies Act and carries on business in manufacture of iron and steel. The petitioner own various mines and steel plants. One of the steel plants of the petitioner-Company is situate at Bokaro Steel City, commonly known as Bokaro Steel Plant.

3. According to the petitioner it purchases 'wood' which is used in the Plant for incidental purposes, i.e. for bracing or laying tracks etc.

4. For the purpose of purchase of 'wood', the petitioner floats tender by publishing the same in various newspapers or on limited tender enquiry basis.

5. According to the petitioner, in each purchase order a clause is contained that the market fee @ 1% shall be paid extra. The petitioner has asserted further that a consumer of wood for the aforementioned purpose does not come within the purview of the definition of 'trader' and as such no licence for tendering in 'wood' is required to be obtained by it, in terms of the provisions of the Act.

6. However, it received a notice dated 225-1987, as contained in Annexure-2 to the writ petition, issued by respondent No. 3, whereby and whereunder it was intimated that it had been carrying on business of purchase and sale of agricultural produce without a licence and as such by the said notice the petitioner was directed to obtain a licence in terms of the provisions of the 'Act', and Rules framed thereunder by depositing the requisite licence fee.

7. The petitioner by its letter dated 1-6-1987

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addressed to the respondent No. 3 denied and disputed its liability, to take out a licence in terms of the provisions of the said Act and the Rules framed thereunder.

In reply to the aforesaid letter (Annexure-3) the respondent No. 3 again by his letter dated 8-7-1987, as contained in Annexure-4 to this writ petition, asked the petitioner to obtain a licence, as allegedly the petitioner had been carrying on business in purchasing agricultural produce.

By a notice dated 9-11-1987 Sri Rajendra Prasad Shrivastava, Advocate, on behalf of the respondent No. 1, threatened the Managing Director, Bokaro Steel Plant, of the petitioner which is contained in Annexure-5 to the writ petition, that unless a necessary licence is obtained within fifteen days from the date of receipt of the notice, legal action would be taken against him.

By a letter dated 16th November, 1987, as contained in Annexure-6 to the writ petition, the petitioner, in reply to the said notice of Sri Shrivastava, Advocate, reiterated that it was not liable to obtain a licence in terms of the 'Act' and the Rules framed thereunder. The petitioner along with the said letter (Annexure-6) annexed a chart showing the supply position of the agricultural tax, (wrongly stated for market fees) for the years 1986-87.

8. By the impugned notice dated 29-3-1988 issued by respondent No. 1, which is contained in Annexure-7 to the writ petition, the petitioner was finally asked to take out a licence in terms of the said Act.

9. The petitioner has contended that as it is not a trader, nor does it carry on any business or trade in any agricultural produce, and merely purchases wood for incidental use thereof and not for manufacturing purpose, the purported notices issued to it by respondent No. 3 and respondent No. 1 as contained in Annexures-2 and 7 to the writ petition respectively are wholly illegal and without jurisdiction.

10. A counter-affidavit has been filed on behalf of respondent No. 3 wherein it has not been denied or disputed that the petitioner purchases 'wood' for its own consumption and it does not carry on any business of purchase and sale of 'wood', which is an agricultural produce. It has, however, been asserted by the said respondent in the aforementioned counter-affidavit that the petitioner, however, being a regular purchaser of wood would be deemed to be carrying on business of buying 'wood', which is an agricultural produce and thus being a trader is required to obtain a licence under the Act.

11. The respondent in this connection, has relied upon a decision of this Court in Lucky Biscuit Company v. State of Bihar reported in AIR 1978 Patna 16.

12. Mr. M.M. Banerjee, learned counsel appearing for the petitioner, submitted that the petitioner is not a 'trader' within the meaning of the section 2(1)(w) of the said act, as it does not carry on any trade in 'wood' It was further submitted that the petitioner pays to the various traders from whom it purchases wood either by floating open tender or on the basis of the limited tender enquiry, the requisite market fee @ 1 % of the value thereof and as such it is not liable to take out any licence whatsoever.

13. Mr. Srideo Misra, the learned counsel appearing for the respondents, on the other hand submitted that as the petitioner regularly purchases 'wood', it would be held that it is ordinarily engaged in business of buying of agricultural produce and as such it is liable to obtain a licence in terms of the provisions of the said Act and the Rules framed thereunder.

14. In view of the aforesaid rival contentions, the only question which arises for consideration is : whether the petitioner being a consumer of wood, which it uses for incidental purpose and not for manufacturing purposes, is a 'trader' within the meaning of the provisions of the Act and the Rules framed thereunder and thus is liable to obtain a licence in terms thereof.

15. The Act was enacted in order to provide for better regulation of buying and selling of agricultural produce and establishment of markets for agricultural produce in the State of Bihar and for matters connected therewith.

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It is now well known that object of the said Act is to establish markets and to regulate buying and selling of agricultural produce in those markets for the purpose of protecting the interests of agriculturists. The said Act has been enacted in terms of entry No. 28 of list II of the VIIth Schedule of the Constitution of India.

16. Trade has been defined in section 2(1)(v) of the said Act which reads as follows:-

"'trade' means any kind of transaction of sale and purchase or any kind of remuneration on sale and purchase of any agricultural produce".

'Trader' has been defined in section 2(1)(w) of the said Act, which reads as follows:

" 'trader' means a person ordinarily engaged in the business of buying and selling agricultural produce as a principal or as a duly authorised agent of one or more principals and includes a commission agent or a person ordinarily engaged in the business of processing of agricultural produce".

Buyer or purchaser has been defined in section 2(1)(y) of the said Act which is as follows :

" 'buyer or purchaser' means a person who buys or agrees to buy any agricultural produce and includes a person who buys or purchases on behalf of any other person as his agent or servant, or commissioned agent.

A seller has been defined in section 2(1)(z) of the said Act to meant:

" 'seller' means a person who sells or agrees to sell any agricultural produce and includes a person who sells on behalf of any other person as his agent or servant or commission agent".

Processor has been defined in section 2(1)(zz) of the said Act which reads as follows

" 'processor' means a person who processes any agricultural produce, either on his own account, or on paying of charges".

Agricultural produce has been defined in section 2(1)(a) of the said Act which reads as follows:

"Krishi Upaj Se Abhiprerit Hal Krishi Uddhankrishi (Bagwani), Bagano, Pashu Palan, Ban, Resham Uddhan, Matsya Palan Ki Sabhi Upaj, Chahe Wah Bidhait (Taiyar) To Ya Abidhait; Binimit Ho Ya Nahin, Our Iske Antargat Anushuchi Me Yathabinirdisth Pasudhan Ka Kukkut, Adi Bhi Hain."

17. Section 15 of the Act imposes an embargo upon a seller, except a retail seller and for personal consumption to carry on business at any other place except in the principal market year or sub-market yard or yards.

18. Section 18 of the said Act provides for powers and duties for the market committee. In terms of clause (ii) of sub-section (2) of section 18 of the Act, market committee is, inter alia, authorised to issue licence in accordance with the rules to traders, brokers, weighmen, measurers, surveyors, warehousemen and other persons including persons or firms engaged in the processing, storing or pressing of agricultural produce concerned operating in the market area; where market has been established.

19. Section 52 of the said Act provides for rule making power upon the State Government.

In exercise of its power conferred upon it under section 52 of the said Act, the State of Bihar has framed rules known as the Bihar Agricultural Produce Market Rules, 1975.

20. Rule 98, inter alia, restricts a person from carrying on business as 'trader' in agricultural produce in the market except under and in accordance with the terms and conditions of the licence in form 23 issued by the Market Committee.

21. Rule 82(iii) provides that if a seller is a licencee and buyer is not a licencee, the seller shall realise the market fee from the buyer and shall within a week deposit the same with the Market Committee.

Sub-rule (iii) of Rule 81 empowers the committee to direct the owner or manager of an industrial concern located within the market areas to furnish such information in respect of agricultural produce for which the

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market is established and which is handled or used by the industrial concern, as the Market Committee may think necessary for the purpose of the market.

22. Mr. Banerjee, as noticed hereinbefore, submitted that the petitioner is not a 'trader' within the meaning of the said Act, inasmuch as it neither carries on any business in any agricultural produce nor does it process the same. According to Mr. Banerjee, the end product so far as the plant of the petitioner is concerned being iron and steel, the agricultural produce purchased by it is neither used as a raw material nor is used for the purpose of manufacturing its end product, nor the same is processed by the petitioner, nor is it transformed to any other agricultural produce or any other commodity.

23. Learned counsel, therefore, submitted that the impugned notices issued by respondents Nos. 1 and 3 and as contained in Annexures-2 and 7 to the writ petition, whereby and whereunder the petitioner has been directed to obtain a licence in terms of the Act and the Rules framed thereunder, must be held to be wholly illegal and without jurisdiction.

24. Mr. Mishra, on the other hand has placed strong reliance upon the decision of this Court in the Belsand Sugar Co. Ltd. v. State of Bihar, 1976 BBCJ 453 : (AIR 1977 Patna 136) and Lucky Biscuit Co. v. State of Bihar, AIR 1978 Patna 16 for the proposition that if a person buys agricultural produce regularly, it is a 'trader' within the meaning of the provision of the Act and is thus liable to obtain a licence.

Learned counsel in this connection has also relied upon the Supreme Court decisions reported in State of Andhra Pradesh v. M/s. H. Abdul Bakhi and Bros., AIR 1965 SC 531 and in Sri Krishna Coconut Co. v. East Godavari Coconut and Tobacco Market Committee, AIR 1967 SC 973.

These aforesaid Supreme Court decisions appear to have been relied on and followed by this Court in Belsand Sugar Company's case, (AIR 1977 Patna 136) as also in Lucky Biscuit Company's case, (AIR 1978 Patna 16).

25. It is not disputed before us that 'wood' purchased by the petitioner is not used for manufacturing of iron and steel in any manner whatsoever. It is admitted that 'wood' is used only for incidental purpose and has got nothing to do with the manufacturing process.

From the definition of section 2(i)(v) of the said Act it would appear that the 'trader' has been defined to mean transaction of sale and purchase or any kind of remuneration on sale and purchase of any agricultural produce.

26. The definition of 'trader' is in two parts. The first part deals with those who are ordinarily engaged in business of buying and selling of agricultural produce, whether as principal or as a duly authorised commission agent of one or more principals. Second part of the said section provides for an extended meaning and embraces within its fold 'commission agent' or a person ordinarily engaged in the business of processing of agricultural produce."

27. Both the words 'trade' and 'trader' having been defined, in my opinion, the definition of 'trade' has also to be borne in mind, while interpreting the word 'trader'.

28. As noticed hereinbefore, Mr. Mishra could not and did not dispute that the petitioner is not ordinarily engaged in business of processing agricultural produce. Thus evidently the petitioner does not come within the purview of the second part of the definition of 'trader'.

29. However, according to him, the petitioner comes within the purview of the first part of the definition, inasmuch as it is ordinarily engaged in the business of buying agricultural produce.

30. Mr. Mishra with reference to the decisions in State of Andhra Pradesh, (AIR 1965 SC 531) and in Sri Krishna Coconut Co., (AIR 1967 SC 973), contended that a person who regularly buys agricultural produce, is also a trader.

31. Learned counsel has also drawn our attention to paragraphs 17 and 21 of the Belsand Sugar Company's case, (AIR 1977

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Patna 136 and paragraph 14 of the Lucky Biscuit's case, (AIR 1978 Patna 16).

32. In Belsand Sugar Company's case (supra) the petitioner thereof used to manufacture sugar and for the said purpose used to purchase sugar cane which was regulated by an ordinance known as Bihar Sugar Cane (Regulation of Supply and Purchase) Ordinance by reason whereof it was bound to purchase sugar cane from a particular market area at a fixed price as may be directed by the concerned authorities from time to time.

33. So far sale of sugar was concerned, levy sugar was controlled by an order made by the Central Government known as Levy Sugar Supply (Control) Order 1972, and so far free sale sugar was concerned, according to the petitioner of the said case, no sale thereof used to take place within the concerned market area.

In that case, therefore, it was contended that as purchase of sugar cane was regulated by the Ordinance, the same cannot be said to be voluntary purchase and similarly the sale of levy sugar being controlled by the Order of the Central Government, also does not come within the purview of the voluntary sale.

34. It was, thus, contended in that case that there being no voluntary purchase or voluntary sale within the market area, the petitioner of that case were not liable to pay any market fee.

35. In paragraph 17 of the said decision, N.P. Singh, J., however speaking for the Division Bench held as follows:- (AIR 1977 Patna 136 at p. 144).

"In view of the fact that I have already held that whenever there is supply of cane by the cane growers to the petitioner-Company, there is a 'sale' the petitioner will be deemed to be a 'trader' inasmuch as the petitioner is ordinarily engaged in the business of buying agricultural produce from the cane-growers.

In the aforesaid judgment of the Supreme Court in Salar Jung Sugar Mills Ltd. while considering as to whether such sugar-cane factories shall be deemed to be 'dealer' within the meaning of the Mysore Sales Tax Act when they purchase sugar-cane from the cane-growers, it was held that they will be deemed to be 'dealers' within the meaning of that Act. In that Act 'dealer' had been defined to mean a person who carries on the business of buying, selling, supplying or distributing goods for cash or for deferred payment. The definition of 'dealer' is more or less similar to the definition of 'trader' in the present Act and, as such, there should not be any difficulty in holding that the petitioner will be deemed to be a 'dealer' and as such it has to take a licence in accordance with the provisions of the Act."

36. The Division Bench in that case further considered the import of rule 82 and held: (AIR 1977 Patna 136 at p. 147, para 21).

"The rule making authority has simply carried out the purposes of the Act by making the rule in question for the purpose of restricting the evasion of market fee by such buyers who are not licensees. It is well known that where a charging section is to be interpreted it should be interpreted strictly in favour of the subject. But the same principle does not apply by construing a section which only provides the machinery for collection."

37. In Lucky Biscuit Company's case, (AIR 1978 Patna 16) the Division Bench held that : (Para 10)

"Learned Solicitor General further contended that if the interpretation as contended by learned counsel appearing on behalf of the petitioner was accepted, then the validity of the definition of 'trader' as given in Section 2(1)(w) of the Act may be challenged on the ground that it makes a discrimination between different persons doing business of buying agricultural produce for one who buys and sells the agricultural produce will be liable to obtain a licence but another who buys the agricultural produce but sells it after transforming it into another goods which is not agricultural produce will not be liable to obtain a licence even though the business of his buying the agricultural produce may be much more than that of one who buys agricultural produce and sells it in the same form. According to learned Solicitor General,

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the definition of section 2(1)(w), therefore, has to be given an interpretation as contended by him to make it intra vires. There also appears substance in this contention of learned Solicitor General. I would accordingly hold that the petitioner which is ordinarily engaged in the business of buying agricultural produce is a trader within the meaning of the terms as defined in Section 2(1)(w) of the Act."

38. There cannot be any doubt whatsoever that the word 'and' can be read as 'or' in certain circumstances depending upon the context in which it is used. The word 'and' however ordinarily is conjunctive and should be read as such.

39. It is now well settled by various decisions of the Supreme Court that literal meaning has to be given to a statute and recourse to various rules of interpretation can only be taken where literal meaning, if given, would render the Act invalid or which would run contrary to the manifest intention of the Legislature enacting the statute. Reference in this connection may be made to the Commr. of Wealth-tax v. Smt. Hashmatunnisa Begum, AIR 1989 SC 1024, Ajay Pradhan v. State of M.P., AIR 1988 SC 1875, Mithilesh Kumari v. Prem Behari, 1989 BBCJ 54 : (AIR 1989 SC 1247) and State of U. P. v. Malik Zarid Khalid reported in (1988) 1 SCC 145 : (AIR 1988 SC 132).

40. In Abdul Bakhi's case (AIR 1965 SC 531) definition of dealer as contained in section 2(e) of the Hyderabad General Sales Tax Act was as follows:-

"'dealer' means any person, local authority, company, firm Hindu undivided family or any association or associations of persons engaged in the business of buying, selling or supplying goods in the Hyderabad State whether for a commission, remuneration or otherwise, and includes a State Government which carries on such business and any society, club or association which buys or sells or supplies goods to its members."

In view of the definition of 'dealer' aforesaid, the Supreme Court in that case held as follows :- (Para 4)

"We are unable to agree with this view of the High Court. A person to be a dealer must be engaged in the business of buying or selling or supplying goods. The expression 'business's' though extensively used is a word of indefinite import; in taxing statutes it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with profit motive, and not for sport or pleasure. But to be a dealer a person need not follow the activity of buying, selling and supplying the same commodity. Mere buying for personal consumption, i.e. without a profit motive will not make a person dealer within the meaning of the Act, but a person who consumes a commodity bought by him in the course of his trade or use in manufacturing another commodity for sale, would be regarded as a dealer. The Legislature has not made sale of the very article bought by a person a condition for treating him as a dealer: the definition merely requires that the buying of the commodity mentioned in Rule 5(2) must be for sale or use with a view to make profit out of the integrated activity of buying and disposal. The commodity may itself be converted into another saleable commodity, or it may be used as an ingredient or in aid of a manufacturing process leading to the production of such saleable commodity."

(Underlining is mine for emphasis)

41. Plainly enough such is not the position here.

42. In Sri Krishna Coconut's case, (AIR 1967 SC 973) the Supreme Court was considering interpretation of Section 11(1) of Madras Commercial Crops Markets Act. The relevant provisions of the said Act and the rules which fell for consideration by the Supreme Court would be evident from paragraph 5 of the reported case which is in the following terms :-

"Section 11(1) with which we are concerned in these appeals reads:

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'The Market committee shall, subject to such rules as may be made in this behalf, levy fees on the notified commercial crop or crops bought and sold in the notified area at such rates as it may detertnine.'

The Explanation to sub-s. (1) provides that all notified commercial crops leaving a notified area shall, unless the contrary is proved, presumed to be bought and sold within such area. Sub-section (2) provides that the fee chargeable under sub-s. (1) shall be paid by the purchaser of the commercial crop concerned provided that where such a purchaser cannot be identified the fee shall be paid by the seller. Section 12 provides that all monies received by a Market Committee shall be paid into a fund and all expenditure incurred by the Market Committee shall be defrayed out of the said fund. The expenditure which the committee can incur is for purposes set out in S.13 which incidentally reflect the object and purpose of the Act. Section 18 empowers the State Government to make rules including rules for licence fee under S.5, the registration fee and the prohibition of buying and selling of commercial crops in the notified area by persons not so registered and the fee to be levied on commercial crops bought and sold in the notified area. Rule 28 lays down the maximum fee leviable on commercial crops under S.11(1) as also the maximum fee payable for licences and registration. Rule 28-A provides that the fees referred to in sub-r. (1), that is, 'fees' under S.11(1), shall not be levied more than once on a commercial crop in a notified area.

43. In that case it was held by the Supreme Court that the provisions clearly show the policy of safeguarding the interests of the producers and of guaranteeing to them reasonable return for the crops they would bring to sell without being exploited. In that case the argument advanced was that in order to be subjected to levy of fee, the notified commercial crop or crops must both be bought and sold within the notified area itself. This argument was advanced on the basis that the notified crop or crops are bought within the notified area but are sold outside thereof and, therefore, no fee could be levied by the Committee.

44. Repelling this argument, the Supreme Court held : (AIR 1967 SC 973, para 11)

"If the construction commended to us for acceptance by Mr. Agarwala were to be correct viz. that the appellants' transactions stopped at the stage of goods 'bought' they would not be transactions in respect of goods 'bought and sold'. If the fee was levied on sales effected by the appellant with their customers its levy would not be valid under S.11(1) and would also be repugnant to Art.286 where goods were delivered outside the State. But it is a well settled rule of construction that the Court should endeavour as far as possible to construe a statute in such a manner that the construction results in validity rather than its invalidity and gives effect to the manifest intention of the legislature enacting that statute. The object in passing the Act was to prevent the mischief of exploitation of producers of commercial crops such as coconuts and copra and to see that such producers dot a fair price for their goods. The mischief to prevent which the Act was enacted was the exploitation of these producers by middlemen and those buying goods from them and therefore, the Act provided facilities such as a market place, place for storage, correct weighment etc. so that the producers and his purchasers come face to face in a regulated and controlled market and a fair price was obtained by them. If the construction suggested by Mr. Agarwalla were to be accepted and the section were to be construed as being applicable to those transactions only which have a dual aspect, that is, buying by a dealer from a producer and the dealer selling those identical goods within the notified area, the object of the Act would be defeated for in a large number of cases the transactions halt at the stage of buying and the committee in those cases would have no power to levy the fee on them. Why is a buyer or a seller or a buyer and seller required to be registered and why does the Act prevent those who have not registered themselves from effecting transactions in commercial crops unless the object was to regulate and control transactions in those commodities at all stages and in a manner preventing the exploitation of the producer. The legislature had thus principally the

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producer in mind who should have a proper market where he can bring his goods for sale and where he can secure a fair deal and a fair price. The Act thus aims at transactions which such a producer would enter into with those who buy from him. The words 'bought and sold' used in S.11(1) aim at those transactions whereunder a dealer buys from a producer who brings to the market his goods for sale. The transactions aimed at must be viewed in the sense in which the legislature intended it to he viewed that is one transaction resulting in buying on the one hand and selling on the other. Such a construction is commendable because it is not only in consonance with the words used in S.11(1) but is consistent with the object of the Act as expressed through its various provisions. The construction on the other hand canvassed by the appellants is defective of the purpose of the Act and should, unless we are compelled to accept it, be avoided. The construction which we are inclined to accept acquires some support from the East that S.11(1) makes the purchaser and not the seller primarily responsible for payment of the fee and it is only when the purchaser cannot be identified that the seller is made liable."

45. It has been held in that case by the Supreme Court that the word 'and' should be read as 'or' only with a view to give effect to the provisions of the said Act.

46. Such is not the case here. So far as the 'trader' of an agricultural produce is concerned, the same is an exhaustive definition.

47. In the definition of 'trader' the word 'and' in my opinion, has to be read as conjunctive and not as disjunctive. A trader is a person who may buy agricultural produce from the agriculturist and sale the same either in the same form or after processing the same to a customer or to another dealer. The definition of 'trader' in my opinion, is required to be read in the context of Rule 98, inasmuch as the petitioner has been directed by the respondents to obtain licence in terms of the provisions of the said Act and the rules framed thereunder only because, according to it, the petitioner is engaged in the business of buying.

48. The dictionary meaning of the word 'business' although is wide, in my opinion. for the purpose of construing the said word in the context of regulating and penal statute, like the Act, must be read as carrying on a commercial venture.

49. Admittedly, the word which is an agricultural produce and which is purchased by the petitioner is not bought by it either for selling it in the same form or in a transformed form.

50. The intention of the legislature in directing the trader to obtain licence is absolutely clear and unambiguous in so far as it seeks to regulate the trade for purchase and sale. Thus a person who is not buying an agricultural produce for the purpose of selling it whether in the same form or in the transformed form, is merely a consumer, inasmuch as it is not using such agricultural produce directly for manufacturing purpose. In order to manufacture iron and steel in its steel plant, the petitioner is required to make purchase of various articles which may include such articles in respect whereof regulatory legislations may exist.

51. The petitioner is called upon to obtain licences in respect of each and every commodity which may be the subject-matter of one or the other regulatory legislation, the same, in my opinion, would lead to an absurd result. As for example it may be mentioned that the petitioner may be purchasing cement for construction of its building which has got no direct nexus with the production of iron and steel, but if the petitioner is asked to take out a licence for the same on the ground that it is a controlled commodity, in our opinion, it would lead to an absurdity.

52. Further, it is well known that construction of statute will depend upon the purport and object of the Act, as has been held in Sri Krishna Coconut's case (AIR 1967 SC 973) (supra) itself. Therefore, different provisions of the statute which had the object of enforcing the provisions thereof, namely, levy of market fee, which was to be collected for the benefit of the producers, in our opinion is to be interpreted differently from a

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provision where it requires a person to obtain a licence so as to regulate a trade.

53. If a person is not a 'trader' in a particular commodity, in our opinion, he cannot be held bound to obtain a licence which would go beyond the intention of the legislature so as to include a person, within its purview, who has not been intended to be included under the provisions of the statute by the legislature.

54. From perusal of the said rules, it would appear that various statutory obligations have been imposed upon a licensed trader. It would also be evident from Rule 98(xii) that a trader who carries on business without a valid licence may be liable, in addition to any action taken under Section 48 of the Act, to pay a sum of rupees five as surcharge for each day of his default for not obtaining licence as required under sub-rule (i) in addition to the licence fee and market fees payable by him.

55. Section 48 of the said Act provides for penalty. Thus any person carrying on business without any valid licence may be prosecuted and upon proof of the allegation against him may be sentenced to imprisonment of one year or fine to the extent of Rs. 100/- or both.

56. It is now well knwon that in a case of doubt in construction of a penal statute, the same should be construed in favour of the subject and against the State.

57. In the case of London and North Eastern Railway Company v. Berriman, 1946 AC 278 Lord Simonds quoted with approval the following observations of Lord Esher N. K. In the case of Truck and Sons v. Priester, (1887) 19 QBD 629, 638.

"We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled Rule for the construction of penal sections."

58. The above authority was also followed by the Supreme Court of India in the case of Tolaram Relumal v. State of Bombay, AIR 1954 SC 496.

59. In M/s. Jamuna Flour and Oil Mills v. Bihar State Pollution Control Board, Patna (1989) 2 BLJ 340, a Division Bench of this Court upon taking into consideration various decisions, including Member Secry., Andhra Pradesh State Board for Prevention and Control of Water Pollution v. Andhra Pradesh Rayons Ltd. (1989) 1 SCC 44 : (AIR 1989 SC 611) and Collector, Central Excise v. Krishna Carbon Paper Company; (1989) 1 SCC 150: (AIR 1988 SC 2223) held that fiscal statute must not only be construed literally, but also strictly.

It is further well known that if in terms of the provisions of a penal statute a person became liable to follow the provisions thereof, it should be clear and unambiguous so as to let him know his obligations and liabilities thereunder.

60. Further, as indicated hereinbefore, ordinarily a literal meaning should be given to a statute.

61. Taking thus all aspects of the matter into consideration, it must be held that the word 'and' used in Section 2(i)(w) of the said Act must be read conjunctively and not disjunctively. By reading the word 'buying' and 'selling' conjunctively, neither violation of the phreaseology used by the Legislature shall take place, nor the object of the Act shall be defeated.

62. Thus the statute being a penal one, the provision thereof must be strictly construed. In this view of the matter also, a person who is not otherwise required to obtain a licence under the provisions of the said Act and the rules framed thereunder cannot be held to come within the purview of the said Act, only for the alleged reason that if they are not so brought within the purview of the said Act itself may be held ultra vires as has been held by this Court in Lucky Biscuit Company's case (AIR 1978 Patna 16) (supra). Further, in my opinion, the said Act will not be rendered unconstitutional, if the buyers are not

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brought within the purview of the definition, of 'trader'.

As noticed above, in Lucky Biscuit Company's case (supra), this Court has held that the Act makes discrimination between different persons doing business of buying agricultural produce for one who buys and sells the agricultural produce will be liable to obtain a licence but another who buys the agricultural produce but sells it after transforming it into another goods which is not an agricultural produce will not be liable to obtain a licence.

63. The persons who buy an agricultural produce for transforming the same into another goods, which is not agricultural produce form a class by themselves. Such classification would be a valid classification and provisions of the statute cannot be interpreted on the basis of supposed violation of Article 14 of the Constitution of India, although on that ground it may not be declared as ultra vires.

64. From a plain reading of the provisions of the said Act, it would be evident that only 'traders' are required to obtain a licence. Thus a person who is not a 'trader' within the ambit of the said Act cannot be directed to Jake out a licence, only on the ground that they are carrying on business of buying. A person who buys agricultural produce for transforming it into another product, which is not an agricultural produce, cannot be said to be carrying on business in buying of agricultural produce within the meaning of Section 2(i)(w) of the said Act.

65. A person is liable to pay fee when he buys an agricultural produce. The said Act and the rules fasten the liability upon the buyer to pay the market fee and if the buyer is not licencee, the seller has been authorised to realise market fee from him.

66. Thus even if a person buys agricultural produce for any purpose whatsoever, in our opinion, the object of the said Act is not defeated by reason of the fact that the buyer is not required to take out such licence, inasmuch as buyer has to pay the market fee and a licensed seller of the agricultural produce has been authorised to collect market fee from the buyer.

67. The purpose of the Act being to regulate market and to realise market fees, so as to render services to the agriculturist and other persons, in my opinion, the question as to whether a buyer should obtain a licence or not is wholly immaterial for the purpose of carrying out the object of the said Act.

68. The reasonings given by the learned Judges deciding the Lucky Biscuit Company's case (AIR 1978 Patna 16) (supra), to the effect that even if a person buys an agricultural produce occasionally, still he would be held to be carrying on business of buying of agricultural produce, does not appear to be sound.

69. Further, the definition of 'trader' is exhaustive as therein both the words 'means' and 'includes' have been used. There is, therefore, no scope whatsoever for giving a further extended meaning to the said definition.

In the premises aforesaid, I am of the opinion that Lucky Biscuit Company case (AIR 1978 Pat 16) (supra) has not been correctly decided and must, therefore, be overruled.

So far Belsand Sugar Company's case (AIR 1977 Patna 136) (supra) is concerned, as indicated hereinbefore, the facts of the case were absolutely different and have no bearing to the facts of this case.

70. Taking these all facts and circumstances into consideration, it must be held that the petitioner is not required to obtain any licence as it is not a 'trader' within the meaning of Section 2(i)(w) of the said Act.

71. In the result, this writ petition is allowed and it is declared that the petitioner being not a 'trader' is not required to obtain any licence under the provisions of the Act and the Rules framed thereunder. Hence, the order dated 22-5-1987, passed by respondent No. 3, as contained in Annexure-2, and order dated 29-3-1988 passed by respondent No. 2, as contained in Annexure-7, being wholly illegal and without jurisdiction are hereby quashed.

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72. However, in the circumstances of the case, parties shall pay and bear their own costs.

73. ROY, J.:- I have perused the judgment prepared by my learned Brother, Sinha, J.

74. It has been asserted by the petitioner that it purchases wood for use in its plant at Bokaro Steel City, namely, Bokaro Steel Plant, for incidental purposes, viz; laying of tracks etc. It neither 'trade' in wood by entering into transaction of sale and purchase nor agricultural produces. Therefore, purchase of wood is not a 'trade' within the meaning of the Act. It is also not a trader because it is not engaged in business of buying and selling of agricultural produces or is ordinarily engaged in business of processing agricultural produce.

75. According to the respondents, as the petitioner regularly purchases wood, it should be held that it is ordinarily engaged in business of buying agricultural produce, and, therefore, is liable to obtain licence.

76. In his judgment, learned Brother Sinha, J., has quoted the definitions of relevant words and has also quoted relevant provisions of the Act and the Rules framed thereunder.

From the definition of both 'trade' and 'trader' it would appear that it speaks about sale and purchase. The word 'trader' within its definition also means a person ordinarily engaged in business of processing of agricultural produce. According to the petitioner it does not process wood. In the counter-affidavit, the respondent has not denied this fact. Both the words 'trade' and 'trader' signify trading activity and this activity means buying and selling of agricultural produce or processing for sell of agricultural produce. Consumption of agricultural produces in this case is for incidental use in the plant and it can neither be 'trade' or business, nor the petitioner can be said to be a 'trader'.

77. I agree with the finding recorded by my learned Brother Sinha, J. that the petitioner is not required to obtain any licence as it is not a 'trader' within the meaning of the Act and the orders as contained in Annexures-2 and 7 being wholly without jurisdiction are quashed.

78. B.P. SINGH, J.:- I agree.

Petition allowed.

AIR 1989 PATNA 60 "Shambhu Singh v. Chairman-cum-S.D.O., Sitamarhi"

PATNA HIGH COURT

Coram : 1 S. B. SINHA, J. ( Single Bench )

Shambhu Singh, Petitioner v. Chairman-cum-S.D.O., Sitamarhi and others, Respondents.

C.W.J.C. No.1753 of 1982, D/- 8 -3 -1988.

(A) Constitution of India, Art.226 - WRITS - Mala fides -Notice cancelling bid -Writ petition challenging notice by alleged successful bidder -Plea of mala fides vague -Relevant statements not property verified -Held, petitioner failed to prove allegation of mala fides. (Para 18)

(B) Bihar Agricultural Produce Markets Act (16 of 1960), S.18 - AGRICULTURAL PRODUCE - WRITS - AUCTION SALE - Acceptance of bid on condition that bid may be cancelled on finding higher bidder -Bid held on Sunday and outside Head-quarters of Agricultural Produce Market Committee -Notice cancelling bid -Not arbitrary -Notice to earlier bidder before cancelling bid -Not necessary.

Constitution of India, Art.226;

(Market -Settlement by auction - Cancellation of accepted bid -Opportunity of hearing).

Where it was decided by the Agricultural Produce Market Committee while granting the bid for settlement of bazar in favour of a person that although he was the highest bidder but if any higher offer is made, the Sub-Committee upon taking a fresh decision in that regard may hold fresh bid and so far as his bid was concerned, he was directed to deposit half of the bid amount on a provisional basis and it was further mentioned that in case there arose a possibility of a higher amount being offered in favour of the Market Committee, the said bidder would not claim any right of settlement on the basis of the amount deposited by him, the notice cancelling the bid cannot be held to be arbitrary when the Sub-Committee took into consideration the objection of the other bidder and decided to cancel the said auction. Moreover, the said decision was taken in the interest of general public as also in the interest of Agricultural Produce Marketing

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Committee. It was more so when the bid was held on Sunday and it was also held outside the headquarters of the Market Committee. Case law discussed. (Para 21)

In such a case, no notice was required to be given to the said bidder nor was he required to be heard prior to the issuance of the impugned notice. (Para 22)

Moreover, in such a case, the right of the Marketing Committee to cancel the bid cannot be questioned. Such a right is implicit in every person who intends to hold auction. It cannot be contended that the auction could be cancelled only in the event of violation of any terms and conditions of the agreement. The question of violation of any term or condition embodied in the agreement would have arisen only after the said agreement is executed. In the instant case, admittedly no agreement was executed by the Marketing Committee in favour of the bidder and in that view of the matter the question of violation of any condition contained in such an agreement would not arise. (Para 23A)

(C) Constitution of India, Art.226 - WRITS - AUCTION SALE - Locus standi - Bid held by Agricultural Produce Market Committee -No agreement executed between Committee and successful bidder -Subsequent cancellation of bid - Challenge as to, by way of writ petition by said bidder -Petition not maintainable - Bidder cannot be held to have acquired any right.

AIR 1986 Pat 267 (FB), Foll. (Para 28)

Cases Referred : Chronological Paras

AIR 1986 SC 1527 10, 24

AIR 1986 Pat 267 : 1986 Pat LJR 149 (FB) (Foll.) 25

AIR 1983 SC 1051 13

AIR 1983 Pat 83 13

AIR 1979 SC 1628 10, 24

AIR 1978 Pat 131 13

Yogendra Mishra and Mithilesh Kumar Khare, for Petitioner; M.S. Madhup, Standing Counsel No.1 and V.K.P. Sihgh, Jr. Counsel to Standing Counsel No.1, for the State. U.K. Choudhary, (for Nos. 2 and 3) and Sushil Chandra Sinha (for No. 8), for Respondents.

Judgement

ORDER :- This writ petition is directed against a notice dated 24-3-1982 as contained in Annexure 3 to the writ petition whereby and whereunder the bid held on 28-2-1982 wherein the petitioner became a successful bidder was cancelled. The petitioner has further prayed for a writ or in the nature of mandamus commanding upon the respondents Nos.2 to 6 to deliver possession of the Bairgania Hat to the petitioner.

2. The facts of the case lie in a very narrow compass.

3. A Hat commonly known as Bairgania Hat at all material times was and still is being held on a giarmazarua malik land belonging to the ex landlord. The said Bazar however has vested in the State of Bihar after coming into force of the Bihar Land Reforms Act, 1950.

4. It is alleged that the aforementioned Bazar was taken over by Bakagania Bazar Agricultural Produce Market Committee on subsidy basis.

5. The petitioner has further asserted that for the year 1980-81 the said Bazar was settled in favour of the petitioner and he collected tolls during the said period. Similarly for the year 1981-82 also the petitioner became the highest bidder and took settlement of the said Bazar. However by a notice dated 21-9-82 the respondents Nos.1 and 2 called for tenders from the eligible candidates. The petitioner along with various other persons took part in the said bid. The petitioner's offer of Rs. 37,700/- being the highest amount. The same was accepted and the respondents Nos.1 and 2 directed the petitioner to deposit half of the bid amount. Pursuant thereto the petitioner deposited a sum of Rs. 10,000/- on 28-2-1982 and further deposited the remaining amount of Rs. 8,850/- on 1-3-82.

6. The petitioner in para 12 of the writ petition has alleged as follows :-

"That after depositing the aforesaid amount, the petitioner approached the respondent No.3 to issue parwans in his favour but the respondent No.3 demanded Rs. 4,000/- for the purpose. The petitioner refused to oblige the respondent No.3 which caused great annoyance to him."

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7. The petitioner has asserted that as he did not comply with the request aforementioned of the respondent No.3 he prevailed over the respondent No.2 and obtained an order for fresh bid wherefor the impugned notice dated 24-3-1982 was issued. The petitioner has further asserted that he filed a petition on 27-3-82 before the Collector, Sitamarhi challenging the action of the respondents Nos. 2 and 3 and the Collector, Sitamarhi stayed the holding of the fresh bid by an order dated 27-3-1982. According to the petitioner the said order of stay was duly communicated to the office of the respondent No.2 on 28-3-82 but in spite thereof the respondent No.3 held bid and knocked down the same. The petitioner brought the matter to the notice of the Collector by filing an application on 30th March, 1982. The petitioner further filed an application before the respondent No. 4 (Regional Director, Bihar Agricultural Produce Market Committee, Bairagania, District Sitamarhi) and also filed an application before the respondent No. 5 (Chairman, Bihar State Agricultural Produce Marketing Board, Patna) on 1-4-1982. By an order dated 15-4-1982 as contained in Annexure-9 to the writ petition the respondents Nos. 5 and 6 directed the respondents Nos.2 and 3 to act in accordance with the order and direction of the Collector as contained in Annexure-4 to the writ petition.

8. In this case a counter affidavit has been filed on behalf of the respondents Nos.2 and 3. Another counter affidavit has also been filed on behalf of the respondent No.8. In the said counter affidavits it has been contended that in the matter of settlement of Hat the Bihar State Agricultural Marketing Board has laid down certain norms for being followed by the Market Committees and according to the said guidelines the Hats are settled by the Executive Committee, Bairgania. It has further been contended therein that the said Executive Committee in a meeting held that the bid amount offered by the petitioner was very low and as such it took a decision on that very date to ask the petitioner to deposit half of the bid money with a condition that if any higher offer is made by any other person the same would be offered to him. According to the aforementioned respondents in that view of the matter even a provisional parwana was not issued to the petitioner. It was further pointed out that some persons have also made a complaint for holding bid on a Sunday and that too outside the headquarters and in that view of the matter the Executive Sub-Committee issued notice for holding bid on 29-3-82. According to the respondents a higher amount, namely, Rs. 42,000/- was offered by the respondent No.8. The said respondents have further asserted that they were not aware of any order of stay passed by the Collector. It has further been asserted that Collector after taking into consideration the case of the petitioner by an order dated 11-5-1982 rejected the case of the petitioner and found that the action on the part of the respondents Nos. 2 and 3 was not mala fide. The said order dated 11-5-82 is contained in Annexure-D to the said counter affidavit, filed on behalf of the respondents Nos.2 and 3. It is further stated that even respondent No.4 held an enquiry into the matter and submitted a report to the respondent No.6 (Director) Bihar State Agricultural Produce Marketing Board, Patna) stating therein that the settlement of hat by the respondents Nos.2 and 3 on respondent No.8 was proper and legal. A copy of the said report is contained in Annexure-G to the aforementioned counter affidavit. It has further been asserted that even the higher officer, namely, the respondent No.6 was also satisfied that the offer made in favour of the respondent No.8 was proper and legal.

9. Mr. Yogendra Mishra, learned counsel for the petitioner raised the following contentions :-

(a) According to the learned counsel the bid could not have been cancelled because no power in that respect was reserved into the Market Committee in terms of Annexure-1 to the writ petition.

(b) He further brought my attention to the fact that such power has expressly been reserved only in the impugned notice as contained in Annexure-3 thereto.

(c) Learned counsel further submitted that the petitioner has acquired a right to hold the hat in view of the fact that his bid was accepted.

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(d) the learned counsel has further submitted that before cancelling the offer of the petitioner he has neither been given any notice to show-cause nor any reason has been assigned therefor.

(e) Learned counsel has further submitted that the action on the part of the respondents Nos. 2 and 3 was mala fide in view of the fact that the fresh offer was invited although the same was stayed by the Collector, Sitamarhi.

(f) Learned caused further submitted with reference to paragraph 12 of the writ petition that the action on the part of the respondents Nos. 2 and 3 was mala fide and in any event the same was arbitrary.

10. Learned counsel in this connection has relied upon Ramana Dayaram Shetty v. International Airport Authority of India reported in AIR 1979 SC 1628 and Shri Harminder Singh Arora v. Union of India reported in AIR 1986 SC 1527.

11. Mr. Sushil Chandra Sinha, learned counsel appearing on behalf of the respondent No. 8 on the other hand, submitted that the authorities had every right to issue the impugned notice. According to the learned counsel the petitioner had no legal right in as much as no agreement was executed in his favour. It was further pointed out that there had been no nalice on the part of the respondent No. 3 as after an enquiry even the Collector, Sitamarhi found that the reauction to the said hat was done according to the rules.

12. Learned counsel further submitted that the action on the part of the said Committee of the Agricultural Produce Market Committee was in public interest.

13. In this connection learned counsel has cited the following decision :

(1) AIR 1983 SC 1051 - Excise Commr. of U.P. v. Manminder Singh.

(2) AIR 1983 Pat 83 - Harishankar Singh v. State of Bihar.

(3) AIR 1978 Pat 131 - Rampati Singh v. State of Bihar.

14. Before proceeding further it may be mentioned that by an order dated 11-5-82 this court restrained the respondents first party from settling the aforementioned (sic) with liberty to the said respondents to make an application for vacating/modifying the said order of ad interim stay. Thereafter an application for vacating the aforementioned order of ad interim stay dated 11-5-82 was filed on behalf of the respondents Nos. 2 and 3. By an order dated 26-7-82 this Court observed as follows :-

"Counsel for respondent No. 8 is not in a position to offer any amount of security as a condition for vacating the order of stay. But the counsel for the petitioner is prepared not only to deposit the difference between the amount of his bid and that of respondent No.8 but also a sum of Rs. 5000/- as a security for payment to respondent No. 8 in case of his failure, subject to the condition that interest of Market Committee as well as respondent No. 8 is safeguarded.

While we were going to pass operative portion of the order, learned counsel for respondent No. 8 made a prayer for granting some time to ask instruction from his client as to whether he would also agree to offer any security.

Put up on Monday next. In the meantime respondent No. 8 who is admittedly collecting the tolls in the market should produce the accounts of the total collection made till Friday next for our consideration."

14A. By an order dated 4-8-1982 this Court passed the following orders : -

"The matter was adjourned to this day to enable the learned counsel for respondent No. 8 to contact his client for offering a security on his behalf.

Mr. Sushil Chandra Sinha appearing for respondent No. 8 when offered a security of Rs. 8,000/- learned counsel for the petitioner raised his offer as on previous day from 5,000/- to 10,000/-. Mr. Sinha, therefore, left the matter in our hands for fixing the proper security and to allow respondent No. 8 to continue with the settlement.

Having examined the facts and circumstance of the case, we fix Rs. 12,500/- as security to be deposited either in cash or by a bank draft by respondent No. 8 within 4 weeks from today in this Court. The amount

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deposited will be invested for a period of one year in any Term Deposit with a Bank by the office. The said security amount (or part thereof) will be available for payment to the petitioner on his success, subject to the orders of this Court."

15. It may further be mentioned that the petitioner filed an application for directing the Bairagania Bazar Agricultural Produce Market Committee to allow refund to the petitioner as bid money amounting to Rs. 18,850/- and the said petition was allowed by an order dated 25-8-83.

16. In view of the respective contentions of the parties and the statements made in their respective pleadings, in my opinion, the following questions arise for consideration by this Court : -

(a) Whether the action on the part of the respondents Nos. 2 and 3 in issuing the impugned notice is mala fide ?

(b) Whether the impugned order suffers from arbitrariness on the part of the respondent Nos. 2 and 3 in so far as before passing the same, the petitioner was neither given an opportunity of hearing nor was he communicated with any reasons therefor ?

(c) Whether the respondent had any authority or power to issue the impugned notice?

(d) Whether the petitioner has any legal right to maintain this writ petition?

Re : - Question No. (a)

17. The allegation of mala fide as against the respondent No. 3, as noticed hereinbefore, has been made in paras 12 and 13 to the writ petition. Paragraph 12 of the writ petition has not been verified by the petitioner whereas paragraph 13 has been verified as true to the knowledge of the deponent derived from the records or otherwise of the case. The respondents Nos. 2 and 3 in their counter affidavit in paragraph 9 thereof have categorically stated that the statements made in paragraph 12 of the writ petition were totally false and untrue. The petitioner although has filed a reply to the said counter affidavit but he has not traversed paragraph 9 of the counter affidavit at all. Further the petitioner has not even impleaded the respondent No. 3 in his personal capacity.

18. It is now well settled that a plea of mala fide has to be based upon proper materials. A High Court in exercise of its jurisdiction under Arts.226 and 227 of the Constitution of India cannot decide a plea of mala fide on fact on the basis of vague allegation. In this connection, as noticed hereinbefore, not only the plea of mala fide besides being vague, the relevant statements have not been properly verified at all. Further the petitioner has not even chosen to traverse paragraph 9 of the counter affidavit. In this situation I have no other option but to hold that the petitioner has utterly failed to prove the allegation of malafide as against the respondent No. 3.

Re : - Questions Nos. (b) and (c)

19. From the facts, as stated hereinbefore, it is evident that the bid was held on Sunday. The said bid was also outside the headquarters of the market committee. From the minutes of the meeting of the Sub-Committee as contained in Annexure-B to the counter affidavit it appears, that it was decided therein, that although the petitioner was the highest bidder but if any higher offer is made, the Sub-Committee upon taking a fresh decision in that regard may hold fresh bid. So far as the petitioner's bid was concerned, he was directed to deposit half of the big amount on a provisional basis. It was further mentioned therein that in case there arises a possibility of a higher amount being offered in favour of the market-committee, the petitioner shall not claim any right of settlement of the said hat on the basis of the amount deposited by him. As stated hereinbefore, according to the respondents the minutes of the meeting of the Sub-Committee were read over and explained to the petitioner and the petitioner deposited 50% of the bid money on the aforementioned conditions.

20. From the minutes of meeting dated 22-3-82 as contained in Annexure-C to the counter affidavit it appears that the Sub-Committee has taken into consideration the objection of one Mr. Nawal Kishore Thakur and decided to cancel the auction in which the petitioner was the higher bidder. The said decision was taken in the interest of general public as also in the interest of,

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Agricultural Produce Marketing Committee. The impugned notice as contained in Annexure-3 to the writ petition was issued pursuant to the aforementioned minutes of the meeting.

21. From the facts aforementioned it is evident that the Market Committee did not proceed either arbitrarily or irrationally.

22. As according to the respondents the half of the bid amount was accepted from the petitioner on conditions mentioned in Annexure-B referred to hereinbefore, the acceptance of the petitioner's bid being a conditional one, he was bound thereby and in that view of the matter no notice was required to be given to the petitioner nor was he required to be heard prior to the issuance of the impugned notice as contained in Annexure-3 to the writ petition. Further the Marketing Committee, in my opinion, has assigned sufficient reasons for issuing the impugned notice which as stated hereinbefore was preceeded by the meeting of the Sub-Committee held on 22-3-1982. Further from the aforementioned acts on the part of the concerned respondents it is evident that the said decision was taken as it was pointed out before the Sub-Committee that the auction which was held on 28-2-1982 being a Sunday and the said auction having taken place at Sitamarhi (outside the headquarters of the Market Committee), several intending bidders could not participate therein. Even the objector Sri Nawal Kishore Thakur offered a sum of Rs. 42,000/-.

23. I also do not find any merit in the contention of the learned counsel appearing on behalf of the petitioner to the effect that the respondents had no authority or power to cancel the bid in terms of Annexure-1 to the writ petition.

23A. The right of the Market Committee to cancel the bid, in my opinion, cannot be questioned. Such a right is implicit in every person who intends to hold auction. The submission of Mr. Yogedra Mishra to the effect that the auction could be cancelled only in the event of violation of any terms and conditions of the agreement, in my opinion, is wholly misplaced. The question of violation of any term or condition embodied in the agreement would have arisen only after the said agreement is executed. In the instant case admittedly no agreement was executed by the Marketing Committee in favour of the petitioner and in that view of the matter the question of violation of any condition contained in such an agreement does not arise.

24. After taking into consideration of the relevant facts I am of the view that the impugned notice does not suffer from the vires of arbitrariness. In view of my aforementioned findings, in my opinion, the decisions cited by the learned counsel appearing on behalf of the petitioner have no application in the facts and in the circumstances of the present case. In International Airport Authority's case (AIR 1979 SC 1628) (supra) the petitioner thereof was denied the right to participate in the tender whereas in Harminder Singh Arora's case (AIR 1986 SC 1527) (supra) the respondents acted contrary to its policy decision and in that case the tenders were not adjudged on their own merits in accordance with the terms and conditions of the tender notice. In the instant case, as noticed hereinbefore, the tender was cancelled after due deliberation amongst the members of the Sub-Committee and on cogent reasons.

Question No. (d)

25. It stands admitted that no agreement was entered into by and between the petitioner and the Agricultural Produce Market Commitee. In absence of such an agreement it cannot be said that the petitioner acquired any legal right. It is well known that issuance of a writ of mandamus can arise only in the event of existence of a legal right in the petitioner and corresponding legal duty upon the respondents. In Chetlal Sao v. State of Bihar reported in 1986 Pat LJR 149 : (AIR 1986 Pat 267) a Full Bench of this Court has held that unless an agreement is entered into by and between the State and the bidder, the later does not acquire any legal right whatsoever.

26. In any event as the bid was accepted by the Market Committee, subject to certain conditions and as such it was lawful on the

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part of the respondents to cancel the said bid as the exigencies therefor arose.

27. Taking into consideration the case from all its ramification I am of the view that this writ petition is not maintainable and the same is hereby dismissed. But in the facts and circumstances of the case, there will be no order as to costs.

28. However it goes without saying that the order dated 4-8-1982 passed by this court shall enure to the benefit of the respondent No. 8.

Petition dismissed.

AIR 1987 PATNA 13 "Ram Autar Santosh Kumar, M/s. v. State (FB)"

PATNA HIGH COURT

(AT RANCHI)

FULL BENCH

Coram : 3 S. S. SANDHAWALIA, C.J., SATYESHWAR ROY AND RAM CHANDRA PRASAD SINHA, JJ. ( Full Bench )

M/s. Ram Autar Santosh Kumar, Petitioner v. State of Bihar and others, Respondents.

Civil Writ Jurn. Case No. 1218 of 1985 (R), D/- 14 -4 -1986.

(A) Bar Agricultural Produce Markets Act (16 of 1960), S.27A(1), S.52 and S.25 - Bihar Agricultural Produce Markets Rules (1975), R.88 - AGRICULTURAL PRODUCE - INTERPRETATION OF STATUTES - Prescription of quorum for Assessment sub-committee by R.88 - Rule for that reason is not ultra vires S.27-A constituting sub-committee nor S.52 authorising framing of rules. Interpretation of Statutes - Rules; Interpretation of;

Constitution of India, Art.245.

R.88 is not ultra vires S.27-A nor S.52 providing for framing of rules, for prescribing quorum for assessment sub-committee constituted under S.27-A and entrusted with the function of assessment and levy of market fees. Reliance in this behalf cannot also be placed on S.25. (Paras 9, 10, 12, 15)

What is to be seen is that S.27-A(1) itself spells out the prescription of a rule for effectuating its provisions. Therefore, in a way the said Sub-Section is itself an authority and mandate for the framing of the necessary rules for its implementation. That being so, Rule 88 which is framed after express reference to S.27-A has to be read along with the said Sub-Section. As statutory rules framed under the powers conferred by an Act become part and parcel of the Act, the said rule is in a way an integral Part of S.27-A(1) itself. When so

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viewed, S.27-A(1) and R.88 are merely parts of a single whole and no question of any conflict or repugnance therein arises. Further, the provision of S.25 would indicate that the prescription of quorum is not only visualised but has expressly been provided in the Act itself. This has to be viewed in the context of the fact that prior to the amendment in 1974, the power to levy and assess market fee was vested in the Market Committee itself. That being so, by virtue of S.25, a quorum for the statutory body competent to levy and assess market fee was itself spelt out by virtue of S.25. What the subsequent ordinance by insertion of S.27-A(1) and the promulgation of R.88 is the substitution of an Assessment Sub-Committee for levy and assessment of market fees and prescription of quorum therefore. The scheme is, thus, wholly consistent and in consonance with what the law even earlier was. Moreover, on settled canons of construction, even if the Act is silent on a point and there is a gap, the same can obviously be filled in by statutory rules to carry out its primal purposes. In order to vitiate a rule framed under an Act, it must be shown that it is in a direct headlong and glaring conflict with the parent provision. There is a presumption of constitutionality and if the statutory rule and the Act can be harmonised effect must be given to both. Herein, the remotest conflict or contradiction betwixt the Act and R.88 is to be found. (Paras 9, 10, 11)

So far as S.52 is concerned, reference must first be made to Sub-Sec. (1) which authorises the State Government to make rules for carrying out the purposes of the Act. As R.88 is in no way inconsistent with any provision of the Act itself, the general power of framing rules for effectuating the purposes of the Act, would plainly authorise and sanctify the framing of such a rule. Indeed S.27A(1) when it employs language "in the manner prescribed" in effect mandates the framing of a rule in this context. R.88, therefore, is both within the mandate of said provision and the generality of power conferred by Sub-Sec. (1) of S.52. It is true that Sub-Sec. (2) of S.52 and the thirty-seven clauses thereof do not expressly use or employ the word "quorum". But neither principle nor precedent warrants the stand that the specific word or language must necessarily be employed for laying out the larger perimeter within which rules are to be framed for carrying out the purposes of the Act. It is to be kept in mind that Sub-Sec. (2) of S.52 in terms lays down that the same is without prejudice to the generality of the powers conferred under Sub-Sec. (1). Yet again, Cl.(xxxvii) of Sub-Sec. (2) of S.52 authorises expressly the framing of rule on any other matter for which there is no provision in the Act and which in the opinion of the State Government requires to be provided for giving effect to the purposes of the Act. Accordingly if necessary the rule comes squarely within Cl.(xxxvii) of S.52(2) as well. (Paras 12, 13)

(B) Bihar Agricultural Produce Markets Act (16 of 1960), S.52 - Bihar Agricultural Produce Markets Rules (1975), R.88 - AGRICULTURAL PRODUCE - Prescription of quorum for Assessment Sub-Committee - Does not suffer from any inherent vice of invalidity on ground that quorum is prescribed for a body. Civil Writ Jurn. Case No. 285 of 1985, D/-1-2-1985 (Pat) and Civil Writ Jurn.

Case No. 983 of 1985 (R), D/-29-8-1985 (Pat), Overruled. (Para 24)

(C) PRECEDENT - Precedents - Decision per incuriam - Subsequent decision in headlong conflict with earlier Judgement - Latter is in a way per incuriam. (Para 25)

Cases Referred : Chronological Paras

1985 Lab IC 315 : 1985 BBCJ 40 (FB) 14

(1985) Civil Writ Jurn. Case No. 285 of 1985,D/-1-2-1985 (Pat), M/s. Shree Murli Manohar Rice and Dal Mills v. State of Bihar, (Overruled) 1, 25, 27

(1985) Civil Writ Jurn. Case No. 983 of 1985 (R), D/-29-8-1985 (Pat), M/s. Ganesh Prasad v. State of Bihar, (Overruled) 1, 16, 18, 25, 26, 27

(1983) CWJC No. 4604 of 1983, D/-3-11-1983 (Pat), Mahesh Udyog v. The Chairman, Agricultural Produce Market Committee 25, 26, 27

AIR 1976 SC 1441 23, 26, 27

AIR 1976 PunjHar 143 (FB) 23

AIR 1972 SC 1812 : 1972 Lab IC 909 22

AIR 1961 SC 751 : 1961 (1) Cri LJ 773 9

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B.K. Dey and A.K. Sahani, for Petitioner; J. Kandolna (G.P.II), I.D. Sinha and V.P. Singh, for Respondents.

Judgement

S.S. SANDHAWALIA, C.J :- Whether Rule 88 of the Bihar Agricultural Produce Markets Rules, 1975, prescribing a quorum for the Assessment Sub-Committee, constituted under S.27A(1) of the Bihar Agricultural Produce Markets Act, 1960, is ultra vires of the said Section or of S.52 of the said Act ? Whether the prescription of a quorum for any quasi- judicial body would suffer from an inherent vice of invalidity ? These are the twin significant questions necessitating this reference to the Full Bench. Equally at issue is the correctness of the view in the two Division Bench judgements rendered at the admission stage itself in Civil Writ Jurn. Case No. 285 of 1985 (M/s. Shree Murli Manohar Rice and Dal Mills v. State of Bihar disposed of on the 1st February, 1985), and Civil Writ Jurn. Case No. 983 of 1985 (R) (Ganesh Prasad v. State of Bihar disposed of on the 29th August, 1985).

2. The facts are not in dispute and otherwise lie in a narrow compass. Messrs Ram Autar Santosh Kumar, the petitioner Firm, carries on the business of tobacco commission agent in the main market yard Garhwa and is admittedly a licensee under the provisions of the Bihar Agricultural Produce Markets Act, 1960 (hereinafter to be referred to as the Act). Respondent No. 4, the Secretary of the Market Committee, Garhwa, issued a notice in Form C, under the provisions of S.27A(5) and (7), directing the petitioner firm to appear before the said respondent on the 26th of April, 1985, with all the relevant records and evidence regarding the assessment of market fees. In compliance therewith, the petitioner firm appeared before the Assessment Sub-Committee, which, by its order (Annexure-2), held the petitioner firm liable for the payment of Rs. 3831.69 paise as market fees over and above the amount already paid. Consequent thereto, a demand notice No. 379 dated the 10th of May, 1985 (Annexure-3), was then issued against the petitioner.

3. Aggrieved by the above, the present writ petition has been preferred to challenge the order of assessment primarily on the ground that the same was made only by two out of the three members of the Assessment Sub-Committee as envisaged by S.27A(1) of the Act. At the admission stage itself, the Division Bench noticed the significance of the question, whether an order of assessment made by two members of the Assessment Sub-Committee under S.27A(1) of the Act would be illegal or not ? Finding a conflict or precedent within the Court itself on the point, the Motion Bench referred the matter to a larger Bench for an authoritative adjudication thereon and that is how it is before us now.

4. The learned counsel for the petitioner assailed the very validity of Rule 88 on the ground that it was contrary to and ultra vires of S.27A(1) and otherwise not within the ambit of S.52 of the Act. In the alternative, it was contended that any quasi Judicial body must act in the totality of its members and the prescription for a quorum therefore is inherently unconstitutional.

5. Since the controversy here in regard to the First question must inevitably turn on the very provisions of the Statute, it is apt to notice the relevant parts thereof at the very outset in extensor :-

"Section 25 : quorum of meeting :- Seven members shall form the quorum for a meeting of the Market Committee.

Section 27A(1) : Accounts of purchase and sale and assessment of market fee : Every Market Committee shall have an assessment sub-committee consisting of the Chairman, Vice-Chairman and the Secretary of the Market Committee for the purpose of assessment and levy of fee, in the manner prescribed.

Section 52 : Power to make rules. (1) The State Government may make rules not inconsistent with this Act, for carrying out the purpose of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the State Government may make rules with respect to all or any of the following matters :-..........

(vii) the management, control and regulation of a Market and the fees which may be levied by the Market Committee, and subject to the provisions of this Act, the recovery and disposal of such fees;.........

(xxxvii) any other matter for which there is

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no provision in this Act and for which provision is, in the opinion of the State Government, necessary for giving effect to the purposes of this Act.

Rule 88 : Assessment of market fee : Assessment Sub-Committee constituted under Sub-Section (1) of Section 27A shall have a quorum of two members. Provided that the Sub-Committee consisting of two members may in its discretion refer the case to a bench consisting of all the members of the Sub-Committee.

(ii) When an assessment is made by all the three members of the Sub-Committee and the members are of divided opinion on any point, such point or points shall be decided in accordance with the opinion of the majority, provided that the assessment is made by a bench consisting of only two persons, such point or points shall be referred to the third person and shall be decided in accordance with the opinion of the majority."

6. Now to truly appreciate the rival contentions, it seems not only apt but indeed necessary to notice the legislative background albeit with some brevity. Agricultural Produce Market Act was enacted way back in the year 1960. It would appear that as originally enacted the power to levy and assess the market fee was vested in the Committee itself by Section 27 which was in somewhat general term as under : -

"Section 27 : Power to levy fees :- (1) The Market Committee shall levy and collect market fees on the agricultural produce brought in the market area, at such rate not exceeding 50 naye paise per Rs. 100/- worth of agricultural produce, as may be prescribed.

(2) The fee realised from the buyer under Sub-Section (1) shall be recoverable by the buyer from seller as a market charge."

7. Apparently the assessment of fees by the Market Committee itself without prescribing in detail the procedure therefore, raised problems and proved somewhat unpracticable and unsatisfactory. To remedy the said situation, Ordinance 41 of 1974 was promulgated, whereby the old S.27 was substituted and a detailed S.27A headed as the 'accounts of purchase and sale and assessment of market fee' and consisting-of eleven Sub-Sections was inserted in the Act. By virtue of Sub-Section (1) thereof it was mandated that every market Committee shall have an Assessment Sub-Committee consisting of the Chairman, Vice-Chairman and the Secretary of the Market Committee for the purpose of the assessment and levy of market fees in the manner prescribed. It is significant that soon thereafter, the Bihar Agricultural Produce Markets Rules, 1962, were repealed and the present Bihar Agricultural Produce Market Rules, 1975, were promulgated and substituted in its. Part VII of the said Rules pertains to assessment, appeal, revision etc. and the very first Rule 88 therein provided in terms for a quorum of two members for the Assessment Sub-Committee constituted under Section 27A(1) of the Act. Not only that, it further provided for the procedure in case of any difference of opinion amongst its members. It may be noticed that the original Ordinance 41 of 1974 was continued by successive Ordinances till its provisions were permanently incorporated in the Statute by the Amending Act 60 of 1982.

8. Now elaborating his first contention, Mr. Dey, learned counsel for the petitioner; had submitted that Section 27A has not in express terms either provided or mentioned for the prescription of quorum for the Assessment Sub-Committee constituted under Sub-Section (1) thereof. Reliance was placed on S.25 of the Act which itself provides for a Quorum of seven members for the meetings of the Market Committee itself. Reference was then made to S.52 and in particular to Sub-Sec. (1) thereof and items (i) to (xxvii) of the same for contending that neither of these in terms spelt out the framing of rules for the fixing of any Quorum. On these premises, it was contended that Rule 88 ran counter to S.27A and being otherwise not within the scope of S.52, it was ultra vires of the Act and should be struck down.

9. Though the aforesaid contention might bring some credit to the ingenuity of the learned counsel, it seems to me that it is patently fallacious on a closer analysis. Herein what would first meet the eye is the fact that S.27A(1) on which basic reliance is placed

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on behalf of the petitioner, itself in terms lays down that the assessment and levy of fees has to be done "in the manner prescribed". Reference in this context may be made to the defining Section 2 and Clause (n) thereof which is in the following terms :-

"Section 2(n) : "prescribed" means prescribed by rule", In view of the above, it seems manifest that S.27A(1) itself spells out the prescription of a rule for effectuating its provisions. Therefore, in a way the said Sub-Section is itself an authority and mandate for the framing of the necessary rules for its implementation. That being so, Rule 88 which is framed after express reference to S.27A has to be read along with the said Sub-Section. Indeed, by virtue of the settled rule in Baburam Upadhyay's case, (AIR 1961 SC 751), that statutory rules framed under the powers conferred by an Act become part ad parcel of the Act, the said rule is in a way an integral part of Section 27A(1) itself. When so viewed, S.27A(1) and Rule 88 are merely parts of a single whole and no question of any conflict or repugnance therein arises.

10. Reliance of learned counsel for the petitioner on S.25 of the Act far from aiding him, to my mind, boomerangs on his stand. The provision thereof would indicate that the prescription of quorum is not only visualised but has expressly been provided in the Act itself. This has to be viewed in the context of the fact that prior to the amendment in 1974, the power to levy and assess market fee was vested in the Market Committee itself. That being so, by virtue of S.25, a quorum for the statutory body competent to levy and assess market fee was itself spelt out by virtue of S.25. What the subsequent ordinance by insertion of S.27A(1) and the promulgation of Rule 88 does is the substitution of an Assessment sub-Committee for levy and assessment of market fees and prescription of quorum therefore. The scheme is, thus, wholly consistent and in consonance with what the law even earlier was. Now what may be prescribed by an Act itself may equally be added or supplemented by the rule if they come within the ambit of the arena spelt out for the prescription thereof, I find not the least conflict or contradiction in prescription of a quorum by a statutory rule framed under the Act. Indeed far from being so, it is normally the usual procedure that the details like prescription of quorum etc. are usually left to subordinate legislation by way of statutory rules, bye-laws, regulations, or even by the resolution of a competent body. Indeed such a provision is plainly in the nature of being supplementary or complementary. To contend that the prescription of a quorum for a statutory body is in any way inherently contradictory to a provision constituting the same, appears to me as totally untenable.

11. Learned counsel for the respondent has also rightly pointed out that on settled canons of construction, even if the Act is silent on a point and there is a gap, the same can obviously be filled in by statutory rules to carry out its primal purposes. In order to vitiate a rule framed under an Act, it must be shown that it is in a direct headlong and glaring conflict with the parent provision. There is a presumption of constitutionality and if the statutory rule and the Act can be harmonised effect must be given to both. Herein, I find not the remotest conflict or contradiction betwixt the Act and Rule 88 and there appears to be no ground whatsoever for quashing or striking it down on that score.

12. Learned counsel for the petitioner's ancillary contention that Section 52 does not warrant the framing of Rule 88 again is patently untenable. Reference herein must first be made to Sub-Sec. (1) which authorises the State Government to make rules for carrying out the purposes of the Act. I have already in terms held that the aforesaid rule is in no way inconsistent with any provision of the Act itself. That being so, the general power of framing rules for effectuating the purposes of the Act, would plainly authorise and sanctify the framing of such a rule. Indeed as has already been pointed out, Section 27A(1) when it employs language "in the manner prescribed" in effect mandates the framing of a rule in this context. Rule 88, therefore is both within the mandate of said provision and the generality of power conferred by Sub-Section (1) of S.52.

13. It is true that Sub-Sec. (2) of S.52 and the thirty-seven clauses thereof do not expressly use or employ the word "quorum". But neither principle nor precedent warrants

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the stand that the specific word or language must necessarily be employed for laying out the larger perimeter within which rules are to be framed for carrying out the purposes of the Act. It is to be kept in mind that Sub-Sec. (2) of S.52 in terms lays down that the same is without prejudice to the generality of the powers conferred under Sub-Sec. (1). Yet again, Clause (xxxvii) of Sub-Sec. (2) of S.52 authorises expressly the framing of rule on any other matter for which there is no provision in the Act and which in the opinion of the State Government requires to be provided for giving effect to the purposes of the Act. Learned counsel for the respondents had, therefore, rightly contended that if necessary the rule comes squarely within Clause (xxxvii) of S.52(2) as well.

14. Though the matter appears to be clear on principle it seems to be equally covered by an authoritative precedent. Before the Full Bench in Dhirendra Kumar Akela v. Bihar State Agricultural Marketing Board, 1985 BBCJ 40 : (1985 Lab IC 315), a similar contention was raised that Rule 64(ii)(c) was ultra vires the provision of Section 52. Repelling such a contention after an exhaustive discussion, the Full Bench had concluded as follows :-

"Against this larger vista can it possibly be said that a rule expressly conferring the power of transfer of the employees of the Market Committees by the Board would go beyond the avowed purpose of the Act investing superintendence, control and discipline of the Market Committees in the hands of the Board ? To my mind the answer is plain that such a power would squarely be within the parameters of the larger purposes of the parent Act. Therefore, in the alternative, Rule 64(ii)(c) would be equally within the framework of the generality of the power conferred by Section 52(1) for the framing of the rules."

15. To conclude on this aspect, the answer to the first part of the question posed at the outset is rendered in the negative. It is held that Rule 88 of the Rules prescribing a quorum for the Assessment Sub-Committee under Section 27A is perfectly intra vires of the Act.

16. The stage is now set for considering the larger question whether the prescribing of a quorum for any quasi judicial body suffers from an inherent vice of invalidity. Herein, the inspiration for this submission stems from a passing observation in M/s. Ganesh Prasad's case (supra). It has been said therein as a dictum that if a quasi judicial or judicial body has been constituted then the entire body must function and a person is entitled to the consideration of his case by all the individuals constituting the judicial or quasi-judicial body. Undoubtedly this view lends considerable weight to the stand taken on behalf of the petitioner, which has been equally, stoutly and frontally assailed on behalf of the respondents. It is significant that neither principle nor precedent has been cited in support of what was thought to be axiomatic. On a closer and a sharper analysis which follows, it would be manifest that any such sweeping statement of the law is untenable.

17. Perhaps, at the very outset, one may pinpoint that in a Full Bench we are not inclined to stray into academic questions but must confine ourselves to what directly falls for adjudication herein. Reference to Section 27A and the detailed provisions of its eleven Sub-Sections would indicate that the Assessment Sub-Committee constituted thereby has been conferred with both quasi-judicial and administrative functions. There is, however, no manner of doubt that having been conferred the power of the assessment of market fees, it necessarily discharges quasi-judicial functions also in this regard. What, however, has to be highlighted is that the Assessment Sub-Committee is not a Court or judicial body stricto sensu. We are, therefore, not called upon even remotely to the legal position with regard to Courts of law or pristinely judicial bodies. The consideration, herein is thus pointedly confined to statutory bodies performing quasi judicial functions as well.

18. Learned counsel for the petitioner taking his clue from M/s. Ganesh Prasad's case (supra), took up the stand that the very provision of a quarum for any quasi-judicial body was inherently illegal and, therefore, providing that two members of the Assessment Sub-Committee can function as such was on the face of it invalid. According to him, any such assessment made by two out of the three members would be per se illegal. Somewhat

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conjecturally it was submitted that the third member, if he had participated, might well have taken a contrary view or even converted the other two to his own.

19. The submission aforesaid has to be viewed against a somewhat larger canvas. Undoubtedly, there are various statutory provisions, which, in terms, provide for or allow the prescription of a quorum for quasi-judicial bodies and indeed even for judicial ones. Reference in this connection may first be made to Ss.5(4) and 6(3) of the Industrial Disputes Act, 1947. Again, S.44(2) of the Motor Vehicles Act, 1939, is equally prescriptive of a quorum. The recently enacted, Administrative Tribunals Act, 1985, provides in S.5(5) thereof that if one of the persons constituting a Bench of the Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the remaining two persons may function as a Bench. Another similar provision is Section 13(1) of the Sikh Gurudwaras Act, 1925. The said Act provides for a tribunal, which is almost judicial character and is composed of 3 members and is presided over by a sitting or retired High Court Judge. Nevertheless, Section 13 thereof is in the following terms :-

"13(1) No proceeding shall be taken by a tribunal unless at least two members are present, provided that notices and summonses may be issued by the president or a member nominated by the President for this purpose.

(2) In case of a difference of opinion between the members of a tribunal, the opinion of the majority shall prevail;

Provided that if only two members are present of whom one is the President and if they are not in agreement, the opinion of the President shall prevail, and, if the President be not present, and the two remaining members are not agreed, the question in dispute shall be kept pending until the next meeting of the tribunal at which the President is present; the opinion of the majority, or of the President when only two members are present, shall be deemed to be the opinion of the tribunal."

It would be manifest from the above that there is no dearth of statutory provisions wherein by express mandate a quorum is provided not only for quasi-judicial bodies but even for tribunals whose functions appear to be primarily' judicial. Learned counsel for the petitioner was unable to cite any authority invalidating the prescription of a quorum in such like forums.

20. In this context one may perhaps equally highlight the anomalous result which must flow herein from holding that each and every member of the Assessment Sub-Committee must always attend throughout each and every proceeding of an assessment. Would it be necessary that all the three members must sit together like a regular Full Bench of a Court of Law to hear and decide every case of the assessment of Market fee ? Would it be even possible or practicable to do so ? If one of the members of the Assessment Sub-Committee was taken ill or otherwise becomes unable to attend for some time the whole proceedings in all the existing cases be stalled and the other members of the Committee debarred from functioning or deciding the cases by themselves. If such were to be the situation, each member can stall the function of the Assessment Sub-Committee to the state of total paralysis. The Assessment Sub-Committee would be eventually rendered nugatory during the period of absence of any of its members. Identical situation would arise in the case of illness, or failure to attend even one of the many meetings for one or the other reasons for each one of its members. An interpretation which would lead to such anomalous, if not mischievous, results has, therefore, to be avoided even on the larger canons of construction.

21. Learned Counsel for the petitioner has contended that if the Vice-Chairman, who was the third member was present he might have taken a different view or might have materially affected the result of the decision. This may well be, though it is equally possible that the third member might have agreed with other two members. There is no manner of doubt that the presence or absence of one or the other members of a quasi-judicial legislative or administrative body may make a difference one way or the other in its ultimate decision. This contingency is basic and inherent in every statutory body for which a q quorum has been lawfully prescribed.

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Indeed, the legal result of a valid prescription of quorum is that the presence of a minimum number of members becomes, in fact, the Committee itself. To put it tersely, the quorum is the Assessment Sub-Committee. Therefore, to draw any distinction as to what would be the result if one or the other members of the Sub-Committee either chose to attend or not is to travel in the realm of surmises and conjecture rather than that of existing facts.

22. I am inclined to subscribe to the view that the issue is now well governed by the binding precedent and it is, therefore, unnecessary to labour the point on principle. Reference in this connection may first be made to Ishwar Chandra v. Satya Narayan Sinha, AIR 1972 SC 1812. Therein a high power Committee, consisting of three members, that is, a retired Chief Justice of the Madhya Pradesh High Court, a sitting Judge of the same Court and a retired Judge of the Allahabad High Court, had been constituted under Section 13 of the University of Sagar Act, 1946. No quorum was provided in this Committee. But, nevertheless, only two members had attended the meeting which was put in issue. Upholding the validity of the proceeding, their Lordships observed as under :-

"It is also not denied that the meeting held by two of the three members on the 4th April, 1970, was legal because sufficient notice was given to all the three members. If, for one reason or the other, one of them could not attend, that does not make the meeting of others illegal. In such circumstances, where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute it a valid meeting and matters considered thereat cannot be held to be invalid."

23. However, the decision which directly governs the issue is The Punjab University, Chandigarh v. Vijay Singh Lamba, AIR 1976 SC 1441. This was on an appeal directed against the majority view in the Full Bench judgement in Vijay Singh Lamba v. Punjab University, Chandigarh, AIR 1976 Punj and Har 143, to which one of us was a party. What was put in issue therein was the proceeding of the Standing Committee constituted by the Punjab University for dealing with unfair means cases. This consisted of a retired Judge of the High Court, the Registrar of the University and an Advocate who was a former Minister of the Punjab State. It was not in dispute that the said Standing Committee was a quasi-judicial body. Its proceeding was challenged on the identical ground that only two out of its three members had attended the meeting in pursuance of a quorum prescribed by the Syndicate. The majority struck down the proceedings on the ground that these had not been passed by all the members of the Standing Committee. Their Lordships of the Supreme Court, on appeal, whilst reversing the majority view and approving the minority opinion, held as follows :-

"Apart from this consideration, we are unable to agree that anything contained in Regulation 32.1 can affect the power of the Syndicate to fix the quorum for the meeting of the Standing Committee. If the quorum consists of 2 members, any 2 out of the 3 members, can perform the functions of the Standing Committee, though the Committee may be composed of 3 members. When Regulation 32.1 speaks of the Committee being unanimous, it refers to the unanimity of the members who for the time being are sitting as the Committee and who, by forming the quorum, can validly and lawfully discharge the functions of the Committee and transact all business on behalf of the Committee."

24. To conclude on this aspect, the answer to the question posed at the outset is rendered in the negative and it is held that the prescription of a quorum for a quasi judicial body does not suffer from any inherent vice of invalidity.

25. It remains to advert to the two Division Bench judgements in Ganesh Prasad v. State of Bihar (supra) and M/s. Shree Murli Manohar Rice and Dal Mills v. State of Bihar (supra), which indeed have necessitated this reference. In a way these exhibit the pitfalls of deciding somewhat difficult and meaningful issues at the threshold stage of admission itself. It would appear that originally, on the 1st of February, 1985, the matter came up at the admission stage before a Division Bench in M/s. Shree Murali Manohar Rice and Dal Mills v. State of Bihar (supra) which was

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summarily disposed of in a few lines on the ground that because the assessment order had been passed by two members of the Assessment Sub-Committee only, therefore, there had been contravention of the provisions of Section 27-A, and the same was quashed. Neither principle nor precedent seems to have been cited before the Bench nor were the material provisions of Rule 88 and its validity even referred to. Counsel for the respondents was patently remiss in not bringing to the notice of the Bench the earlier Division Bench decision in Mahesh Udyog v. The Chairman, Agricultural Produce Market Committee, (CWJC No. 4604 of 1983, disposed of on the 3rd November, 1983), wherein it was categorically observed as follows :-

"From a bare reference to Section 27A(1) of the Act, it is apparent that although the Assessment Committee is to be constituted having three members, but the quorum provided under Rule 88 of the Rules is two only. As such, the order of assessment cannot be invalid on that ground."

It is plain from the above that the view expressed was in headlong conflict with the earlier judgement, and, is in a way per incuriam.

26. However, the identical point again came before a Division Bench in Ganesh Prasad v. State of Bihar (supra). Even though the unequivocal observations of the earlier Division Bench in Mahesh Udyog v. The Chairman, Agricultural Produce Market Committee (supra) were brought to the notice of the Motion Bench, it was observed cryptically that the same was distinguishable. As has already been noticed, it was held as a dictum that no quorum could be prescribed for a quasi judicial body. Apart from the fact that the order ran counter to the decision in Mahesh Udyog v. The Chairman, Agricultural Produce Market Committee (Civil Writ Jurn. Case No. 4604 of 1983 (supra)), the same is directly in conflict with what has been authoritatively laid down in The Punjab University, Chandigarh v. Vijay Singh Lamba, AIR 1976 SC 1441 (supra).

27. With the deepest deference, it is, therefore, to be held that the views in Ganesh Prasad v. State of Bihar, and, M/s Shree Murali Manohar Rice and Dal Mills v. State of Bihar (supra) do not lay down the law correctly. Equally they are contrary to direct precedent in the Punjab University, Chandigarh v. Vijay Singh Lamba, AIR 1976 SC 1441, and, therefore, cannot hold the field. Both these judgements are consequently overruled and the earlier view in Mahesh Udyog v. The Chairman, Agricultural Produce Market Committee (Civil Writ Jurn. Case No. 4604 of 1983) is hereby affirmed.

28. Once the meaningful legal questions arising herein have been answered, it is plain that there is no merit in the primary ground raised on behalf of the petitioner that the assessment herein is not valid because of the same having been rendered by only two members of the Assessment Sub-Committee. This writ petition, therefore, must fail and is hereby dismissed. In view of some conflicting precedent within the Court, I decline to burden the petitioner with costs.

SATYESHWAR ROY, J. :- I agree.

RAMCHANDRA PRASAD SINHA, J. :- I also agree.

Petition dismissed.

AIR 1985 PATNA 241 "Prabhat Zarda Factory, M/s. v. State"

PATNA HIGH COURT

Coram : 2 HARI LAL AGRAWAL AND S. H. S. ABIDI, JJ. ( Division Bench )

M/s. Prabhat Zarda Factory and another, Petitioners v. State of Bihar and another, Respondents.

Civil Writ Jurn. Case No. 4432 of 1978, D/- 9 -4 -1985.

(A) Bihar Agricultural Produce Markets Act (16 of 1960), S.2(1)(a), S.27 - AGRICULTURAL PRODUCE - Agricultural produce - Zafrani Zarda, not within ambit of "tobacco" a notified agricultural produce within S.2(1)(a) - Levy of market fee on Zafrani Zarda - Illegal. AIR 1965 Cal. 498 Held no longer good law in view of (1967) 19 S. T. C. 129(SC).

Zafrani Zarda cannot be included within the ambit of 'tobacco', a notified 'agricultural produce' within the meaning of S.2(1)(a) of the Bihar Agricultural Produce Markets Act. As such notice issued by an Agricultural Produce Market Committee asking a firm manufacturing Zafrani Zarda to pay market fee thereon is illegal and must be quashed. 1977 BBCJ 339, ILR (1978) 57 Pat 63 and (1967) 19 S. T. C. 129 (SC) Foll AIR 1965 Cal 498 Held no longer good law in view of (1967) 19 S. T. C. 129 (SC). Case law disc. (Para 22)

Even the wider definition of 'agricultural produce' in S.2(1) (a) takes note of 'processing' and not of 'manufacturing'. The processing for manufacturing of Zafrani Zarda is more extensive and cumbersome than preparing chewing tobacco. Chewing tobacco is a manufactured item from raw tobacco, and if that be so, then a fortiori it has got to be held that Zafrani Zarda becomes all the more a different commodity and, it would not be proper to include within the ambit of "agricultural produce" all bye-products or finished products which become entirely a different commodity and known and understood as such in the market as well as in the common parlance. (Paras 12, 19, 20)

Each case of processing cannot be manufacturing, in each case of manufacturing there will be an element of processing. Almost every kind of agricultural produce has to undergo some kind of processing or treatment by the agriculturist himself in his field or farm in the first instance in order to make it transportable and marketable commodity. For example, the two main food products, namely, paddy and wheat, have to be husked thrashed and subjected to other processes to make them reach the markets. In each case, therefore, the test would be as to whether the processing done to the raw agricultural produce was a necessary concomitant and minimal or it was so cumbersome or long drawn that the end product changed its basic shape and name in common parlance as well as in the market became known to be an entirely different commodity. In that situation its processing takes the shape of manufacturing the commodity into a different item, for example, Suji and flour which are products of wheat become entirely different items. (Para 10)

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(B) Constitution of India, Art.226 - AGRICULTURAL PRODUCE - WRITS - Who can apply - Firm manufacturing "Zafrani Zarda" challenging levy of market fee thereon - Firm subjected to the provisions of Act levying "market fee" - Firm bound to suffer in the shape of market fee in huge amount - Firm is an aggrieved party and does have locus standi to file writ petition. (Para 23)

Cases Referred : Chronological Paras

AIR 1983 Pat 311 : 1983 BBCJ (HC) 618 13

AIR 1980 SC 169 : (1979) 4 SCC 741 12

AIR 1979 Pat 217 : 1979 BLJ 611 14

1979 BLJR 560 : ILR (1979) 58 Pat 345 15

ILR (1978) 57 Pat 63 : 1985 BLT (Rep) 58 17, 18

1977 Tax LR 2194 : 1977 BBCJ (HC) 484 15

1977 BBCJ (HC) 339 : ILR (1977) 56 Pat 86 17, 18, 20

AIR 1972 SC 168 : 1972 Tax LR 54 11

(1972) 29 STC654 : ILR (1972) Andh Pra 260 15

(1967) 19 STC 129 (SC) 18, 19

AIR 1965 Cal 498 16

AIR 1963 SC 791 12

Shreenath Singh, G.C. Bharuka, Navaniti Prasad Singh and Ramesh Kumar Agrawal, for Petitioners; Balbhadra Prasad Singh, Alakh Raj Pandey, Vishwambhar Sharma and Shivesh Misra, for Respondent No. 2; Ram JanamOjha, Santosh Singh and Jagdish Narain, for the Intervenor, Marketing Board.

Judgement

HARI LAL AGRAWAL, J.:- Whether Zarda manufactured by the petitioner firm will be covered within the ambit of 'tobacco', a notified 'agricultural produce' within the meaning of S.2(1)(a) of the Bihar Agricultural Produce Markets Act, is the short but ticklish question which falls for decision in this case.

2. The petitioner firm manufactures Zafrani Zarda in the town of Muzaffarpur, which is an excisable commodity under the Central Excises and Salt Act. The fact that Zarda is prepared out of tobacco is not in dispute. The petitioners have stated the process of manufacturing Zafrani Zarda and the same is as follows.

At first plain water is sprinkled on the bundles of tobacco. It is allowed to ferment for some days so as to be able to generate heat. The stalks of tobacco are then broken and cleaned, and thereafter treated with permissible colours and compounds, and cut into thin strips by shearing machine. This product is known as 'Sada Zarda'.

Sada Zarda is then allowed to dry for some days for preparing zafrani zarda by coating it with Zafrani solution. Flavouring essence solution is sprinkled on it; besides various other commodities such as powdered Ilaichi, Long, Dalchini, Menthol, Keshar, silver foils etc. are mixed up and then the same are packed in special wrappers and put into small containers of various weights and sizes for marketing.

3. The petitioner firm imports Sada Zarda from various places such as Varanasi, Delhi etc., and the same is made Zafrani Zarda by processing it as indicated above. It may be stated that Zafrani Zarda prepared by the petitioner firm has got a good market and repute. The price of the end product of the petitioner firm is thus raised by 20 to 25 times of the cost price of Sada Zarda.

4. The petitioner firm was served with a notice dated 29-7-1978 (Annexure 2) from respondent No. 2, the local Agricultural Produce Market Committee, to pay market fee on the sale of Zarda by the petitioner firm, on the ground that it was included in 'tobacco', a scheduled item under the Act. The petitioner firm refuted the liability to pay market fee mainly on the ground that Zarda, which was entirely a different commodity, was not covered under the net of 'tobacco', but since the Market Committee insisted for payment and issued threatening notices the petitioners filed the writ application.

5. The case was earlier heard in January, 1984 and judgment was reserved. Later on, however, we decided to refer the case to a larger Bench and accordingly by our order dated 8-2-1984 the records were ordered to be placed before the Hon'ble the Chief Justice who, in absence of any conflict in the views of this Court in some of the cases which were since decided, declined to accept the reference and the case was sent back to us for disposal. Accordingly the matter was placed for hearing on 18-3-1985 and although the hearing of the case had been completed earlier, on account of lapse of time learned counsel for both the parties were allowed opportunities to give a resume of the arguments.

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6. It may be mentioned that an application was filed by the Bihar Agricultural Produce Marketing Board, the apex body under the Act, to enforce and regulate the provisions thereof, for its intervention. That application was allowed on 30-1-1984 and Mr. Ram Janam Ohja, appearing for the Marketing Board was also heard on both the occasions.

7. The stand of the respondents, on the other hand, is that Zarda being basically a product of tobacco and processed from tobacco, is an 'agricultural produce' and the market fee has been rightly demanded on the trade of Zarda.

8. The parties also joined issues regarding the validity of the constitution of the Market Committee and the right to impose market fee etc., in the petition and the counter-affidavit, but since all these questions have been authoritatively settled by this Court as well as by the highest Court in a series of decisions, no argument was addressed on behalf of any of the parties on this question.

I would, therefore, proceed to consider and decide the basic question already indicated, viz., as to whether the Market Committee was entitled to realise market fee from the petitioner firm on the sale of Zafrani Zarda on the basis of tobacco. That necessitates the reference to some of the provisions of the Act.

9. Section 27 empowers the Market Committee to levy and collect market fee on the 'agricultural produce' bought or sold in the market area @ Rs. 1/- per Rs. 100/- worth of 'agricultural produce'. The expression 'agricultural produce', has been defined in S.2(1)(a) as follows :

"'agricultural produce' includes all produce, whether processed or non-processed of agriculture, horticulture, animal husbandry and forest specified in the Schedule;" The word 'schedule' has also been defined in cl.(1) of S.2 as "a schedule to this Act".

Section 39 of the Act empowers the State Government "by notification to add, amend or cancel any of the items of agricultural produce specified in the schedule". The original schedule, when the Act was enforced has been amended and expanded from time to time by the State Government. I shall now refer to the schedule itself to answer the question.

The schedule, as it stands at present, has classified the various items mentioned therein under 12 categories, namely, (i) Cereals, (ii) Pulses, (iii) oil seeds, (iv) oils, (v) fruits, (vi) vegetables, (vii) fibres, (viii) animal husbandry products, (ix) condiments, spices and others, (x) grass fodder, (xi) narcotic and (xii) miscellaneous. We are concerned in this case with, the eleventh category, namely, tobacco, which is the single item of this category.

It is, no doubt, true that definition of 'agricultural produce' gives the expression a wider connotation and the inclusive nature of the definition would embrace even the processed or non-processed products of agriculture, horticulture and animal husbandry specified in the schedule.

10. The argument made on behalf of the petitioners in this regard, on the other hand, is that the products of tobacco, namely, Zafrani Zarda, after processing becomes an entirely different commodity in which the element of tobacco is not more than 4% and the rest of its components are other materials such as powders of Ilaichi, Long, Dalchini, Menthol, Kesar, Silver foils, flavouring essence, etc., which are entirely different commercial commodities. The act of manufacturing and processing is also well defined. Whereas "manufacturing means bringing into existence a new substance from the raw material, "processing" means merely bringing out some changes in the substance.

It is thus obvious that each case of processing cannot be manufacturing; in each case of manufacturing there will be an element of processing. Almost every kind of agricultural produce has to undergo some kind of processing or treatment by the agriculturist himself in his field or farm in the first instance in order to make it transportable and marketable commodity. For example, the two main food products, namely, paddy and wheat, have to be husked, threshed and subjected to other processes to make them reach the markets. In each case, therefor, the test would be as to whether the processing done to the raw agricultural produce was a necessary concomitant and minimal or it was so cumbersome or long drawn that the end product changed its basic shape and name in common parlance as well as in the market became known to be an entirely different commodity. In that situation its processing

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takes the shape of manufacturing the commodity into a different item, for example, Suji and flour which are products of wheat become entirely different items. Similarly, Chhena, Khowa, Besan, Sattu, Chura etc. become an entirely different commodity and it is, perhaps, in that view of the matter that in category No. I of the schedule dealing with 'cereals,' besides paddy and wheat, rice, wheat Atta, Sujji, Maida, Choora, Murhi etc. have also been separately included as independent items.

11. In the case of C. I. T., Andhra Pradesh v. M/s. Taj Mahal Hotel, Secunderabad AIR 1972 SC 168 it was held that where the definition of a word has not been given it must be construed in its popular sense if it is a word of every day use. 'Popular sense' was also clarified to mean that sense which people conversant with the subject matter of the statute would attribute to it.

12. It will be useful to notice that the inclusive definition of 'agricultural produce' has simply contemplated the processed or non-processed products and not manufactured products of any item thereof. This definition is well brought about in a passage thus quoted in Words and Phrases, Vol. 26, from an American judgment noticed by the Supreme Court in the case of Union of India v. Delhi Cloth and General Mills Co. Ltd., AIR 1963 SC 791 as well as later in the case of Commr. of Sales Tax, Lucknow v. D. S. Bist, (1979) 4 S.C.C. 741 : (AIR 1980 SC 169). In the former case the question was as to whether the producer of Vanaspati could be held to manufactures some kind of 'non-essential vegetable oil' within item 12 of Schedule I of the Central Excises and Salt Act by applying to the raw material the processes of neutralisation by alkali and bleaching by activated earth or carbon. It was held that the processed raw oil was not covered by the said expression as no new substance known to the market had been brought into existence at that stage.

13. It may be mentioned that Atta, Sujji and Maida were not included in the original schedule until the notification dated 12th Feb. 1972, but this was not notified till 15th May, 1980, although wheat was already a scheduled agricultural produce from before.

A Bench of this Court in the case of Sree Behariji Mills Ltd v. State of Bihar 1983 BBCJ (HC) 618 : (AIR 1983 Patna 311) rejected the claim of the respondent Market Committee for levy of market fee on Atta, Sujji and Maida on the ground of the absence of the notification.

14. In the case of Ashok Industries v. State of Bihar, 1979 BLJ 611: (AIR 1979 Patna 217) while considering the question of right to levy market fee on pulses in processed or non-processed from, if gram or Arhar or Masoor had at one stage been subjected to levy of market fee, it was observed by a Bench of this Court that "the matter will certainly be different if in one form a foodgrain is notified as a distinct agricultural produce while in another form after its being processed it is enumerated as another distinct notified agricultural produce".

This observation will apply a fortiori to the case of Zafrani Zarda which also becomes a distinct commodity that 'tobacco.

15. Reliance placed on behalf of the respondents on two decisions of this Court also, namely, (1) Mahabir Tea Co. v. State of Bihar, 1979 BLJR 560 where the question was as to whether tea could be included in the schedule as an agricultural produce, and (2) Sahu Mills v. State of Bihar 1977 BBCJ (HC) 484 : (1977 Tax LR 2194) where the question was as to whether stalks of 'tobacco' were included in 'tobacco', is not of much help in this case.

In the latter case on reference to the case of Amara Purushottam Mamidi Obaih and Co. v. State of Andhra Pradesh (1972) 29 S. T. C. 654 where the following observation was made

"The word 'tobacco' therefore connotes the plant going by that name as a whole and not merely its leaves, as sought to be contended for the respondents. Roots, stems, stalks, flowers and seeds are as much parts of the plant as its leaves sine a typical plant consists of all these parts and branches and fruits in addition."

It was held that the 'tobacco stalks' were included in 'tobacco' which was a scheduled article.

It may be noticed that in common parlance also there is no separate name nor separate use for the stalks of tobacco and leaves of the plant of tobacco.

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16. Strong reliance was, however, placed on behalf of the respondents on the case of Dilip Kumar Mukherjee v. Commercial Tax Officer, AIR 1965 Cal 498. No doubt, this case apparently gives their case a direct support because it has been held by a learned single Judge that Zarda is 'tobacco' of the category of 'chewing tobacco' within the meaning of item 9 of the Schedule I of the Central Excises and Salt Act, but no closer scrutiny of this decision it is entirely distinguishable as item 9 of the said schedule defines 'tobacco' as follows;

"Tobacco means any form of Tobacco-, whether cured or uncured and whether manufactured or not, and includes the leaf, Stalks and Stems of the tobacco plant but does not include any part of a tobacco plant while still attached to the earth."

This definition is much more wider than the definition of 'tobacco' read with reference to 'agricultural produce' in the Act with which we are concerned in this case. In the Salt Act 'tobacco' in its manufactured form is sought to be brought within the purview of 'tobacco', but I have already indicated that in Markets Act only the processed form has been purported to be included in the basic item. The same decision in para 18 has said that although "the word 'tobacco' refers only to the plant and, primarily, the dried leaves of that plant which are used for purposes of smoking and similar habits", the definition "widens the ordinary meaning of the word to bring in every form of tobacco, whether cured or uncured, whether manufactured or not, to bring in a large number of allied raw and finished products within the fold of the duty imposed by the Act of 1944..... 'zarda' is a variety of manufactured tobacco." The expression Manufacture" has also been defined in S.2(f) of the Salt Act and while referring specifically to 'tobacco' this definition says that it included "the preparation of cigarettes, cigars, cheroots, biris.......... chewing tobacco or snuff."

In that view of the matter the learned judge was but to hold that 'chewing tobacco' was covered under item 9 of Schedule I as the said commodity was specifically mentioned. No construction and interpretation of the expression 'tobacco' was, therefore, needed in that decision and, therefore, the learned counsel for the respondents is entirely mistaken in his impression that the Calcutta decision has a bearing on the present case, in the absence of that wider definition of agricultural produce' in the Markets Act.

17. Reliance was also placed upon some decisions of the Supreme Court by Mr. Ram Janam, Ojha to bring home the point that Markets Act being a beneficial legislation and not a fiscal statute, a liberal construction to the same should be given.

Although in the case of Vir Bhan v. State of Bihar, 1977 BBCJ (HC) 339, followed by another Bench of this court in unreported case of Ranchi Timbers Association v. State of Bihar [C. W. J. C. No. 269 of 1976 (R)] disposed of on 20-9-1977 : (Since reported in ILR (1978) 57 Pat 63), it has been held that this was a fiscal statute, even assuming for the sake of argument that it was not such a statute but was a beneficial legislation, there is no question of giving any other interpretation on that account by any liberal construction or interpretation a commodity shall on the face of it would fall beyond its purview.

18. I may now refer to a few cases strongly relied upon on behalf of the petitioners, namely, (1) Vir Bhan's case (supra), (2) Ranchi Timbers Association's case (supra) and (3) State of Madras v. Bell Mark Tobacco Co., (1967) 19 S. T. C. 129 (SC).

The judgment in Vir Bhan's case was given by me on behalf of the Bench, where the question was as to whether knitting wool could be included within the ambit of 'wool' or 'fleece', the two items mentioned in the 8th category of the schedule. On reference to a large number of cases it was held that 'knitting wool' was entirely a different commodity and could not be covered by the notified commodity 'wool' in the schedule. Discussing the matter I had categorically observed :

".....But I am not prepared to hold that simply because now parent product of either agriculture, horticulture, animal husbandry or forest is specified in the schedule without any of its species which may be produced after any processing than that by itself would be sufficient to incorporate and include within its womb all those bye products or finished products. Such construction in my opinion, of a fiscal statute would not be a proper and reasonable construction and would amount to reading in the schedule something by considering as what is the substance of the

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matter, and then substituting other materials by following the rule of intendment and then by implication to read that knitting wool, a commodity which is apparently different, would be covered in the expression 'wool'."

This decision was followed by another Bench in the unreported decision mentioned above where the question was as to whether the words 'bamboo' and 'wood', the two scheduled commodities, within their fold would also include bamboo clumps or standing trees in a forest coup or lot. The argument on behalf of the Market Committee was rejected.

19. In the case of State of Madras v. Bell Mark Tobacco Co. the question was whether excise duty paid in respect of raw tobacco was liable to be excluded in the computation of the taxable turn over of the dealer with respect to his business in chewing tobacco. It was held that the various processes to which the raw tobacco was subjected, amounted to a manufacturing process and, therefore, the chewing tobacco sold by the respondents was not the same commodity as raw tobacco but was a manufactured product from raw tobacco purchased by the respondent. The process of preparation of chewing tobacco has also been indicated in the judgment and that was jaggery juice was sprinkled on the tobacco which was then cut into thin strips by shearing machine and it was thereafter allowed to dry for some days and then flavouring essence was sprinkled and then packed in special wrappers and packets known as chewing tobacco packets. We have seen that the processing for manufacturing of Zafrani Zarda is more extensive and cumbersome than preparing chewing tobacco. This decision has said (1) that the chewing tobacco was a manufactured item and (2) a different item than tobacco.

20. I have already indicated earlier that even the wider definition of 'agricultural produce' in S.2(1)(a) takes note of 'processing' and not of 'manufacturing'. The Supreme Court in unequivocal terms in that case has held that chewing tobacco was a manufactured item from raw tobacco, and if that be so, then a fortiori it has got to be held that Zafrani Zarda becomes all the more a different commodity and, as already held by me in Vir Bhan's case (1977 BBCJ (HC) 339) (supra), it would not be proper to include within the ambit all bye-products or finished products which become entirely a different commodity and known and understood as such in the market as well as in the common parlance.

21. Neither Shri Balbhadra Prasad Singh, appearing for respondent No. 2, nor Shri Ram Janam Ojha, appearing for the intervenor, could make out any point of distinction so as not to apply the above decision to the facts of the present case and the Calcutta decision also must give way in face of this decision of the Supreme Court apart from the distinguishing feature.

22. From the above discussions I come to the conclusion that Zafrani Zarda cannot be included within the ambit of 'tobacco'. This application, therefore, must succeed and the notices issued by respondent No.2 to the petitioners, contained in Annexures 2 and 4, must be quashed. They are accordingly quashed herewith and the respondents are ordered to forbear from enforcing the provisions of the Bihar Agricultural Produce Markets Act against the petitioners.

23. Before parting with the case, however, I would also like to notice a line of argument indicated in the written argument filed on behalf of the intervenor, namely, that the petitioners were not an aggrieved party and thus not entitled to any relief and that they had no locus standi to invoke the writ jurisdiction. This argument has been noticed simply to be rejected. As, if the petitioners are subjected to the provisions of the Act, then certainly they are bound to suffer in the shape of market fee in huge amounts.

24. The application is accordingly allowed with costs. Hearing fee is, however, assessed at Rs. 500/- only.

S. H. S. ABIDI, J.:- I agree.

Application allowed.

AIR 1985 PATNA 295 "B. K. V. Mahasangh v. B. K. U. Bazar Parishad"

PATNA HIGH COURT

Coram : 2 N. P. SINGH AND PHANI BHUSHAN PRASAD, JJ. ( Division Bench )

Bihar Khudra Vikreta Mahasangh and another, Petitioners v. Bihar Krishi Utpadan Bazar Parishad and another, Respondents.

Civil Writ Jurisdiction Case No. 144 of 1980, D/- 10 -1 -1985.

Bihar Agricultural Produce Markets Act (16 of 1960), S.4(4) and R.98(xi) - AGRICULTURAL PRODUCE - Applicability - Petitioner, a licensed retail dealer and leading trader of notified agricultural produce and other commodities - Petitioner purchasing notified agricultural produce from different traders and selling them to different persons - Court not able to record any categorical finding as to petitioner's daily or annual turnover as prescribed by R.98(xi) - Held, petitioner is not covered by S.4(4) and as such provisions of Act and Rules are applicable to him. (Para 5)

Tara Kant Jha and Rukmini Kant Choudhary, for Petitioners; Alakhraj Pandey and Ramesh Jha, for Respondents.

Judgement

N.P. SINGH, J.:- The writ application has been filed on behalf of the petitioners for a writ of mandamus directing the respondent-Bihar Agricultural Produce Market Board (hereinafter to be referred to as 'the Board') not to insist petitioner No. 2 to take licence for carrying on business in the concerned Market Committee area. Petitioner No. 1 is the Bihar Khudra Vikreta Mahasangh, a representative body of the retail dealers.

2. It is the case of the petitioners that petitioner No. 2 (hereinafter to be referred to as 'the petitioner') is a retail seller. The Market Committee issued notices to dealers, including the retail sellers, directing them to obtain licences, in default thereof they would be criminally prosecuted. According to the petitioners, the provisions of the Bihar Agricultural Produce Markets Act (hereinafter to be referred to as 'the Act') and the Rules framed thereunder, i.e., Bihar Agricultural Produce Markets Rules (hereinafter to be referred to as 'the Rules') are not applicable.

3. The stand of the respondent Board is that the provisions of the Act are applicable to retail dealers/traders whose daily or annual outturn exceeds the amount and has been prescribed under the Rules. S.2(p) defines 'retail sale' as follows :-

" 'retail sale' means a sale of any agricultural produce not exceeding such quantity as may, by bye-law or rule, be fixed in respect of such agricultural produce."

The expression 'trader' has been defined as follows under S.2(1)(w) : -

" 'trader' means a person ordinarily engaged in the business of buying and selling agricultural produce as a principal or as a duly authorised agent of one or more principals and includes a commission agent or a person ordinarily

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engaged in the business of processing of agricultural produce."

Section 4 vests power in the State Government to declare the area specified in a notification as market area for the Act. Sub-sec.(2) and sub-sec.(4) of S.4, which are relevant, are as follows :-

"(2) On and after the date of publication of the notification under sub-sec.(1), or such later date as may be specified therein, no municipality or other local authority, or other person, notwithstanding anything contained in any law for the time being in force, shall, within the market area, or within a distance thereof to be notified in the Official Gazette in this behalf, set up, establish, or continue, or allow to be set up, established or continued, any place for the purchase, sale, storage or processing of any agricultural produce so notified, except in accordance with the provisions of this Act, the rules and bye-laws."

"Explanation - A municipality or other local authority or any other person shall not be deemed to set up, establish or continue or allow to be set up, established or continued a place as a place for the purchase, sale, storage or processing of agricultural produce within the meaning of this section, if the quantity is as may be prescribed and the seller is himself the producer of the agricultural produce offered for sale at such place or any person employed by such producer to transport the same and the buyer is a person who purchases such produce for his own use or if the agricultural produce is sold by retail sale to a person who purchases such produce for his own use."

"(4) Nothing in this Act shall apply to a trader whose daily or annual turnover does not exceed such amount as may be prescribed."

In view of sub-sec.(2) no person can set-up, establish or continue any place for purchase, sale, storage or processing of any agricultural produce within the market area except in accordance with the provisions of the Act, Rules and Bye-laws. R.98(i) provides that no person shall carry on business as trader in agricultural produce in the market area except under and in accordance with the terms and conditions of licence issued in this behalf by the Market Committee. In view of the aforesaid provision, if the petitioner is a trader and is carrying on business in the market area in question, then unless his case is covered by sub-sec.(4) of S.4, he cannot carry on the business in the market area as a trader without licence.

4. On behalf of the petitioners it was urged that in view of the explanation to sub-sec.(2) of S.4, the provisions of the Act and the Rules shall not be applicable. It was pointed out that in view of the explanation aforesaid "if the agricultural produce is sold by retail sale to a person who purchases such produce for his own use", such sale is not covered by the provision of sub-sec.(2) of S.4. On a plain reading, the explanation is applicable to retail sale of agricultural produce to a person who purchases such produce for his own use, but before that a quantity has to be prescribed which shall be exempted from the application of the provisions of the Act. The definition of 'retail sale' under S.2(p) also requires a quantity to be fixed in respect of such agricultural produce under the Rules or Bye-laws. The counsel for the petitioners admitted that for the present there is no order directly fixing the limit of the quantity below which it can be held to be a retail sale. He pointed out that reading the definition of 'retail sale' along with R.94 and Schedule II to the Rules it can be ascertained as to what is the limit of the sale of agricultural produce which has been fixed to bring it within the definition of retail sale.

5. In the writ application petitioner No. 2 has been described as Proprietor of Ganga Kirana Stores and it has been claimed that he is a licensed retail dealer. In the counter-affidavit, which has been filed on behalf of the respondent-Board, it has been asserted that the petitioner is a leading trader of notified agricultural produce and other commodities. It has also been stated that the petitioner is purchasing notified agricultural produce from different traders and selling those agricultural produce to different persons. There is no denial of the aforesaid statements made in the counter-affidavit. In such a situation, it has to be held that the petitioner is a trader within the meaning of the Act. Once the petitioner is held to be a trader, whether he is exempted from the provisions of the Act and the Rules has to be determined in light of sub-sec.(4) of S.4 read with R.98(xi). R.98(xi) of the Rules is as follows :

"The provisions of the Act shall not apply to trader till his daily turnover does not exceed a sum of Rs. 400 (four hundred) or till the

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annual turnover exceeds a sum of Rs. 15,000/- (fifteen thousand), whichever is earlier i.e., if the daily turnover exceeds Rs. 400 (four hundred) or when total turnover during any of the year exceeds Rs. 15,000 (fifteen thousand) the provision of the Act shall apply."

If the daily turnover does not exceed Rs. 400/- or the annual turnover does not exceed Rs. 15,000/- as in R.98(xi), then only the petitioner can be exempted from the provision of sub-sec.(2) of S.4 of the Act. On basis of the materials on the record, it is not possible for this Court to record any categorical finding on that question. My considered opinion is that the case of the petitioner is not covered by sub-sec.(4) of S.4 of the Act. As such, it has to be held that the provision of the Act and the Rules are applicable to him.

6. This writ application accordingly fails and it is dismissed, but, in the circumstances of the case, there shall be no order as to costs.

PHANI BHUSHAN PRASAD, J .:- I agree.

Petition dismissed.

AIR 1984 PATNA 86 "Ram Prasad v. Bihar State Agrl. Produce Mktg. Board"

PATNA HIGH COURT

Coram : 2 S. SARWAR ALI, Actg. C.J. AND PRABHA SHANKER MISHRA, J. ( Division Bench )

Ram Prasad Dubey, Petitioner v. Bihar State Agricultural Produce Marketing Board, Patna and others, Respondents.

Civil Writ Jurn. Case No. 1343 of 1983, D/- 16 -9 -1983.

(A) Bihar Agricultural Produce Market Rules (1975), R.14(i)(a) - AGRICULTURAL PRODUCE - ELECTION - Rejection of nomination paper under - Not to be on basis of technical defects in voters' list occurring due to clerical or printing mistakes.

Representation of the People Act (43 of 1951), S.33(4).

A clerical or printing mistake in the voter's list either in the name of the voter or in any other particular would not justify holding that the proposer's name is not included in the list of voters. Such a defect is not a defect of substantial character and has to be ignored while rejecting a nomination paper. (Para 8)

(B) Bihar Agricultural Produce Market Rules (1975), R.16(ii), R.14(iv), R.15 - AGRICULTURAL PRODUCE - ELECTION - APPEAL - Election to market Committee - Nomination paper of one candidate rejected - Appeal against pending - Declaration of another candidate as duly elected under R.16 (ii) before disposal of appeal - When permissible.

Where a candidate to the election as member of market committee has filed an appeal against rejection of his nomination paper and even before the disposal of his appeal a declaration in favour of some other candidate under R.16 (ii) as duly elected member of the Committee is made, the declaration cannot be said

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to be ultra vires if it is made after the expiry of the period of seven days prescribed under Rule 14 (iv) and the period of 3 days under Rule 15. But a declaration made within the time limit for filing the appeal under Rule 14 (iv) and three days under Rule 15 shall be in valid and the Election Officer shall be obliged to act in accordance with the directions of the appellate authority. (Paras 9, 11)

A period of seven days for filing the appeal against the decision of the Election Officer rejecting the nomination paper is prescribed under Rule 14 (iv). The Election Officer undoubtedly, is obliged to wait for seven days from the date of the rejection of the nomination paper of a candiate to enable him to file appeal before proceedings to make a declaration under Rule 16 (ii). A further obligation to wait until the date of withdrawal is over can, by implication, be read in Rule 15. No statutory obligation to wait for any period thereafter is available under the rules. Therefore if the appeal gets decided before the stage under Rule 16 is reached the Election Officer shall be obliged to follow the directions of the appellate authority. But if no such appellate decision comes before the stage of Rule 16 is reached the Election Officer, on the date fixed for deciding to proceed with the election cannot postpone the declaration under Rule 16 (ii). (Paras 9, 10)

(C) Bihar Agricultural Produce Market Rules (1975), R.43, R.16(ii) - AGRICULTURAL PRODUCE - ELECTION - Election petition under R.43 - Scope - Candidate declared elected under R.16 (ii) - Validity of his election can be challenged under R.43.

Validity of election of a candidate declared elected under Rule 16 (ii) can be challenged in a election petition filed under Rule 43. (Para 12)

In Rule 43 there is no mention of declaration made under Rule 16 (ii). But a declaration under Rule 16 (ii) is only a step in the process of election, and a person declared elected under Rule 16 (ii) can take his office only after the Election Officer shall prepare a return of the result of the election in form XIV and declare the candidates elected under Rule 41. It cannot, therefore, be reasonable to suggest that validity of election of a candidate declared elected under Rule 16(ii) cannot be challenged u/r. 43. Moreover there is nothing in the language of Rule 43 to suggest that challenge is confined to the declarations made under Rule 41. It is in such situation not possible to read in the words "may challenge the election", further words "under Rule 41" or like words to restrict the challenge to the candidates declared elected under Rule 41 only. (Para 12)

Cases Referred : Chronological Paras

AIR 1972 SC 580 8

1970 Pat LJR 539 9

AIR 1962 SC 1248 8

AIR 1961 SC 1125 8

Narbadeshwar Pandey and Ashok Kumar Singh, for Petitioner; Alakh Raj Pandey, Shivesh Mishra and Ramesh Jha (for the Board), Vyas Mani Singh (for No. 4), for Respondents.

Judgement

P. S. MISHRA, J.:- The petitioner, a candidate declared elected as a member of Market Committee, Arrah from Constituency No. 5 of the agriculturists has moved this Court under Articles 226 and 227 of the Constitution against the order of the Director, Marketing, Bihar State Agricultural Produce Marketing Board (respondent No. 2) dated 14-3-1983 declaring the nomination paper of the respondent No. 4 for the said constituency valid. The nomination paper of the respondent No. 4 was found invalid by the Election Officer-cum-Deputy Collector, Land Reforms, Arrah (respondent No. 3) and accordingly rejected on 26-2-1983. The respondent No. 4 preferred an appeal before the respondent No. 2. His appeal was allowed by the Director (respondent No. 2) on 14-3-1983. In the meanwhile on 7-3-1983 the petitioner being the only candidate left in the field, had been declared elected. In view of the order of the Director (respondent No. 2) dated 14-3-1983, the Marketing Secretary (H. Q.) of the Board issued memo No. 672 dated 21-3-1983 stating that the election on contest would be held afresh in the agriculturists constituency No. 5. The petitioner has questioned the validity of this order as well. The order of Director dated 14-3-1983 is Annexure 2 to the writ application. Memo No. 672 dated 21-3-1983 is Annexure 4 thereof.

2. Only a few facts need to be stated. The Election Officer-cum-Deputy Collector, Land Reforms, Arrah (respondent No. 3) notified the programme of election in different constituencies of the agriculturists of the Arrah Market Committee.

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Four persons, the petitioner, respondent No. 4 and Jagdish Singh and Ramkumar Lal filed their nomination papers on the date fixed for the said purpose in constituency No. 5 of the agriculturists. The nomination papers of these candidates were scrutinised by the reponsdent No. 3 on 26-2-1983. He rejected the nomination paper of the respondent No. 4 on the ground that his proposer was not a voter of the constituency No. 5. Jagdish Singh and Ramkumar Lal withdrew their candidatures on 2-3-1983, that is to say the date fixed for the said purpose. The respondent No. 4 filed an appeal before the Director, Marketing Board (respondent No. 2) on 2-3-1983. Although the appeal filed by the respondent No. 4 was entertained, no order staying further proceedings of the election in constituency No. 5 of the agriculturists was made by the respondent No. 2. The respondent No. 3 declared the petitioner elected uncontested on 7-3-1983. Notices were issued to the parties concerned by the respondent No. 2 including the petitioner and the Election Officer-cum-Deputy Collector, Land Reforms. The appeal was heard and as it appears from the order of the Director (respondent No. 2) dated 14-3-1983, learned counsel appearing for the appellant (respondent No. 4) and the Election Officer (respondent No. 5) were heard. The respondent No. 2 found that the name of proposer of the respondent No. 4 was included in the voters' list of the constituency and accordingly declared that his nomination paper was valid. As a consequence of the order of the respondent No. 2 the respondent No. 4 also became a candidate duly nominated and thus election on contest was required to be held. The Secretary of the Board accordingly issued memo No. 672 dated 21-3-1983 stating that election on contest would be held in the petitioner's constituency.

3. Before prospecting into the contentions of the parties I propose to take a bird's-eye view of the relevant provisions of law. The legislature of Bihar enacted the Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as "the Act") with a view to provide better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Bihar. Chapter II of the Act contains provision as to the constitution of markets and market committees. Section 4 thereof empowers the State Government to declare a market area in the manner prescribed therein. Section 6 lays down that for every market area the State Government shall, by notification, establish a Market Committee. Section 8 provides for constitution of first market committee and Section 9 for the constitution of the second and subsequent market committees. These provisions have undergone several amendments. Section 9 as amended by Act, 60 of 1982 in sub-sec.(i) contains provisions for election in the prescribed manner of seven representatives of agriculturists from seven constituencies created for the said purpose.

4. The Bihar Agricultural Produce Market Rules were first framed in the year 1962 providing, inter alia for constitution of market committee and election. 1962 Rules were, however, repealed by a new set of rules known as the Bihar Agricultural Produce Markets Rules, 1975. Part II of these rules contains provisions as to constitution of Market Committee and Election. Rules 7 to 16 provide for calling upon the constituencies to elect, notice to elect, nomination, scrutiny of nomination, verification, publication and scrutiny of nomination, disposal of objections and rejection of nomination, withdrawal of candidature and procedure of election. In cases, however, in which more than one candidate remain in the field, provisions have been made for holding poll, counting and declaration of results. Provisions have been made for presenting election petitions before the Munsif within whose territorial jurisdiction the market yard of the market area concerned is situated and appeal before the District Judge against the decision of the Munsif. Rule 9 requires a nomination paper completed in form II to be delivered by candidate to Election Officer on the day appointed in this behalf. Rule 9 (ii) reads as follows:

"Every nomination paper shall be signed by a person qualified to vote as proposer and the candidate shall sign his declaration on it expressing his willingness to stand for the election."

It is thus obvious that for a nomination paper to be valid it has to be signed by a person qualified to vote as proposer. Obligation to prepare lists of voters qualified to vote for each of the

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agriculturists constituencies etc. is placed upon the Election Officer by an express provision made under Rule 5 of the Rules. Any person whose name is not included in the final voters' list of a constituency may apply to the Election Officer for inclusion of his name in the list and the Election Officer after being satisfied that the applicant is entitled to be included in the list, direct his name to be included therein. No amendment, however, is permissible in the voters' list after the last day for making nomination for election in the constituency. Rule 14 enumerates the grounds upon which a nomination may be rejected. One of the grounds enumerated therein is that a nomination may be rejected if the proposer is a person whose name is not entered in the list of voters. Rule 15 provides for withdrawal of candidature and states that on completion of the scrutiny of nomination and after the expiry of the period within which candidature may be withdrawn, a list of persons whose nominations are in order and who have not withdrawn their candidature shall be prepared in form VI and affixed by the Election Officer on the notice board of his office and in the office of the Market Committee, not less than seven days before the date fixed for the election. Rules provide the procedure for election, if the number of the candidates who are duly nominated and who have not withdrawn their candidature exceeds that of the vacancies by ballot and thereafter declaration of the name of the candidate obtaining highest number of valid votes and if the number of such candidates is less than the number of vacancies, declaration of their names as duly elected. The two relevant rules are, and Rule 16 (ii) and Rule 41. These rules state:-

Rule 16 (ii):- "If the number of such candidates is less than the number of vacancies, all such candidates shall be declared to be duly elected and the Election Officer shall call upon the constituency to fill the remaining vacancies, as the case may be in accordance with election programme notified under Rule 8."

Rule 41:- "Declaration of results- (i) After completing the scrutiny and counting of votes, the Election Officer shall prepare a return of the result of the election in Form XIV, and declare such number of candidates equal to the number of seats in that constituency as have secured the highest number of votes in descending order to be duly elected.

(ii) Any candidate or his agent shall, on application, be permitted to take a copy or an extract of the return in Form XIV."

These rules thus provide for election in two different instalments. Declaration of the result of the election under Rule 16 (ii) may in a given case complete the election leaving no further election to be held on contest. In another case it may still be necessary to proceed to hold election on contest resulting in the declaration of results thereof under Rule 41. Rule 43 which provides for the determination of validity of election, however, says:-

"(i) At any time within fifteen days from the date of publication, under Rule 41, of the result of an election, any, candidate who stood for election or any person qualified to vote at that election may challenge the election by presenting an election petition by making ...."

This rule or any other rule nowhere mentions that a declaration made under Rule 16 (ii) can be challenged in any manner. An appeal has been provided before the Director or the officer authorised by the Chairman of the Board within seven days of the decision of the Election Officer rejecting a nomination paper in Rule 14 (iv) which says:-

"An appeal shall lie against the decision of the Election Officer for the rejection of a nomination paper to the Director or the Officer authorised by the Chairman of the Board within seven days of such decision and the decision given by the Director or the authorised officer shall be final and binding and shall not be questioned in a court of law."

Although this rule makes the pronouncement of the appellate authority final and binding and also says that the same cannot be questioned in a court of law, Rule 43 (iii) (c) provides that the Munsif, who shall be holding enquiry into the validity of the election and exercising any of the powers of the civil court may set aside the election and direct for holding a fresh election if he is of opinion:- "That any nomination has been improperly rejected."

5. Learned counsel for the petitioner has contended that the impugned order of the Director (Annexure 2) is without

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jurisdiction. According to him a declaration made under R.16 (ii) is final and the same cannot be nullified on account of any post determination of the validity of a nomination paper under R.14 (iv). The election of the petitioner can now be invalidated only under Rule 43 by the Munsif holding enquiry into the validity of election. He has further contended that the Director who heard the appeal filed on behalf of the respondent No. 4, was obliged to give a hearing to the petitioner and as no opportunity was given to the petitioner to place his case before the appellate authority the impugned order, (Annexure 2) has been passed in violation of the principles of natural justice. He has submitted that the Director (respondent No. 2) or the Secretary of the Board has no authority like one conferred upon the Munsif under Rule 43 to set aside the election and direct for a fresh election. The order as contained in the communication of the Secretary dated 21-3-1983 (Annexure 4) is, therefore, wholly without jurisdiction. Learned counsel appearing for the respondent Board as also learned counsel appearing for the respondent No. 4 have contended, on the other hand, that the declaration of the election of the petitioner under Rule 16 (ii) without awaiting the result of the appeal of the respondent No. 4 is invalid. In any event the exercise of appellate jurisdiction by the Director is authorised under Rule 14 (iv). As the Director, the appellate authority, has found that the nomination paper of the respondent No. 4 was wrongly rejected by the Election Officer, the respondent No. 4 was/is a candidate in the field and Rule 16 (ii), therefore, had/has no application in such a case. As the declaration of the election of the petitioner was/is a nullity, the direction as contained in Annexure-4 is a valid direction. Both the learned counsel for the Board and the learned counsel for the respondent No. 4 emphasised on the words used in the appellate order, "Heard both the parties at length" to suggest that the petitioner also was heard by the Director before passing the order. According to them the petitioner was present before the Director. According to the counter affidavit of the respondent No. 4.:- "the writ petitioner was present in the office of the respondent No. 2 and participated in the hearing of the appeal on 14-3-1983 which could be clearly borne out from the order contained in Annexure 2. The writ petitioner also filed voters' list personally, made submissions personally." Learned counsel for the respondents have also contested the contention of the learned counsel for the petitioner that the declaration made under R.16(ii) can be challenged under Rule 43. According to them in Rule 43 whereas there is a specific mention of 'publication of the result of the election under R.41, there is no mention to such publication under Rule 16 (ii). Presentation of election petition under Rule 43 has been deliberately confined to the election under Rule 41, A Munsif entertaining election petition under Rule 43 in a case covered by Rule 16 (ii) shall do violance to the rule itself and act without jurisdiction.

6. Although, in my opinion, facts of this case do not require any detailed examination of the various provisions of the Act and the rules and this case can be disposed of on the adjudication of only two issues namely, (I) Whether the Director (respondent No. 2) violated the principles of natural justice in disposing of the appeal of the respondent No 4 without giving any opportunity of hearing to the petitioner, and (II) Whether the rejection of the nomination paper of the respondent No. 4 by the respondent No. 3, was valid. If the answer of these two issues are in the affirmative, the petitioner must succeed. If the answer of these two issues are in the negative, the petition must fail. But on the facts of the present case, in my view, the first issue has to be answered in favour of the petitioner and the second issue has to be answered in favour of the respondent No. 4.

7. It is admitted on all sides that the registered notice of the appeal issued by the respondent No. 2 on 7-3-1983 was received by the petitioner on 14-3-1983 at his village in the district of Bhojpur. The impugned order (Annexure 2) was passed on 14-3-1983, itself. The petitioner, therefore, had no notice of the appeal before its hearing by the Director (respondent No. 2). The respondent No. 4 has suggested that the petitioner was present, produced the voters' list at the hearing of the appeal and personally made submissions. It is fully evidenced by the contents of the impugned order (Annexure 2) that the respondent No. 4, the appellant before the Director

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and the Election Officer, respondent No. 3 were represented by their respective lawyers at the time of hearing and they were heard on the questions of fact and law. There is no record to show that the petitioner was represented by any counsel or that he was present himself. The statement in the counter affidavit of the respondent No. 4 that the petitioner was present, filed a copy of the voters' list and made some submissions personally is not supported even by a valid affidavit what to speak of any other evidence. It is not possible to hold that the petitioner was heard by the appellate authority. The respondents have not contested the proposition that in the absence of opportunity of hearing afforded to the petitioner the appellate order will be invalid. It is so well settled that it needs no repetition. A person who is likely to be visited with a civil consequence must be given adequate opportunity to represent his case. As a consequence of the appellate order the election of the petitioner was/is undoubtedly affected. As the petitioner was not heard by the appellate authority, the impugned order, (Annexure 2) having been made in violation of a well recognised principle of natural justice, is invalid.

8. Coming to the question of the validity of the rejection of the nomination paper of the respondent No. 4 by the Election Officer, the respondent No. 3, it has to be seen that one Sudarshan Singh signed as the proposer on the nomination paper of the respondent No. 4. In the voters' list of constituency No. 5 of the agriculturists his name was/is included at Sl. No. 60. There has been a mistake, however, in the printing of the voters' list and at the top of the page in which Sudarshan Singh's name was/is included instead of constituency No. 5, constituency No. 6 had/has been printed. This obviously was/is a printing mistake. In all the pages preceding page in which Sudarshan Singh's name was/is printed as also succeeding the said page correct constituency number and other particulars were/are printed. The respondent No. 3 rejected the nomination paper of the respondent No. 4 on the ground that Sudarshan Singh's name was not included in the voters' list of the constituency. The respondent No. 2 examined the voters' list and found that Sudarshan Singh, although belongs to a different village, was included in the voters list at Sl. No. 60. He accordingly held that the rejection of the nomination paper of the respondent No. 4 by the respondent No. 3 was bad in law and set aside and declared his nomination valid. I have referred to rule 14 (i) (a) earlier. Nomination of the respondent No. 4 could be rejected only if the proposer's name was not found entered in the list of voters. Some sort of clerical or printing mistake in the voters' list either in the name of the voter or in any other particular, cannot justify holding that the proposer's name is not included in the list of voters. On the question of rejection of a nomination paper on account of some misdescription as to the electoral roll number of the candidate or of the proposer and like defects quite a few cases under the Representation of the People Act (1951) have been decided. Provisions under Rule 14 are more or less similar to the provisions made in this behalf in the Representation of the People Act under which it has been made incumbent upon the Election Officer to record in writing a brief statement of his reasons for rejecting the nomination paper although for accepting the nomination paper he is not required to do so. In Section 33 (4) of the Representation of the People Act a proviso is appended saying:-

"Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral rolls or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the Returning Officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked."

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In cases after cases the Supreme Court emphasised:-

"What is of importance in an election is that the candidate should possess all the prescribed qualifications and that he should not have incurred any of the disqualifications mentioned either in the Constitution or in the Act. The other information required to be given in the nomination paper is only to satisfy the Returning Officer that the candidate possesses the prescribed qualification and that he is not otherwise disqualified. In other words those informations relate to the proof of the required qualifications" (see Ram Awadesh Singh v. Smt. Sumitra Devi, AIR 1972 SC 580). A nomination paper should not be rejected on such technical defects which occur on account of either clerical or printing mistakes. This, as the principle has been recognised by the Supreme Court in Dev Kanta Barooah v. Kusharam Nath (AIR 1961 SC 1125), and Rangilal Choudhury v. Dahu Sao, (AIR 1962 SC 1248). The learned counsel for the petitioner produced before us a copy of voters' list of constituency No. 5. There is misdescription at the relevant page and the constituency No. printed therein is different. The name of the village and the Panchayat is also different. But these descriptions are misprints and there is no manner of doubt that the proposer of the respondent No. 4 is shown at Sl. No. 60 of the voters' list of the constituency No. 5. True, there is no provision in the rules like one as contained in the proviso to Section 33 (4) of the Representation of the People Act, yet there is no reason not to accept as a principle that a defect which is not of substantial character such as an inaccurate description on account of printing error in the electoral roll should be ignored. Rejection of the nomination paper of the respondent No. 4 by the respondent No. 3 for the reason stated before us, falls in the category of a defect which is not of a substantial character. The respondent No. 2 has rightly held in his order (Annexure 2) that the nomination paper of the respondent No. 4 was valid and its rejection by the respondent No. 3 was illegal.

9. The event of the declaration in favour of the petitioner under R.16 (ii) as the duly elected member of the Committee took place on 7-3-1983. The respondent No. 3 rejected the nomination paper of the respondent No. 4 on 26-2-1983 and as the candidates other than the petitioner withdrew from the contest on 2-3-1983, and the petitioner alone remained in the field in constituency No. 5, the respondent No. 3 was not required to follow the election programme any further. He could therefore make a declaration in favour of the petitioner under R.16 (ii). The respondent No. 4 had, however, filed an appeal against the decision of the Election Officer rejecting the nomination paper before the Director (respondent No. 2) on 2-3-1983, that is to say within seven days of the decision rejecting his nomination paper as provided under Rule 14 (iv). Before the respondent No. 2 ordered for acceptance of the nomination paper of the respondent No. 4 in the appeal, the petitioner had been duly elected to the office. Although the appeal had been filed on 2-3-1983 and no declaration had been made under Rule 16(ii) until that date or even thereafter until 7-3-1983, the respondent No. 2 did not pass any order of stay. Learned counsel for the petitioner has contended that the proceeding before the Director (respondent No. 2) became infructuous and the order passed by him on 14-3-1983 can have no effect in view of the declaration made under Section 16 (ii). This argument is attractive. It also finds support from the observations by Untwalia, J. (as he then was) in the case of Dhanushdhari Prasad v. Sub-Divisional Magistrate, Saran. (1970 Pat LJR 539). In an election held under Bihar Panchayat Elections Rules, 1959, Dhanushdhari Prasad was declared duly elected under Rule 26 thereof. The nomination paper of the respondent No. 2 of his case had been rejected by the Election Officer on 5-2-1970 and he had filed objection under Rule 23 (4) of the said rules before the Sub-divisional Magistrate on 9-2-1970. Before the disposal of his objections, however, the Election Officer declared Dhanushdhari Prasad duly elected to the office of the Mukhia of the Gram Panchayat concerned under R.26 of the said rules on or before 16-2-1970. Rule 23 (4) of the Panchayat Elections Rules with which Untwalia, J. was concerned prescribed a period of seven days for the objections to the rejection of the nomination paper. It provided a further period of one week for disposal of the objections. This Court in several decisions has held that the period of

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seven days provided for the filing of the objection petition is mandatory but the period of one week provided thereafter for disposal of the objections is directory. In the case before Untwalia, J. the declaration made on or before 16-2-1970 fell within two weeks counted from the date of rejection of the nomination paper. Rejecting the argument that the proceeding before the Sub-divisional Magistrate had become infructuous and the order recorded by him on 23-2-1970 could not be given effect to. Untwalia, J. said:-

"I am unable to accept this argument. For the purpose of making the order, the Sub-divisional Magistrate may take more time, but on the express language of Rule 26, it is abundantly clear that the Election Officer has no jurisdiction to make the declaration before the expiry of the period both for filing and disposal of the objection petition as provided in sub-rule (4) of Rule 23. The period provided undoubtedly for both is two weeks. The second period may be directory, but that does not mean that the period is not provided in Rule 23 (4) of the Rules. It is provided and even if directory, ordinarily and generally, it is meant to be complied with and hence the Election Officer making a declaration under Rule 26 before the expiry of the total period of two weeks does an act which is ultra vires and his declaration must be held to be nullity. I am inclined to think, although that question does not arise in this case, that the declaration made on the expiry of two weeks and before passing of the order of the Sub-divisional Magistrate under Rule 23 (4) of the Rules may not be ultra vires, illegal or a nullity. But since in this case, the declaration was not made on the expiry of two weeks from 5-2-70, that is, on 20-2-70 and before 23-2-70, but it was made before the expiry of the period of two weeks, I have no doubt in my mind that such a declaration was illegal, ultra vires and a nullity."

A prescription, even though directory, for disposal of the objection petition filed under Rule 23 (4) of the Panchayat Elections Rules was available in Dhanushdhari Prasad's case for holding that the Election Officer could not make a declaration under Rule 26 before the expiry of the total period of two weeks. A period of seven days for filing the appeal against the decision of the Election Officer rejecting the nomination paper is prescribed under Rule 14 (iv). There is no prescription, however, for the disposal of the appeal by the Director or the officer authorised by the Chairman of the Board. On the basis of the ratio of the case of Dhanushdhari Prasad, the Election Officer undoubtedly, is obliged to wait for seven days from the date of the rejection of the nomination paper, of a candidate to enable him to file appeal before the Director or the Officer authorised by the Chairman. A further obligation to wait until the date of withdrawal is over, can, by implication, be read in Rule 15. No statutory obligation to wait for any period thereafter is available under the rules. A declaration made under Rule 16 (ii) after the expiry of the period of seven days prescribed under Rule 14 (iv) and the period of 3 days under Rule 15, therefore, cannot be said to be ultra vires, illegal or nullity.

10. There is no specific provision under rules empowering the Director or the Officer authorised by the Chairman of the Board to stay further proceedings in the election. It is doubtful, in the absence of a specific provision that the Director or the officer authorised by the Chairman of the Board shall have the power to stay further proceedings in the election. The election officer cannot call upon the constituency to fill the remaining vacancies in accordance with election programme notified under Rule 8 unless he takes a decision and makes declaration under Rule 16 (ii). Rules suffer from serious lacuna in this regard. Perhaps prompt and immediate action in course of election by the concerned officers alone can save incidents like one in the instant case. It is possible in a given case for the appellate authority to dispose of the appeal before the Election Officer's action under Rule 16 (ii). In that case the Election Officer shall be obliged to follow the directions of the appellate authority. But if no such appellate decision comes before the stage of Rule 16 is reached the Election Officer on the date fixed for deciding to proceed with the election cannot postpone the declaration under Rule 16 (ii).

11. Can it then be said that the order of the appellate authority coming after the declaration under R.16 (ii) is infructuous and cannot be given effect

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to? In my view, a declaration under Rule 16 (ii) made after seven days as prescribed under Rule 14 (iv) and three days under Rule 15 (i) may not be given effect to. A person aggrieved by the rejection of his nomination paper will now be required to challenge the election in accordance with law. But a declaration made within the time limit for filing the appeal under Rule 14 (iv) and three days under Rule 15 shall be invalid. The Election Officer shall be obliged to act in accordance with the directions of the appellate authority.

12. What is then the remedy to a person who is deprived of this right to contest the election on account of illegal rejection of his nomination paper? The instant case is a glaring example of the denial of the right to contest the election. I have pointed out earlier that improper rejection of a nomination paper is a ground to set aside an election under Rule 43 (iii) (c). But Rule 43 says that election can be challenged by presenting an election petition at any time within fifteen days from the date of publication, under Rule 41, of the result of an election. In Rule 43 there is no mention of declaration made under Rule 16 (ii). On the basis of this, it has been argued before us that no election petition can be filed against a declaration made under Rule 16 (ii). I have given anxious consideration to this aspect of the law. In my opinion, even a declaration made under Rule 16 (ii) shall be covered by Rule 43. Support for this conclusion is available in the language of the relevant rules. Rule 16 (ii) has envisaged a situation in which number of candidates is less than the number of vacancies. The Election Officer is required to make the declaration in favour of the candidates who fit in the vacancies. Rule 16 (ii) still requires the election officer to proceed with the election programme notified under Rule 8 for remaining seats. Declaration under Rule 16 (ii) is thus a step in the process of election. Not one but all the constituencies are called upon to elect their representatives under Rule 7. Notice to elect their representatives is given to the electorate of the constituencies according to the election programme published in accordance with Rule 8. Nominations followed by different steps in course of election culminate in the poll and declaration of results under Rule 41. A person declared elected under Rule 16 (ii) can take his office only after the Election Officer shall prepare a return of the result of the election in form XIV and declare the candidates elected under Rule 41. Market Committee shall be deemed to be constituted only thereafter. It cannot, therefore, be reasonable to suggest that validity of election of a candidate declared elected under Rule 16 (ii) cannot be challenged under Rule 43. Moreover there is nothing in the language of Rule 43 to suggest that challenge is confined to the declarations made under Rule 41. The opening words of the rule only show that the time limit under which election may be challenged is fifteen days from the date of publication under Rule 41, but the petition presented under Rule 43 may challenge any election by, making the candidates at the election parties to the petition and after complying with requirements of deposits of security for costs etc. It is not possible to read in the words "may challenge the election", further words "under Rule 41" or like words to restrict the challenge to the candidates declared elected under R.41 only.

13. In the instant case, however, I do not propose to leave the parties to get the issues settled by the Munsif under Rule 43. Right to challenge an election by filing election petition may be an adequate and effective remedy, yet this Courts, jurisdiction is not ousted. Unless the order of the respondent No. 2 as contained in Annexure 2 is set aside and consequently the direction as contained in Annexure 4 is made inoperative, the petitioner cannot claim on the basis of declaration under Rule 16 (ii) that he is a member of the committee. I have found that the order of the Director (Annexure-2) is bad in law. But at the same time I have also found that declaration by the Election Officer under R.16 (ii) in favour of the petitioner is illegal. If on account of the infirmities noticed by me the order of the respondent No. 2 (Annexure 2) will be quashed without quashing the declaration made by the Election Officer in favour of the petitioner, a bad and invalid action shall be perpetuated. It is well settled that an order which may be bad and invalid should not be quashed if its quashing shall perpetuate another illegality. Alternatively

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if one bad order is brought to the notice of the Court and in course of hearing it has noticed another bad order which should not be allowed to exist, it can suo motu exercise its jurisdiction under Article 226 of the Constitution and invalidate that order.

14. During the course of hearing we have been informed that the date of poll had been fixed and when this Court admitted this application it did not stay the poll, but only stayed the publication of the result. Learned counsel for the petitioner has, however, submitted that the date of poll was fixed under an invalid order of the Director of the Board (Annexure-2). There has been no valid order declaring the petitioner's election under Rule 16 (ii) invalid. Until declared invalid by a competent court or authority, the respondents 1 to 3 could not treat the constituency vacant. There is substance in this contention of the learned counsel. It will be improper to recognise as valid actions taken by the respondents 1 to 3 pursuant to the order as contained in Annexure-2. The respondents cannot take advantage of the principle that a void action should be ignored as learned counsel for the petitioner has rightly contended that until avoided declaration of election of the petitioner is valid.

15. To conclude, there is force in the contentions of learned counsel for the petitioner that the order as contained in Annexure-2 is invalid. There is also force in the contention of the learned counsel for the respondents that the declaration of the election of the petitioner under Rule 16 (ii) and the rejection of the nomination paper of the respondent No. 4 are illegal and void. I accordingly hold that the order as contained in Annexure-2 is void and fit to be quashed. The declaration of the election of the petitioner by the respondent No. 3 under Rule 16 (ii) is also bad in law and fit to be quashed.

16. In the result this application is allowed, the order of the Director, Bihar Agricultural Produce Marketing Board, Patna dated 14-3-1973 is hereby quashed. Consequently the communication of the Secretary of the Bihar State Agricultural Marketing Board, as contained in Annexure-4, is also quashed and all consequential actions are declared invalid. Let a writ in the nature of certiorari accordingly issue. The declaration of the election of the petitioner under Rule 16 (ii) by the respondent No. 3 as a member of Agricultural Produce Market Committee, Arrah is hereby declared void. Rejection of the nomination paper of the respondent No. 3 on 26-2-1983 in constituency No. 5 of Agricultural produce Market Committee, Arrah is also, hereby quashed. The respondent Nos. 1 to 3 are directed to hold a fresh election in accordance with law. Let a writ in the nature of mandamus accordingly issue. On the facts and in the circumstances of this case there shall, however, be no order as to costs.

S. SARWAR ALI, Actg. C. J.:- I agree.

Application allowed.

AIR 1984 PATNA 163 "Ramautar v. Managing Dir., B. S. A. Mktg. Board"

PATNA HIGH COURT

Coram : 2 HARI LAL AGRAWAL AND SURENDRA NARAIN JHA, JJ. ( Division Bench )

Ramautar Choudhary, Petitioner v. The Managing Director, Bihar State Agricultural Marketing Board, Patna and others., Respondents.

Civil Writ Jurisdiction Case No. 217 of 1983, D/- 10 -1 -1984.

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(A) Bihar Agricultural Produce Markets Act (16 of 1960), S.9 and S.18 - AGRICULTURAL PRODUCE - JUDGEMENT - Dissolution of Market Committee - Appointment of Administrator - imposition of market fees by Administrator on basis of best judgment assessment is legal

Whenever a body corporate is superseded or dissolved, then the authority appointed for discharging the functions of the body corporate, by dint of its appointment and the conferment of powers under the notification, becomes competent to assume and discharge all the powers and functions of the main body. The purpose of appointing authority is to carry out the entire scheme of the statute. (Para 4)

On the dissolution of the Market Committee, powers and functions of the Assessment Sub-Committee, like any other Sub Committee, absolutely vest in the specified person, namely, the Administrator appointed by the State Government in that behalf. Therefore, imposition of market fees by Administrator on basis of best judgment assessment is legal. (Para 9)

(B) Bihar Agricultural Produce Markets Act (16 of 1960), S.9 - AGRICULTURAL PRODUCE - WRITS - Order of assessment based on best judgment-assessment - Legality of - Best judgement order passed by Administrator sitting along with Secretary of dissolved Committee - Secretary's participation was that of an unauthorised person in the performance of a duty of a quasi-judicial nature by the Administrator - Such order is rendered invalid as it was influenced and observed by the unauthorised person.

Constitution of India, Art.226. (Para 10)

Cases Referred : Chronological Paras

AIR 1980 SC 1124 : 1980 All LJ 490 7

1971 BLJR 1038 3, 7

G.C. Bharuka and Navaniti Prasad Singh, for Petitioner; Vishwambhar Sharma and R.N. Roy, for Respondents.

Judgement

HARI LAL AGRAWAL, J.:- The petitioner is a trader in foodgrains and is a licensee under the Bihar Agricultural Produce Markets Act, 1960, (hereinafter referred to as 'the Act'). He has challenged the order of assessment of market fee for the years 1979-80, 1980-81 and 1981-82 passed by one composite order dated 3-7-1982 (Annexure '1'),by the Sub-Divisional Officer, Sadar, Purnea, appointed as Administrator under the provisions of sub-sec. (5) of Section 9 of the Act, of the Agricultural Produce Market Committee, Banmankhi, on the dissolution of the Market Committee on account of the expiry of its tenure as provided under the Act, as well as its Secretary. By this order an amount of Rs. 8065.90 was assessed as market fee by way of best judgment assessment on taking the total turnover of the petitioner at Rs. 7,21, 590.00 for all the three years.

2. In the counter-affidavit filed on behalf of respondent No. 3, the position of the Assessment Sub-Committee has been admitted in paragraph 15 in these words :

" ... ... ... While superseding the Market Committee the Assessment Sub-Committee also was automatically superseded ........."

After making this statement it has been asserted that thereafter all the powers of the Assessment Sub-Committee were vested in the Chairman.

3. I have examined the scheme of the Act. After the decision in Mangalchand Ramchandra v. State of Bihar, (1971 BLJR 1038), where it was held that the remedy of the Market Committee, in case of dispute between the trader and the Market Committee, lies before the Civil Court for the purpose of assessment, the Legislature had come forward with an amendment to the Act and inserted the new Section 27-A, in the year 1973, by an Ordinance which was kept alive by subsequent Ordinances till Act No. 60 of 1982, was passed, in order to overcome this difficulty. Section 9 (5) was also similarly added whereby the life of the Market Committee was fixed for a firm period of three years.

4. The order of assessment was challenged by Mr. Bharuka firstly on the ground that during the period of dissolution of the Market Committee the specified person appointed by the State Government to discharge the functions of the Market Committee could not discharge the functions of the Assessment Sub-Committee and make any order of assessment, and on going out of office of the two office bearers, namely, the Chairman and the Vice Chairman of the Market Committee, the Assessment Sub-Committee was rendered non est, particularly when Section 9 (5) did not specifically authorise the specified person to assume the powers of the Assessment Sub-Committee also. In this connection the main ground of Mr. Bharuka was that the Assessment Sub-Committee was not a Sub-Committee appointed by the Market Committee as such, but it was a statutory committee appointed by the Legislature and, therefore, must be held to be a body independent from the Market Committee. Mr. Bharuka referred

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to various provisions of Section 27-A to contend that the various powers of issuing notice, production of accounts of making of best judgment assessments were conferred upon the Sub-Committee. Mr. Bharuka, however, seems to have failed to appreciate that the provision of Section 27-A in its very nature must refer only to the Assessment Sub-Committee in the matter of performance of the very functions starting from the issue of the notice up to the making of the assessment, just like the reference to the Market Committee in regard to the functions to be performed by the Market Committee. The position is analogous to the provisions contained in the Municipal Act. Whenever the body corporate is superseded or dissolved, then the authority appointed for discharging the functions of the body corporate, by dint of its appointment and the conferment of powers under the notification, becomes competent to assume and discharge all the powers and functions of the main body. The whole purpose of appointing an authority is to carry out the entire scheme of the statute. I do not find any merit in the contention that simply because the Assessment Sub-Committee has been constituted by the Legislature it will cease to be a Sub-Committee under, the control and outside the purview of Section 19 of the Act. The three members of the Assessment Sub-Committee are none else but the Chairman, the Vice Chairman and the Secretary of the Market Committee. I am sorry to observe that Mr. Vishwambhar Sharma, Advocate for, the respondent Market Committee could not advance any satisfactory argument on this important question which is bound to affect a large number of Market Committees where such situation frequently occurs

5. This at once takes us to the provisions contained in sub-section (5) which reads as follows:

The underlined provision, contained in subsection (5) quoted above clearly indicates that the prescribed authority will exercise all the powers and perform all the duties of the Market Committee in regard to the provisions of the Act or the Rules framed thereunder. The powers and duties of the Market Committee are prescribed under Section 18 of the Act which, inter alia, lays down for implementation of the provisions of the Act, the Rules and Bye-laws thereunder, in the market area. Section 19 empowers the Market Committee to appoint from among its members a Sub-Committee or a Joint Committee, and to delegate to such Committee such of its powers or duties as it may think fit. Under sub-section (2) of Sec.19, Market, Committee retains the power of revising any decision of a Sub-Committee or a Joint Committee.

6. Under Section 27-A the Market Committee has to appoint an Assessment Sub- Committee for the purpose of maintaining a register showing the total purchase and sales made by traders and the fees recovered from them and to levy fee payable under S.27 on the basis of returns furnished under subsection (2), and to make assessment of the amount of market fee leviable on the traders. It may be mentioned that the 1982 Act has also inserted a new sub-section as sub-section (1) and the old provisions have been put under sub-section (2) thereof. The new sub-section (1) of Section 18 reads as follows-

"18. Powers and Duties of the Market Committee. (1) It shall be the duty of a Market Committee to implement the provisions of this Act, the rules and bye-laws made thereunder in the market areas, to provide such facilities for marketing of agricultural produce therein as the Board may from time to time direct, and do such other acts as may be required in relation to the superintendence, direction and control of market, or for regulating the marketing of agricultural produce in any place in the market area, and for purposes connected with the matters aforesaid,

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and for that purpose the Market Committee may exercise such powers and perform such functions and discharge such duties as may be provided by or under this Act."

Section 27 of the Act gives power to the Market Committee "to levy and collect market fees on the agricultural produce brought or sold in the market area at the rate of Re. 1/- for sale of agricultural produce worth Rs. 100/-. These are all, the relevant provisions of the Act which have been noticed by us for understanding and answering the arguments advanced by Mr. Bharuka.

7. A volume of case law has been generated on different questions raised by the traders, but we do not find any direct authority for the question with which we have been confronted. Though sub-sec. (5) of S.9 prima facie vests all the powers of the Market Committee in the Administrator, the further argument of Mr. Bharuka was that the Market Committee itself having no power of adjudicating a dispute between it and the traders, there is no question of appointment of any sub-committee of the nature of an assessment sub-committee inasmuch as under Section 19, a sub-committee can be appointed by a market committee delegating one or more of the powers and duties of the market committee itself as may be thought fit by it. In other words, as the market committee has got no statutory power to make an assessment of market fee in case of a dispute between the committee and the trader, the question of constituting an assessment sub-committee does not arise. Mr. Bharuka further contended that the assessment sub-committee constituted under Section 27-A was not a delegatee of the market committee within the meaning of Section 19, but was an-independent statutory body and, therefore, the power of this body could not be exercised by the Administrator, respondent No. 2. It is difficult to accept this argument of Mr. Bharuka. It is, no doubt, true that in the case of Mangalchand Ramchandra, 1971 BLJR 1038 (supra), Untwalia, J. as he then was in para 19 observed that-

"... ... ... In absence of such a machinery learned Advocate-General had to admit that fee can be recovered by the Market Committee from a trader only if the Market Committee files a suit in a Civil Court and establishes the liability of the trader to pay the market fee claimed by the Market Committee. Until that is done, under the law, as it stands at the moment, it is not possible to take the view that the petitioners on their claim of the nature of their transaction are liable to pay any fee to the Market Committee or are committing any breach of the Act or of any Rule by not paying such a fee."

In this connection, I may refer to a Supreme Court decision in Ram Chandra Kailash Kumar and Co. v. State of U. P., (AIR 1980 SC 1124). This is a case arising out of Uttar Pradesh Krishi Utpadan Mandi Samitis Adhiniyam, where the judgment of the Court was again delivered by Untwalia, J. while his Lordship was in the Supreme Court. Some views observed in para 10 of the said judgment can be usefully quoted:

"... .. ... A machinery for adjudication of disputes is necessary to be provided under. the rules for the proper functioning of the market committees. We have already observed and expressed our hope for bringing into existence such machinery in one form or the other. But it is not correct to say that in absence of such a machinery no market fee can be levied or collected. If a dispute arises then in the first instance the market committee itself or any sub-committee appointed by it can give its finding which will be subject to challenge in any Court of law when steps are taken for enforcement of the provisions for realisation of the market fee."

I feel persuaded to observe that the above observation of his Lordship weakens the observations made while deciding the case of Mangalchand Ramchandra, (1971 BLJR 1038) (supra) in this Court.

8. Be that as it may, it cannot be disputed that the levy of fees and its realisation is the most essential element for carrying out the purpose of the Act and achieving the ideals envisaged thereunder, because in the absence of revenue no object can be fulfilled. Therefore, if the market committee is superseded, and the contention of Mr. Bharuka is to be accepted, then practically it will frustrate the aims and objects of this beneficial legislation. The Court, therefore, must try to avoid such situation by applying the accepted principles of interpretation of statutes. By incorporation of sub-section (1) of Section 18 quoted earlier, large powers were conferred upon the Market Committees by the Legislature empowering it to do all connected acts and perform all such functions and discharge all duties as provided by or under this Act. The power to levy fee and realise it is a matter related to establishment

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and regulating the markets. The powers and duties of the Market Committee are also enumerated in Rule 67 of the Rules and Rule 82 deals with levy and collection of market fee.

9. For the reasons discussed above, I feel no difficulty in holding that on the dissolution of the Market Committee, the powers and functions of the Assessment Sub-Committee, like any other Sub-Committee, absolutely vest in the specified person, namely, the Administrator appointed by the State Government in that behalf. The first point of Mr. Bharuka, therefore, must fail and it is hereby rejected.

10. Mr. Bharuka, however, raised another ground that in case the Court holds that on the dissolution the powers of the Assessment Sub-Committee vested exclusively in the Administrator, then the order of assessment having been passed not by the Administrator alone, but along with the Secretary of the Market Committee, the participation of the Secretary would vitiate the order of assessment.

There appears to be substance in this argument. The tenor of the order (Annexure 1) indicates that respondent No. 2 had constituted a Sub-Committee for making the best judgment assessment order along with the Secretary. No authority is needed for the proposition that participation of an unauthorised person in performance of a duty of a quasi-judicial nature would tender the order of the Authority invalid as his opinion has been influenced and observed by an outsider. On this short ground the order of assessment must be quashed and cancelled, with liberty to the proper authority to pass a fresh order of assessment in accordance with law.

11. In the result, the application succeeds and is hereby allowed, the impugned order of assessment contained in Annexure 1 is quashed. In the circumstances, however, do not feel inclined to award cost to the petitioner.

SURENDRA NARAIN JHA, J.:- I agree.

Petition allowed.

AIR 1983 PATNA 311 "Sree Bahariji Mills Ltd., M/s. v. State"

PATNA HIGH COURT

Coram : 2 S. SARWAR ALI, C.J., AND LALIT MOHAN SHARMA, J. ( Division Bench )

M/s. Sree Bahariji Mills Ltd., and others, petitioners v. State of Bihar and others, Respondents.

Civil Writ Jurisdiction Case Nos. 1660 and 4122 of 1981. 90 and 91 of 1982, D/- 18 -5 -1983.

(A) Bihar Agricultural Produce Markets Act (16 of 1960), S.39 - AGRICULTURAL PRODUCE - AMENDMENT - GENERAL CLAUSES - Amendment of Schedule - Notification under S.39 - Non-publication of notification in Gazette - No amendment to schedule comes about.

Bihar and Orissa General Clauses Act (1947). S.28.

In view of S.28 of the Bihar General Clauses Act any notification is deemed to have effect only from the date it is published in the gazette. Where the order amending and adding certain commodities in the schedule though issued in 1972, was not published before 1980, the schedule could be said to have been amended in 1980 only when the order was duly published and not earlier. (Para 7)

(B) Bihar Agricultural Produce Markets Act (16 of 1960), S.4, S.39 - AGRICULTURAL PRODUCE - Order under S.39 adding commodities in schedule, not published in gazette - Items do not stand added to schedule - Subsequent notification under S.4 purporting to apply to all items in schedule in respect of certain Market Committee - Items purportedly added to schedule cannot be said to be included in agricultural Produce with reference to Market Committee in question. (Para 8)

(C) Bihar Agricultural Produce Markets Act (16 of 1960), S.3, S.4(3), S.39 - AGRICULTURAL PRODUCE - AMENDMENT - Amendment of schedule by notification under - Publication of notification and consideration of objections to proposed amendment is obligatory - Ordinance 35 of 1982 does not alter this position.

Bihar Agricultural Produce Markets (Validation) Ordinance (35 of 1982).

Where the order under S.39 amending the schedule to the Act was not published in the gazette nor procedure prescribed under S.3 of inviting objections and consideration of the objections was followed, the schedule could not be considered to be amended by the order purporting to amend the schedule. In such a case. Bihar Ordinance 35 of 1982 also could not be pressed into service for conferring validity on the amendment as Ss.3, 4 and 39 of the Act have not been disturbed by the Ordinance. (Paras 9, 10)

Sub-sec.(2) of S.3 making it obligatory for the notification to invite for consideration objections and suggestions if any, to the proposed amendment, grants a valuable right to the traders, agriculturists. AIR 1976 SC 263. Rel. on. (Para 7)

Cases Referred : Chronological Paras

AIR 1976 SC 263 : 1975 CH LJ 1993 9

Shreenath Singh, G.C. Bharuka and Navanity Prasad Singh, for Petitioners; P.S. Mishra, A.R. Pandey. Shivesh Mishra, Ram Janam Ojha and L.K. Bajla, for Respondents.

Judgement

LALIT MOHAN SHARMA, J.:- The petitioners in these four cases have challenged the right of the different Agricultural Produce Market Committees, the respondents to the cases, to demand and collect market fee on Ata, Sujji and Maida under the provisions of the Bihar Agricultural Produce Markets Act, 1960 and the Rules framed thereunder. The main argument has been addressed on behalf of the petitioners in C.W.J.C. 1660 of 1981 with reference to the paperbook of that case,

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which has been adopted in the other cases.

2. It has been contended that since Ata. Sujji and Maida have not been legally included in the schedule to the Act and in the list of items notified in accordance with law with reference to the Market Committees the Market Committees have no jurisdiction to direct the petitioners to collect and pay market fee thereon. The petitioners have also taken several other points in support of their case which, in view of my opinion on the above question, are not necessary to be dealt with.

3. For the better regulation of buying and selling agricultural produce and the establishment of markets therefor, the Bihar Agricultural Produce Markets Act (hereinafter referred to as 'the Act') was enacted in 1960. By S.2(1)(a), the term 'agricultural produce' was defined as the produce specified in the schedule to the Act. Ata, Sujji and Maida were not included in the schedule. S.3(1) empowers the State Government to declare its intention by notification of regulating the purchase and sale of such agricultural produce and in such area as may be specified, inviting objections and suggestions within a period of two months. S.4 provides for consideration of the objections and suggestions so received and consequent appropriate reduction in area and exclusion of any item in terms of produce by another notification. It is also enjoined that for such market area, there shall be a principal market yard (one or more sub market yards are also permitted). Sub-sec.(3) of S.4 deals with the modification of the market area and the list of the agricultural produce applicable to any market area in the following terms:-

"(3) Subject to the provisions of S.3, the State Government may at any time, by notification exclude from a market area any area or any agricultural produce specified therein or include in any market area any area or agricultural produce included in a notification issued under sub-sec.(1)".

By a further notification under S.5, the details of the principal market yard and the sub market yards are to be declared. By still another notification under S.6 a Market Committee is to be established for every market area. S.27 places a duty on the Market Committee to levy and collect fees on the agricultural produce bought or sold in the market area at a given rate. The fee has been made payable by the buyer and the procedure with respect to the levy and collection is laid down in Rr.82 and 83.

4. Coming to the circumstances leading to the filing of C.W.J.C, 1660 of 1981 the respondent No. 2, Patna City Market Committee was constituted, under a notification dated 11-11-1970, with only a few commodities out of the schedule. By another notification dated 9-9-1974, as contained in Annexure-2, all the commodities specified in the schedule were notified by a general reference to that effect and without actually detailing the items, S.39 of the Act authorises the State Government to add to, amend or cancel any of the items in the schedule by a notification. By an order dated the 12th Feb. 1972, the State Government purported to add inter alia Ata. Sujji and Maida in the schedule. This order, however, was not notified before 1980. It was published in the extraordinary issue of the Bihar Gazette on the 15th May, 1980. However, no notifications were issued under Secs.3 and 4 for the purpose of declaring the added items as notified agricultural produce for the respondent-Market Committee.

5. According to the respondents, the schedule stood amended in 1972 by virtue of the aforesaid order dt. 12-2-72 and the fee on the disputed items was payable with effect from the establishment of the Market Committee in 1974. Several letters in this regard were exchanged which have been detailed in the writ application, According to the petitioners' case, the schedule was not amended before 15-5-1980. It is further contended that since the notifications under Secs.3 and 4 with respect to these items have not ever been issued, the petitioners cannot be liable to collect and pay fees thereon.

6. During the pendency of these cases, an Ordinance being. The Bihar Agricultural Produce Markets (Validation) ordinance 1982 (Bihar Ordinance No. 35 of 1982) was passed. The main provision in the ordinance is quoted below :-

"2. Notwithstanding the non-publication of the notification Nos. 14841 dt. 27th Oct, 1967 in the Bihar Gazette and 2028 dt. 12th Feb. 1972 in the Bihar Gazette in time the orders made for

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regulating the market with respect to such items, and market-fees levied, collected or to be levied and collected shall not be illegal and invalid merely on that ground and notwithstanding anything contained to the contrary in any judgment, decree or order of any court, the schedule of the notifications Nos. 14841 dt.27th Oct. 1967 and 2028 dt.12th Feb. 1972 shall always be deemed to be valid and effective and all levies made or market-fees collected shall be deemed to have been validly realised, taken, done and issued as if the provisions of this Ordinance were in force at all material times when such realisation was made, action taken, things done and orders issued and no suit or proceeding shall be maintainable for the refund of the levies made or fee collected or action taken under those notifications." The notification No. 14841 dt. 27-10-67 is not relevant in the present cases. The learned counsel for the respondents also relied on the provisions of the Ordinance mentioned above in support of their case that even if the stand of the respondents mentioned above be not acceptable, the writ applications must fail by reason of the ordinance.

7. The question as to when the schedule to the Act got amended appears to be simple. The power in this regard has to be exercised under Sec.39 only by a notification. The expression 'notification' has been defined by S.4 (36) of the Bihar and Orissa General Clauses Act. 1917 to mean ''a notification in the Gazette." Section 28 of the General Clauses Act provides that where in any Bihar Act, it is directed that any notification shall be issued, such notification shall be deemed to be duly made if it is published in the Gazette unless the Act otherwise provides, Sec.39 is not suggesting any alternative method and, therefore, it must be held that until the order was published in the Bihar Gazette, the schedule was not amended. The language of Section 39 does not suggest that the schedule could be amended with retrospective effect by a later notification. I, therefore, hold that the schedule stood amended on 15th May, 1980 when the order in this regard dt. 12th Feb, 1972 was published in the Bihar Gazette and not earlier.

8. A further question arises as to what was the effect of the notification dt. 9-9-1974 as contained in Annexure-2 as far as the Agricultural Produce Market Committee is concerned. This notification was issued under Sec.4(1) of the Act. It purported to apply to all items in the schedule to the Act. Since in 1974. Ata. Sujji and Maida were not included in the eye of law in the schedule in respect of the 1972 Order, in absence of a notification, these items cannot be held to have been included in the agricultural produce with reference to the Market Committee.

9. It was contended on behalf of the respondents that items applicable to the Market Committee automatically stood amended by inclusion of Ata. Sujji and Maida with effect from the date on which the schedule of the Act stood amended. There does not appear to be any merit in this argument, either. Sec.4(3) of the Act permitting the amendment in the list of schedule of agricultural produce has been subjected to the provisions of Sec.3 which enjoins a notification to be issued declaring the intention of the State Government in this regard. Sub-sec.(2) of S.3 makes it obligatory for the notification to state that any objection or suggestion to the proposed step would be considered by the Government. Section 4 reiterates the duty of considering the objections and suggestions received from public. Holding of an enquiry in this connection is also contemplated by the section. A valuable right has, therefore been granted by the statute to the traders, agriculturists and other affected persons to offer objections and suggestions which have to be decided on merits before taking final decision. Admittedly. no notification under S.3 was issued with reference to Ata. Sujji and Maida. By holding that the list of agricultural produce in regard to the Market Committee stood amended without resorting to the aforesaid procedure, the right of raising objection by concerned persons bestowed by the Act would stand forfeited and this cannot be allowed. The observation of the Supreme Court in Govind Lal v. Agricultural Produce Market Committee (AIR 1976 SC 263) relied on by Mr. Shreenath Singh, learned counsel for the petitioners supports this view.

10. The learned counsel for the respondents alternatively contended that in view of the Bihar Ordinance No. 35 of 1982, referred to earlier, the petitioner's case must be rejected and the writ application dismissed. The relevant

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portion of the Ordinance has been quoted in paragraph 6 above. It may be noted that Ss.3, 4 and,39 or any other provision including the schedule of the Act has not been amended and the, right of objection of the concerned members of the public to addition of items of produce has not been disturbed. It must therefore, be held that unless the necessary notifications mentioned and discussed above are issued the objections filed to the proposed modification of the schedule are considered and a final decision in this regard is taken thereafter, the lists of agricultural produce in regard to the particular market committee cannot be deemed to have been amended by reason of the Ordinance. The Market Committees are, therefore, not entitled to the fee on the disputed items. The demands in this respect cannot be upheld,

11. It was also urged on behalf of the petitioners that the Ordinance was not kept alive after re-assembly of the Bihar Legislature and must, therefore, be held to have ceased to exist, and it is now not available to the respondents for placing any reliance thereon Prima facie, the position appears to be so. But in view of my conclusion mentioned above it is not necessary to decide this question finally.

12. In the result the writ applications are allowed, the impugned annexures are quashed and the respondents are directed not to demand or collect any fee on Ata. Sujji or Maida. The parties however, are directed to bear their own costs.

S. SARWAR ALI, C. J. :- I agree.

Petitions allowed.

AIR 1979 PATNA 23 "Shankar Bhai v. State"

PATNA HIGH COURT

Coram : 2 LALIT MOHAN SHARMA AND S. ALI AHMED, JJ. ( Division Bench )

Shankar Bhai Dada Bhai Patel, Petitioner v. The State of Bihar and others, Respondents.

Civil Writ Jur. Case No. 764 of 1976, D/- 25 -1 -1978.

Bihar Agricultural Produce Markets Act (16 of 1960), S.27 - AGRICULTURAL PRODUCE - WORDS AND PHRASES - "Worth" - Word means market value including excise duty paid.

(Words and Phrases - "Worth").

There being no indication in the Act limiting the meaning of the word "worth" occurring in S.27 enabling levy of market fee on agricultural produce bought or sold in the market area, the expression would only mean 'market value' in the sense that it includes the entire amount paid or incurred for procuring the commodity. Therefore, "worth" of agricultural produce must be held to include

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excise duty paid thereon. (1895), 1 Ch 53, (1824) 107 ER 825 and AIR 1959 Pat 389, Rel. on. (Paras 3 and 4)

Cases Referred : Chronological Paras

AIR 1959 Pat 389 4

(1895) 1 Ch 53 : 71 LT 679, MaclLquham v. Taylor 3

(1824) 107 ER 825 : 3 B and C 516, King v. Hull Dock Co. 3

Kailash Roy and Binod Kumar Roy, for Petitioner; Rambalak Mahto Govt. Pleader No. 4 with Harendra Pd. J.C. for Respondents.

Judgement

ORDER :- The petitioner, by this application under Arts.226 and 227 of the Constitution of India has challenged the demand for market fee as contained in Annexure-1 to the writ application, payable under the Bihar Agricultural Produce Markets Act, 1960 (hereinafter to be called as the Act) on tobacco, after including in its value the amount of excise duty paid on the commodity.

2. The market fee is payable under Sub-Sec. (1) of S.27 which is in the following terms :

"27. power to levy fees (1) The market committee shall levy and collect market fees on the agricultural produce bought or sold in the market area, at the rate of rupee one per Rs. 100/- worth of agricultural produce.

Explanation - All notified agricultural produce leaving a market area, shall unless the contrary is proved, be presumed to have been bought or sold in such area.

Provided that, when any agricultural produce brought in any market area for the purpose of processing or export is not processed or exported therefrom as the case may be, or any such produce processed in the market area is not exported therefrom within twenty one days from the date of its arrival therein, it shall, until the contrary is proved, be presumed to have been bought or sold in the market area, and shall be liable for the levy of fees under this Section as if, it had been so bought or sold."

3. Mr. Kailash Roy appearing for the petitioner has contended that the term "worth" in the Section does not mean the price or the market value of the commodity and does not include the excise duty paid thereupon. He has referred to the Dictionary edited by Sir James Murray for the meaning of the word. The term conveys different shades of meaning in accordance with the context in which it is used. When used in connection with say the forensic skill of a person it may refer to the quality of the person or the degree of his skill but when used with reference to commercial transactions it must be understood to refer to the market value, that is the price for which the particular commodity is sold. In the cited dictionary also, the first meaning given to the word is "pecuniary value" the "price". The other meanings mentioned in the Dictionary are clearly not applicable in the present context. As it appears from a reference to the Section quoted above, fee has to be paid on the agricultural produce bought or sold in the market and therefore the aforesaid ordinary meaning has to be given to the word "worth". In MaclLquham v. Taylor (1895) 1 Ch 53 the expression "£ 1000 worth of shares" had to be construed. The defendant in the case had covenanted, by a deed to pay a sum of £ 1000 or transfer to the plaintiff £ 1000 worth of fully paid company shares. The value of the shares had considerably diminished when the dispute arose and the court of appeal held that the expression "£ 1000 worth of shares" meant shares of that value in the market and since the shares transferred had no market value the defendant was asked to pay the amount in cash. In the King v. The Hull Dock Co., (1824) 107 ER 825 a similar interpretation was given. We therefore, overrule the objection raised on behalf of the petitioner and hold that the word "worth" in S.27 of the Act means the market value of the commodity in question.

4. The next point which has been canvassed is that the excise duty paid on the commodity is not included in its value. Ordinarily the market value of an article must include the entire amount which has been paid or incurred in procuring the same and unless there is a provision in the statute to limit this meaning, it cannot be restricted. The learned counsel for the petitioner has not been able to give any reason for limiting the meaning of the word in the present case. He has, however, referred to rule 82 (viii) as an illustration that actual market price is not always taken the basis of the levy. This provision does not to our mind, advance the petitioner's argument. The sub-rule governs the cases of fictional sales in a market and by providing for calculation of the worth of a commodity brought for the purpose

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of processing or export on the basis of the average market rate of the relevant day, it supports rather than negatives our view, Mr. Government pleader also relied upon the case of Dayabhai Gokul Bhai v. The State of Bihar (AIR 1959 Pat 389) for the proposition that excise duty must be deemed to be included in the price. In the present case the question is confined to the value of tobacco on which excise duty has already been paid and it is not necessary to consider or decide the question with reference to tobacco on which excise duty has to be paid in future. The market fee has to be paid on the transactions of sale and purchase in the market area and the amount for which the transaction takes place is always ascertainable and therefore there is no difficulty in interpreting the meaning of the Section so far this aspect is concerned. Accordingly, we hold that the fee is payable on the entire amount paid as the price of the commodity in question including the excise duty which has already been paid.

5. For the reasons stated above the application is dismissed but there will be no order as to costs.

Petition dismissed.

AIR 1979 PATNA 217 "Ashok Industries v. State"

PATNA HIGH COURT

Coram : 2 S. K. JHA AND SIVANUGRAH NARAIN, JJ. ( Division Bench )

M/s. Ashok Industries and others, Petitioners v. State of Bihar and others, Respondents.

Civil Writ Jur. Case No. 496 of 1977, D/- 4 -1 -1979.

(A) Bihar Agricultural Produce Markets Act (16 of 1960), S.27(3) and S.2(1)(a) - AGRICULTURAL PRODUCE - Whole pulses (Dalhan) processed into split Dal - Levy of market fee on purchase of whole pulses - Sale of split dal, held, not liable to market fee again.

Any of the pulses or grains, as distinct agricultural produce, enumerated in the Schedule, if once charged to market fee, which has been levied thereon at one stage or the other within a market area, cannot be subjected to levy of market fee twice over in the same market area even if the same has undergone a change after processing. The matter will certainly be different if in one form a foodgrain is notified as a distinct agricultural produce while in another form after its being processed, it is enumerated as another distinct notified agricultural produce. (Para 5)

Thus if gram or Arhar or Masur, etc. falling under the caption 'pulses', be it either in the processed or non-processed form, at one stage has been subjected to levy of market fee, merely its undergoing a change after processing will not

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make it liable to a further charge of the market fee within the same market area. (Paras 5 and 8)

(B) Constitution of India, Art.226 - WRITS - Guidelines for assessment of market fee found to be illegal - Writ petition challenging such guidelines - Maintainable - Actual assessment orders not relevant.

Illegal guidelines in the matter of assessment laid down by the Director of the Bihar State Agricultural Marketing Board for the Marketing Committee functioning under the Bihar Agricultural Produce Markets Act (16 of 1960) - Writ petition challenging such guidelines, held, maintainable even though no assessment orders produced - Petitioners need not wait till assessment orders by the market committee which is bound to follow the guidelines, are actually passed. (Paras 6 and 9)

Anno : AIR Comm. Const. of India (2nd Edn.), Art.226 N.144(B).

Cases Referred : Chronological Paras

AIR 1971 SC 870 : 1971 Tax LR 391 9

AIR 1954 SC 403 9

Braj Kishore Prasad No. 2 and G.C. Bharuka, for Petitioners; Ram Balak Mahto, Govt. Advocate, for Respondents.

Judgement

S. K. JHA, J. :- In this application under Arts.226 and 227 of the Constitution of India the petitioners have prayed for appropriate writ/order/direction quashing the communication dated 25-9-76 from the Director Marketing, Bihar State Agricultural Marketing Board, Patna, (respondent No. 2). A copy of the impugned communication has been marked Annexure-'2' to the writ application.

2. The facts are uncontroverted. On the materials on the record the established facts are that petitioners 1, 2 and 3 are the partnership firms owning Dal mills and petitioner Nos. 4 to 6 are the respective partners of the aforesaid firms. The petitioners are carrying on milling business in pulses within the local limits of the Barh Agricultural Produce Market Area. The Agricultural Produce Market Committee, Barh, through its Secretary, has been impleaded as respondent No. 3. The petitioners are all licensees under the provisions of the Bihar Foodgrains Dealer's Licensing Order, 1967, as well as under those of the Bihar Agricultural Produce Markets Act 1960, (hereinafter to be referred to as 'the Act') and the Rules framed thereunder.

3. The petitioners purchase whole pulses (Dalhan), inter alia, from the market area concerned and after processing the same into split Dal they sell the same. In Para. 4 of the petition it has been asserted that the respondent market committee through its Secretary under the threat of penalty, seizure of stocks and books of account, and prosecution, is realising market fee from the petitioners' firms on the purchase of whole pulses (Dalhan) as well as on sale of pulses processed by them, which means the split pulses and after the Dalhan has been processed. On 28-8-75 the petitioners Nos. 2 and 3 along with some other firms of the area in question filed an application before the Chairman of the Market Committee objecting to the realisation of market fee on the whole grains as well as split pulses produced out of whole grains. The matter was heard of length several times by the Chairman but no final decision was given in the matter and the Secretary of the Committee (respondent No. 3) was regularly realising market fee on both whole grains and split grains. Under these circumstances an application was filed on 31-8-76 by the Secretary, Vanijya Parishad, Barh, on behalf of the Dal Mill owners of the area, including the petitioner firms, before the Chairman of the Bihar State Agricultural Marketing Board, Patna, requesting him to clarify the legal position as to whether market fee is payable both on whole grains as well as on split grains. A copy of the application has been marked Annexure-1. In response thereto by the impugned letter dated 25-9-76 (Annexure-2) respondent No. 2 wrote back saying "if notified agricultural produce like Arhar, Gram, Paddy, Khesari, Masur and oil seeds are purchased within the market area and are processed and even if it is sold in the same market area, market fee is payable on both the points.

4. The grievance of the petitioners is that in view of the provisions of S.27(3) of the Act read with S.2(a) thereof and item 2 of the Sch. II appended to the Act, the whole pulses or the whole grains in question once having been subjected to market fee under the Act could not be so subjected to twice over in the same market area on account of the clear inhibition given in Sec. 27(3) of the Act. That at once necessitates a reference to the relevant provisions of S.27 of the Act. S.27, which is the charging Section, lays down in Sub-S. (1) that the market committee shall levy

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and collect market fees on the agricultural produce bought or sold in the market area at a certain rate. Sub-Sec. (2) enjoins that the market fee chargeable under Sub-Sec. (1) shall be payable by the buyer, in the manner prescribed, by the Rules. Sub-Sec. (3), which is the most relevant for our purpose in the instant case, runs thus :-

"The fee chargeable under Sub-S. (1) shall not be levied more than once on a notified agricultural produce in the same notified area."

The language of Sub-Sec. (3) is plain enough and there can be no other inference but that the fee chargeable under Sub-Sec. (1) on a notified agricultural produce cannot be levied more than once in the same notified area. This then brings us to the definition of the expression "agricultural produce" first. The term "agricultural produce" has been defined in S.2(1)(a) of the Act, which reads as follows :-

" 'agricultural produce' includes all produce, whether processed or non-processed of agriculture, horticulture, animal husbandry and forest specified the Schedule."

It is not in dispute that the notified agricultural produce, referred to in Section 27(3) of the Act means an agricultural produce as defined in S.2(1)(a) of the Act, which, in its turn, means "in a form of processed or non-processed agricultural produce specified in the Schedule." So far as the Schedule is concerned, item No. II captioned 'Pulses' enumerates the pulses which can be treated as notified agricultural produce in so far as the pulses are concerned. The objects enumerated under the caption 'Pulses' in item II of the Sch. are (1) Gram (2) Arhar (3) Masur (4) Urd or Kalai (5) Khesari (6) Mung (7) Dry peas (Matar or Karao) (8) Kulthi (9) Cowpea seed (dry). In so far as the Schedule is concerned, under the heading 'pulses' no distinction has been drawn between whole pulses, namely, Dalhan and the split pulses, which, we ordinarily treat as the objects for direct human consumption. From the definition of 'agricultural produce' in S.2(1)(a) of the Act, already extracted above, it is clear that all the pulses enumerated under item II referred to above, whether whole or processed must be treated a form a foodgrain is notified as a distinct as notified agricultural produce. To give concrete example, when the item 'gram' Ss mentioned at serial No. I of item No. II in the Sch. it means gram as a whole with its shells which will be merely a form of Daihan. It will also mean processed gram, which we ordinarily call 'gram pulse' or 'Chana Dal'. Both the objects - gram as a whole or split gram after being processed and made fit direct for human consumption as an item of pulse - are covered under the same notified agricultural produce, namely, gram; so also with regard to the other pulses enumerated under the caption 'Pulses' like Arhar, Masur, etc. There can be no doubt, therefore, that the market committee is vested with the power under the charging S.27 of the Act to levy and collect market fees within the same notified area only once for any of the pulses enumerated under item II of the Sch. If, for instance, Arhar in its original shape with its shells is already subjected to levy of market fee in a market area, after its being processed into Arhar Dal it remains the same notified agricultural produce within the meaning of S.2(1)(a) of the Act. Manifestly, therefore, S.27(3) of the Act is a clear bar to the charging or levying of any market fee chargeable under Sub-Sec. (1) more than once in the same notified area. The stand of respondent No. 2 or for that matter, the market committee that "if notified agricultural produce like Arhar, Gram, Paddy, Khesari, Masur and oil seeds are purchased within the market area and are processed and even if it is sold in the same market area, market fee is payable on both the points" cannot, therefore, be countenanced in law. Such a construction will be in clear contravention of the express statutory provision contained in S.27(3) of the Act, Annexure-'2' therefore, has to be held to be illegal and based on a wrong construction of the relevant statutory provisions.

5. The Government Advocate, who appears for all the three respondents, could not combat the position in law that any of the pulses or grains, as distinct agricultural produce, enumerated in the Schedule, if once charged to market fee, which has been levied thereon at one stage or the other within a market area, cannot be subjected to levy of market fee twice over in the same market area even if the same has undergone a change after processing. The matter will certainly be different if in one agricultural produce while in another form, after its being processed, it is

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enumerated as another distinct notified agricultural produce. For instance, under the heading 'Cereals' in Caption I of the Schedule we find paddy, rice and Chura as having been specified as three distinct agricultural produces; so also wheat, wheat Ata and Maida, have been distinctly enumerated and so notified Similar is the case with the gram Besan, gram Sattu, etc. But that is not the question here. The petitioners have asserted that the same notified agricultural produce, which has been subjected to levy of market fee within the Barh Market Area, has been and is being sought to be subjected to levy of market fee twice over after it has been processed, although in the processed form if is not identified in the Schedule as a distinct agricultural produce. There can thus be no scope for the argument that if gram or Arhar or Masur, etc. falling under the caption 'pulses', be it either in the processed or non-processed form, at one stage has been subjected to levy of market fee, merely its undergoing a change after processing will make it liable to a further charge of the market fee within the same market area.

6. The learned Government Advocate raised a technical objection to the maintainability of this application. He submitted, rather half-heartedly, that the petitioners should not be given any relief in this writ application since they have not produced any illegal assessment order passed by the market Committee. This is a point stated merely to be rejected. As already referred to earlier, in para. 4 of the petition there is a clear statement and assertion by the petitioners that the market committee under the threat of penalty, seizure of stocks and books of account and prosecution is realising market fee from the petitioners on the purchase of whole grains as well as on sale of pulses processed by them. There is no counter-affidavit controverting this fact. Furthermore, the Director Marketing, Bihar State Agricultural Marketing Board, Patna, has already laid the guideline, which, I am sure, cannot be overruled by the market committee which makes the assessment. The test in such cases is not to see as to whether any illegal assessment order has been passed before the writ jurisdiction of this Court can be invoked, but, as to whether the foundation on which the jurisdiction of the assessing authority rests, is to be found in the statute or not, and, if that is not so, then was there is real or imminent threat to the petitioners' deprivation of right to property under part III of the Constitution, the writ jurisdiction of this Court will not be shut to such a person aggrieved for the purpose of going into protracted litigation, suffering harassment and then coming to this Court for redressal of the wrong done to him. It is well settled that though a writ of prohibition or certiorari would not issue against an executive authority at all, the High Court has power to issue, in a fit case, an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction is likely to subject a person to lengthy proceeding and unnecessary harassment, the High Court would issue appropriate writ or direction to prevent such consequences by way of a writ. It cannot be doubted that the market committee while assessing market fee is acting quasi-judicially. It also cannot be doubted that it performs executive functions and the performance of such executive functions far outweighs the judicial approach in the matter of assessment, only more so in the instant case, since no less a person than the Director of the Bihar State Agricultural Marketing Board seems to have laid down a clear but illegal guideline for the market committees to follow. If such guideline on a clearly wrong interpretation of the provisions of the statute is to be sustained it would be subjecting the petitioners to suffer by way of wrong assessment, harassment and protracted litigation, and then only permit them to invoke the writ jurisdiction of this Court. The petitioners have been subjected in past and are being subjected in the present, and as Annexure-2 would show, they are likely to be deprived of their property without any authority of law in future. This Court, in my view, shall not sit idle to watch the harassment to which the petitioners or persons of that category are put before this Court can come to the rescue of such aggrieved persons whose fundamental rights are in jeopardy both in substance and in reality as well as in imminence.

7. For the foregoing reasons, I think, the petitioners' application is well merited and it must succeed and it is, accordingly, allowed, and the correspondence, issued to the petitioners by Respondent No. 2, as contained in Annexure-'2'

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giving a wrong exposition of the charging Section of the Act is quashed, and the respondents are hereby commanded to forbear from levying or charging marked fee twice over on a distinct identifiable notified agricultural produce as given in the Schedule. If once levy has already been made on such a commodity in one form or the other, then the respondents are directed not to do so over again after such agricultural produce although having undergone a change by being processed, still falls within the same category of the distinct notified agricultural produce as pulses as enumerated in Caption II of the Schedule. There shall, however, be no order as to costs.

8S. NARAIN, J. :- I agree. But as the question of law raised is one of first impression, I wish to add few words of my own. Sub-Sec. (3) of Section 27 of the Bihar Agricultural Produce Markets Act 1960, (hereinafter to be referred to as 'the Act') in clear and unambiguous terms prohibits the levy of fee chargeable under Sub-Sec. (1) thereof "more than once on a notified agricultural produce in the same notified area." There is no doubt that if the averments in the question, which are not controverted, are accepted, the fee chargeable under Sub-Sec. (1) has been levied or is threatened to be levied more than once in the same notified area. The crucial question, therefore, is whether it is being levied more than once on a notified agricultural produce within the meaning of the expression as used in S.27(3) of the Act. It is obvious that a notified agricultural produce in Sub-Sec. (3) means the same notified agricultural produce. What has, therefore, to be determined in the present case is whether pulses, like gram, Arhar, etc. in its original state are the same pulse after being processed into split pulse is the same agricultural produce. In my opinion, the answer must be in the affirmative. The words used are 'agricultural produce'. There can be no doubt that considered as agricultural produce, pulse in the natural state and the same pulse split after being processed are the same agricultural produce. This conclusion is re-enforced by the provisions of the Act itself, which, as has been pointed out by my learned brother, merely mentions the different kinds of pulses in Item II of the Schedule to the Act and the expression 'gram, Arhar, etc. in that Schedule, include gram, Arhar, etc. either whole or split after processing.

9. As regards the preliminary objection raised, that also is completely untenable. It is true that so far as the fee assessed is concerned, the petitioners could have taken recourse to the procedure provided in the Act itself. But it is well settled that a threat to realise a tax without authority of law from a person is a sufficient infringement of his fundamental right under Art.19 of the Constitution and gives him a right to invoke the jurisdiction of this Court under Art.226 of the Constitution. See the decision in Himmatlal Harilal Mehta v. State of Madhya Pradesh (AIR 1954 SC 403) in which the Supreme Court reversing the judgement of the Nagpur High Court directed the issue of an appropriate writ restraining the authorities from imposing or authorising imposition of sales tax on the appellant in exercise of its authority under the provisions of the taxing statute, which was ultra vires the Constitution even though no proceeding for assessment had been initiated. A similar view was expressed in Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras (AIR 1971 SC 870) in which it was observed that demand of tax not backed by valid law is a threat to property and this gives rise to a right to move the Supreme Court under Art.32 and the person threatened is not compelled to wait or go through the lengthy procedure of appeals, reference, etc. In the present case on the averments in the petition, which have to be accepted as they have not been controverted, the petitioners have been compelled to pay market fee twice on the same notified agricultural produce within the same market area. And in view of the letter (Annex.-2 to the writ petition) of the Director, Bihar State Agricultural Marketing Board, Patna, upholding the right of the market committee to levy such fee, it must be held that there is a real and imminent threat of levy of market fee more than once on the same notified agricultural produce in the same market area. It is true that the proceedings for assessment have not yet been initiated but that they will be is not in doubt and in view of the exposition of law given by the Director of the Bihar State Agricultural Marketing Board, in response to the letter addressed by the Vanijya Parishad to the Chairman, Bihar State Agricultural Marketing Board, who under

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S.27C of the Act is vested with the plenary powers of revision of the order passed by any authority under the Act, it will be idle to expect the assessment sub-committee to refuse to make assessment in accordance with the exposition of law contained in that letter, which, in essence, may be said to represent the opinion of the Chairman of the Board also, as the exposition was given in reply to the letter addressed to the Chairman of the Board itself.

Petition allowed.

AIR 1979 PATNA 234 "Ramjee Prasad v. State"

PATNA HIGH COURT

Coram : 2 K. B. N. SINGH, C.J. AND LALIT MOHAN SHARMA, J. ( Division Bench )

Ramjee Prasad and others, Petitioners v. State of Bihar and others, Respondents.

Civil Writ Jur. Case No. 1454 of 1978, D/- 9 -1 -1979.

(A) Bihar Agricultural Produce Markets Act (16 of 1960), S.18, S.21 - AGRICULTURAL PRODUCE - S.52 Rules under - R.66 - Powers of Secretary, Market Area Committee Competent to appear on behalf of Market Committee and to instruct its lawyer to present its case before the Court. (Para 7)

(B) Bihar Agricultural Produce Markets Act (16 of 1960), S.4(1) and S.4(2) - AGRICULTURAL PRODUCE - Notification under - Effect - Prohibition as to purchase, sale, storage, or processing of notified agricultural produces flows from the publication of the notification itself without waiting for any other steps to be taken by anybody else - Operation of S.4(2) is not kept in abeyance till market is transferred to the Market Committee. (Para 8)

(C) Bihar Agricultural Produce Markets Act (16 of 1960), S.4(2) - AGRICULTURAL PRODUCE - WORDS AND PHRASES - 'Other person' - Includes State Government - Language used in S.4(2) is wide in terms.

Words and Phrases - 'Person' - Meaning of. (Para 9)

(D) Constitution of India, Art.277, Art.372(1) - - Bihar Agricultural Produce Markets Act (16 of 1960) - MUNICIPALITIES - AGRICULTURAL PRODUCE - AMENDMENT - LEGISLATIVE COMPETENCE - Validity - Provisions of Act so far as they purport to take away rights of Municipalities are not ultra vires State Legislature on ground of inconsistency - Art.277 not applicable - Protection under Art.372 also not available as Municipal Act stands impliedly amended. (Para 12)

Cases Referred : Chronological Paras

AIR 1968 SC 360 9

AIR 1967 SC 997 : 1967 Cri LJ 950 9

Jai Narayan, Kapildeo Singh and Mrs. Ansuiya Jaiswal, for Petitioners; K.N. Singh (Standing Counsel No. 4) and J.D. Singh (Jr. Counsel) (for Nos. 1 and 3); B.C. Ghose and Satish Chandra Surya (for No. 5); Janardan Prasad Singh (for No. 2); Basudeo Prasad and Dhananjoy Kumar (for No. 4) and R.B. Mahto and Narendra Prasad (for No. 6) for Respondents.

Judgement

LALIT MOHAN SHARMA, J. :- In the present writ application, under Articles 226 and 227 of the Constitution of India, the petitioners have stated that in April, 1978, they purchased several commodities from some grain merchants in Siwan town and paid, in addition to the price, sales tax as well as fee payable under the provisions of the Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as 'the Markets Act'). Subsequently, the respondents 4 and 5 acting on behalf of the respondents 2 and 3 respectively realised additional toll from them. The petitioners have challenged the right of the respondents 2 and 3 or their agents to collect any fee, toll or tax, on transactions of sale and purchase of agricultural produce within the area notified under the Act as Siwan Agricultural Produce Market area and have prayed for a writ against them restraining

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them to make any collection. The respondent No. 2 is the Siwan Municipality and the respondent No. 3 is the Land Reforms Deputy Collector, Siwan, under the respondent No. 1 and the respondents 4 and 5 claimed to be their respective lessees in regard to the Siwan market.

2. The preamble of the Markets Act indicates that the Legislature passed this Act with the object of providing better regulation of buying and selling agricultural produce and for establishment of markets for that purpose and Chap. II of the Act deals with the constitution of markets and Market Committees. In Section 5, it is mentioned that the State Government may, by notification, declare its intention of regulating the purchase, sale etc. of specified agricultural produce in a particular area, invited (sic) any objection or suggestion within the specified period. After expiry of the specified period and consideration of disposal of any objection or suggestion received, the State Government may, by a notification under S.4 of the Act, declare the area mentioned in the notification under S.3 (or any portion thereof) to be a market area for the purposes of the Act; and Sub-Section (2) of the Sec. 4 declares that on the publication of the said notification, no Municipality or other local authority or other persons notwithstanding anything contained in any law for the time being in force shall within the market area or within a distance thereof, so notified set up, establish or continue any place for purchase, sale, etc. of the notified agricultural produce. According to the case of the petitioners, such a market has been established for Siwan town which is collecting the fees payable under Section 27 of the Act and the respondents 2 and 5 have no right whatsoever to collect any toll.

3. This application has been mainly contested on behalf of the respondents 4 and 5. The respondent No. 5 has stated that he is a lessee in respect of the market held by the State Government in Siwan town and collects tolls, taxes etc. on the strength of a lease for the year 1978-79, which was granted to him after holding a public auction. It has been further stated that the Sub-Divisional Officer, Siwan, is the Chairman of the Agricultural Produce Market Committee, Siwan and it was he who held the auction for the settlement of Siwan market in which the respondent No. 5 was the highest bidder. The right of the Agricultural Produce Market Committee to realise any toll or tax has been seriously challenged on the ground that the market has not been transferred by the State Government to the Committee. The allegations in the writ application about payment of the fees by the petitioners to the Market Committee have been denied and it has been pointed out that this question does not arise since no Market Committee is functioning in the area.

4. The case was taken up for hearing on 18th July, 1978 when a preliminary objection was taken by Mr. B.C. Ghose, appearing for the respondent No. 3 that the writ application was not maintainable in absence of the Agricultural Produce Market Area Committee, Siwan. The petitioners, therefore, filed an application for adding the Market Area Committee as a party respondent and after hearing the learned counsel of the parties, we added the Market Area Committee as the respondent No. 6 by our order dated 20th July, 1978. Mr. Rambalak Mahto, Government Pleader No. 4, appeared in court and stated that he has got instruction on behalf of the Area Committee to appear in the case and that he will be filing a Vakalatnama and, in that view, it was not necessary to issue a notice to the added respondent. The hearing of the case was later adjourned several times on the prayer of one party or the other and was resumed in September, 1978, after a Vakalatnama executed by the Secretary of Market Area Committee was filed by Mr. Mahto. The Market Area Committee also filed its show cause supporting the case of the petitioners. Mr. Mahto further relied upon the statements made in the writ application, the rejoinder dated 7-7-1978 (pages 40 to 50 of the brief) filed on behalf of the petitioners in reply to the petition of the respondent No. 5, and the petitioner's application for addition of the respondent No. 6 as a party respondent filed on 20-7-1978 (at pages 64 to 86 of the brief). A counter affidavit on behalf of the respondents 1 and 3, that is, the State and the Land Reforms Deputy Collector Siwan was filed for the first time on 31-7-1978 which is at pages 87 to 93 of the brief stating that in 1974 the Revenue Department of the State Government had

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issued a general order for the transfer of such markets throughout the State of Bihar which were covered under the provisions of the Market Act; but by its letter dated 12-7-1975, a copy whereof has been annexed to the counter-affidavit as Annexure-'A', it reviewed its earlier direction and stayed the transfer of the markets to the different Agriculture Produce Market Committees. It is further stated that the Revenue Department had been settling the Siwan market, the subject matter of the present case, since the date of the vesting of the zamindari under the provisions of the Bihar Land Reforms Act and continues to do so. Proceeding further, it is asserted that since the Siwan Market had not been transferred to the Market Committee, the Revenue Department continues to settle the same. During the course of the argument, Mr. Standing Counsel No. 4 appearing for the respondents Nos. 1, 3 stated that he does not want to say anything further than placing the said counter affidavit.

5. Mr. Janardan Prasad Singh asserted on behalf of the Siwan Municipality that it has got the right to collect the tolls since the Market Committee is not functioning.

6. The main contention of the petitioners and the respondent No. 6 is that both the State Government and the Siwan Municipality were deprived of the right to maintain any market within the notified area by mere declaration of the area to be market area under Section 4 of the Market Act. No other step is necessary for the establishment of the market area and since there has been issued such a notification in the present case, the respondents 2 and 3 have lost their previous rights in this regard. The answer to the question depends on a construction of Section 4 of the Act. But before I proceed to consider this aspect, it is desirable to decide another objection mentioned below raised on behalf of the respondent No. 5.

7. Mr. Ghose challenged the right of the Secretary of the respondent Market Area Committee to authorise Mr. Rambalak Mahto to appear on behalf of the committee. He urged that Mr. Mahton's appearance and arguments are fit to be ignored. In reply Mr. Mahton relied upon several provisions of the Market Act and Bihar Agricultural Produce Market Rules 1975 (hereinafter referred to as 'the Rules'). Sec. 6 of the Act states that a Market Committee shall be established for a market area and Section 8 deals with the constitution of the first Market Committee. The procedure in regard to the constitution of the second and subsequent Market Committees is dealt with in Section 9. Section 18 declares that it shall be the duty of a market committee to implement the provisions of the Act, the Rules and by-laws and to provide facilities for marketing of the agricultural produce and to do such other acts as may be required in that connection. The Sub-Section (2) of the Section 18 has by way of illustration enumerated some of the works of the Market Committee including the duty to defend any legal proceeding. Section 17 enjoins that every Market Committee shall be a body corporate which may sue or be sued and further declares that subject to the Act, Rules and by-laws, it shall be competent for it to do all other things necessary for the purposes for which it is established. Section 21 provides that the Secretary of the Market Committee shall exercise such powers and perform such duties as are conferred or imposed on him by or under the Act and the rules. Rule 66 of the Rules, which has been framed under Section 52 of the Act deals with the powers and functions of the Secretary who has been described as Chief Executive Officer of the Market Committee. Clause (xiv) of Rule 66 says that the Secretary shall conduct legal proceedings in all courts and Tribunals on behalf of the market committee. In view of these provisions, it has to be held that the Secretary is empowered to appear on behalf of the Market Committee and to instruct its lawyer to present its case before the court. It is relevant at this stage to mention that there is nothing on the records of the case to suggest that Siwan Market Committee or its Chairman has taken a decision contrary to the steps which are being taken by the Secretary in the present case. I, therefore, overrule the objection raised on behalf of the respondent No. 5.

8. Before coming to the main question argued on behalf of the parties, it may be necessary to examine the provisions of Section 4 of the Markets Act

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in some detail, which is in the following terms :

"4. Declaration of market area - (1) After the expiry of the period specified in the notification issued under Section 3 and, after considering such objections and suggestions as may be received before such expiry and after holding such enquiry as it may consider necessary, the State Government may by notification, decree the area specified in the notification under Section 3 or any portion thereof to be a market area for the purposes of this Act in respect of all or any of the kinds of agricultural produce specified in the notification under Section 3.

(2) On and after the date of publication of the notification under Sub-Sec. (1), or such later date as may be specified therein, no municipality or other local authority, or other person, notwithstanding anything contained in any law for the time being in force, shall, within the market area, or within a distance thereof to be notified in the Official Gazette in this behalf, set up, establish, or continue, or allow to be set up, established or continued any place for the purchase, sale, storage or processing of any agricultural produce so notified, except in accordance with the provisions of this Act, the rules and bye-laws.

Explanation.- A municipality or other local authority or any other person shall not be deemed to set up, establish or continue or allow to be set up, established or continued a place as a place for the purchase, sale, storage, or processing of agricultural produce within the meaning of this sectio, if the quantity is as may be prescribed and the seller is himself the producer of the agricultural produce offered for sale of such place or any person employed by such producer to transport the same and the buyer is a person who purchases such produce for his own use or if the agricultural produce, is sold by retail sale to a person who purchases such produce for his own use.

(3) Subject to the provisions of Section 3, the State Government may, at any time, by notification, exclude from a market area any area or any agricultural produce specified therein or include in any market area any area or agricultural produce included in a notification issued under Sub-Section (1).

(4) Nothing in this Act shall apply to a trade whose daily or annual turnover does not exceed such amount as may be prescribed."

The effect of a notification under Section 4(1) of the Markets Act is dealt with in Sub -Section (2) and it will be observed that the mandate of law prohibiting purchase, sale, storage, or processing of notified agricultural produces flows from the publication of the notification itself without waiting for any other steps to be taken by anybodyelse. If any person is maintaining a market from before such notification, the operation of Sub-S. (2) is not kept in abeyance till that person transfers the market to the Market Committee or takes any other steps in that regard. In that view, the affidavit filed on behalf of the respondents 1 to 3 to the effect that the Siwan bazar has not been transferred to the Market Committee is of no consequence. If the necessary conditions mentioned in Section 4(2) of the Markets Act are proved to have been satisfied, it has to be held that any other market which was in existence from before, if covered by the provisions of the Markets Act, must cease to continue. It has been asserted in paragraph 3 of the show cause of the respondent No. 6 that a notification under Section 4 dated 10-10-1975 was made, as evidenced by Annexure-'A' to the show cause and that there has been further extensions of the area covered by the notification subsequently. The notifications have been published in Extraordinary issues of the Bihar Gazette. The admitted position now is that the notified area covers that area in respect of which the present writ application has been filed. It must, therefore, be held that the effect mentioned in Sub-Section (2) of Section 4 of the Markets Act has come into play.

9. Mr. B.C. Ghose contended on behalf of the respondent No. 5 that Section 4(2) of the Markets Act cannot, in any event, affect the right of the State Government and consequently its agent, respondent No. 5, as the language thereof although referring to municipalities, other local authorities or other persons, does not refer to the State Government. However I should mention here that no such interpretation has been pressed by Mr. Kameshwari Nandan Singh, appearing for the State. The question, therefore, arises as to whether the State Government can be included in the expression

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other 'person' within the meaning of the Sub-Section. It is true that the popular use of the term 'person' is in regard to human beings, but the meaning of the word given in the Dictionary also include 'personality' in the larger sense of the term. It cannot be laid down as a general rigid proposition that the word 'person' can never include the State and it may be useful to refer to the decision in the Superintendent and Remembrancer of Legal Affairs, West Bengal v. Corpn. of Calcutta (AIR 1967 SC 997). Under Section 218(1) of the Calcutta Municipal Act, 1951, it is enjoined that every person who carried on certain business in Calcutta should take out a licence and in default thereof he is liable to fine. The question arose as to whether the State of West Bengal was included within the said Sub-Section and the answer was given by the Supreme Court in the affirmative. It is, therefore, a question of the interpretation of Section 4 of the Markets Act which will decide the issue. The object of the Markets Act is to provide for a regulated system of markets for agricultural produce, and in furtherance thereof S.4 has abolished double control of the markets which could understandably lead to confusion and in many cases inconsistency. The Market Committees which are established under S.6 of the Market Act (in the present case also a market committee has been established by notifications which are on the record of this case) have been authorised under Section 27 of the Markets Act to levy and collect market fees and Section 4(2) takes care that nobody is subject to double fee. The language used in the Sub-Section is wide in terms. In view of the object of the legislature, the scheme of the Act and the language of the Section, it is hardly likely that any discrimination between the State on the one hand and the citizens and other authorities on the other is being made in the present context. This is specially so because if such a discrimination is to be brought about through a construction suggested by Mr. Ghose, it may result in an anomalous situation in many cases. Applying the guide line for the purpose of interpretation, as indicated by the Supreme Court in paragraph 12 of the judgement in Union of India v. Jubbi (AIR 1968 SC 360). I am of the view that the Section 4 of the Market Act includes in its terms the State of Bihar.

10. Mr. Ghose also faintly suggested that the provisions of Section 4(2) of the Markets Act are ultra vires the Constitution of India. But since the vires of the Act has been considered in great detail by several decisions of this court, both reported and unreported, I do not propose to deal with the question except by following the earlier decisions upholding the Act.

11. Another argument attempted on behalf of the respondent No. 5 has been that the petitioners have not proved that they have been adversely affected so as to maintain the writ application and the allegations of fact are too vague about the realisation of the fee by the Market Committee. During the course of the hearing, certain prayers were also made by the respondents for orders directing for the production of certain documents and examination of certain authorities of the State. Having regard to my view on the question agitated, I do not consider it either expedient or desirable to direct production of any evidence and the application made by the respondent No. 5 is rejected. The petitioners have asserted that they were made to pay the fee realisable under Section 27 of the Markets Act and the allegations have not been denied in the show cause of the Market Committee. The Committee, instead, asserted that it has been realising market fee within the notified area and details of the collections have been given in paragraph 10 of the show cause. During the pendency of this application, while dealing with the question of stay, this court permitted the Market Committee to continue to collect fees on the condition that proper accounts should be maintained so that in case of dismissal of the writ application, materials could be available for the successful respondents to claim damages. I, therefore, hold that there is no substance in the objection raised to the maintainability of the writ application.

12. Appearing on behalf of the respondent No. 4 who claims authority to realise tolls on behalf of the Municipality, Mr. Basudeva Prasad contended that in view of the power bestowed on the Municipality by Section 82(1)(ff) and Section 275 of the Bihar and Orissa Municipal Act, 1922, read with

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Article 277 of the Constitution of India, the provisions of the Markets Act so far as they purport to take away the right of the Municipalities are ultra vires. The Article I s in the following terms :

"Any tax, duties, cesses or fees which immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any Municipality or other local authority or body for the purposes of the State, Municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law."

It is manifest that the Article, covers only such cases in which the fees are mentioned in the Union List and not to other cases and it has been firmly established that the Markets Act is within the legislative competence of the State Legislature and deals with matters covered by the State List. It must, therefore, be held that Article 277 of the Constitution has no application in the present context. So far as clause (1) of Art.372 of the Constitution is concerned, it said that all the laws in force immediately before the commencement of the Constitution would continue in force. "Until altered or repealed or amended by a competent Legislature or other competent authority."

The protection to the earlier law given by the Article 372 is, therefore, available only so long there is no amendment of the law itself. It is well settled that besides express amendment of a statute, it may be modified by necessary implication by competent legislature and it can be so done even by a separate enactment. When two Acts are clearly inconsistent with or repugnant to each other, the former will be deemed to be altered, repealed or amended, as the last expression of the will of the Legislature must prevail. It is of course essential to show that the two provisions are really irreconcilable before an inference of implied repeal can be drawn. In the present case, Mr. Basudeva Prasad rightly contends that the power of the Municipality under Sections 82(1)(ff) and 275 of the Municipal Act and the interpretation which I have put on Section 4 of the Markets Act are, consistent (sic). In that view, it must be held that the power of the Municipality under the Municipal Act has been cut down to the extent which is covered by S.4 of the Markets Act. It must be held that to that extent the provisions in the Municipal Act are impliedly amended by the Markets Act and there is no question of the Markets Act being held ultra vires on the ground of inconsistency with the Municipal Act. The additional objection raised on behalf of the respondent No. 4 is also, in the circumstances, rejected.

13. It may further be observed that no claim by any of the respondents has been made on the basis of Sub-Section (3) or (4) of the Section 4 of the Markets Act.

14. In the result, I hold that the State of Bihar and the Siwan Municipality have been deprived of the power to realise any tax or fee on the purchase, sale etc. of any agricultural produce notified in the notifications mentioned above within the areas specified in the said notifications to the extent covered by the provisions of the Bihar Agricultural Produce Markets Act, 1960 and the respondents 1 to 5 are restrained from realising any such tax or fee. The writ application is accordingly allowed, but in the circumstances of the case, without costs.

K. B. N. SINGH, C. J. :- I agree.

Petition allowed.

AIR 1978 PATNA 16 "Lucky Biscuit Co. v. State"

PATNA HIGH COURT

Coram : 2 SHAMBHU PRASAD SINGH AND S. K. CHOUDHURI, JJ. ( Division Bench )

M/s. Lucky Biscuit Co., Petitioner v. The State of Bihar and others, Respondents.

Civil Writ Jurisdiction Case No. 2749 of 1976, D/- 5 -4 -1977.

(A) Bihar Agricultural Produce Markets Act (16 of 1960), S.2(1)(w) - AGRICULTURAL PRODUCE - - "Trader" - A firm which is ordinarily engaged in business of buying agricultural produce is a "trader" within S.2(1)(w).

"Transaction of sale and purchase" in the definition of "trade" in S. 2 (1) (v) of the Act will mean a transaction whereunder a dealer buys from a person who brings to market his goods for sale, i. e. the transaction is one resulting in buying by one and selling by another. AIR 1967 SC 973, Rel. on. (Para 8)

"Trader" ordinarily means one who does trade. Therefore, "buying and selling" in S. 2 (1) (w) of the Act, has to be given the same meaning as sale and purchase in S. 2 (1) (v) of the Act. An interpretation reading the word "and" in between the words "buying" and "selling" as "or" or at least that the transaction of buying and selling need not necessarily be by the same person in respect of the agricultural produce but it may also include such transactions where buyer is one person and the seller is another person will also give full effect to the intention of the legislature of levying and collecting market fees on the agricultural produce bought or sold in the market area as envisaged by S. 27 of the Act. A person can be called upon to obtain a licence only if he is engaged in the business of buying and/or selling agricultural produce. Business indicates continuity. If a person buys or sells agricultural produce occasionally, then he cannot be said to be engaged in the business for the purposes of Section 2 (1) (w) of the Act and cannot be called upon to obtain a licence. The definition in S. 2 (1) (w) has to be given an interpretation to make it intra vires. An interpretation which gives scope for challenge on ground that it makes discrimination should be avoided. The petitioner firm which is ordinarily engaged in the business of buying agricultural produce is a trader within the meaning of that term as defined in Section 2 (1) (w) of the Act. (Paras 9, 10)

(B) Bihar Agricultural Produce Markets Act (16 of 1960), S.2(1)(w) - AGRICULTURAL PRODUCE - "Manufacturing" - "Processing" - Connotation of.

There can be no doubt that the two words "processing" and "manufacturing" cannot be equated. Manufacturing means bringing into existence a new substance whereas processing means merely bringing out some changes in the substance. Thus each case of processing is not a case of manufacturing whereas in each case of manufacturing

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there is an element of processing. (Para 11)

Held : that the petitioner while engaged in the business of manufacturing of biscuits is also engaged in the business of processing of agricultural produce such as maida, sugar and vanaspati oil. (Para 11)

(C) Constitution of India, Art.228A and Art.226 - WRITS - CONSTITUTIONALITY OF AN ACT - Writ petition challenging constitutional validity of State law - Prior decision of Division Bench upholding validity of Act - Petitioner cannot claim that it should be heard by a Bench of five or more Judges, unless court is inclined to think that earlier decision is not correct and requires reconsideration. (Para 12)

(D) Constitution of India, Art.301 and Art.304 - Bihar Agricultural Produce Markets Act (16 of 1960), S.1 - AGRICULTURAL PRODUCE - CONSTITUTIONALITY OF AN ACT - FREEDOM OF TRADE - Vires - Act not ultra vires on account of contravention of Arts.301 and 304.

1975 BBCJ 1, Followed. (Para 12)

Cases Referred : Chronological Paras

1975 BBCJ 1 12

AIR 1968 SC 554 : 1968 Lab IC 547 11

AIR 1968 SC 1450 : 1969 Cri LJ 19 6, 7

AIR 1967 SC 973 8

AIR 1963 SC 791 11

(1949) 1 KB 142 : (1948) 2 All ER 610 7

(1888) 13 AC 595 : 58 LJ QB 152 6

(1798) 7 TR 509 : 101 ER 1103 6

(1795) 126 ER 651 : 2 H B1 463 11

Balbhadra Prasad Singh, N.K. Agrawal and S.C. Bharuka, for Petitioner; Lal Narain Sinha (Solicitor General), R.B. Mahto (Govt. Pleader No. 4) and Narendra Prasad (Jr. Counsel to Govt. Pleader No. 4), for Respondents.

Judgement

SHAMBHU PRASAD SINGH, J. :- The petitioner is a registered partnership firm and manufactures biscuits at Patna City in the district of Patna. A notice (Annexure-1 to the writ petition) dated 10th of September, 1976 was issued to the petitioner by the Secretary, Agricultural Produce Market Committee, Patna City (respondent No. 3) calling upon the petitioner to obtain a licence from the Committee. It was stated that the petitioner was required to obtain the licence as it was purchasing and selling notified agricultural produce in Patna City market area. The licence to be obtained was for the year 1975. It was further stated that if the petitioner did not obtain licence within a week of the receipt of the notice, then it would be deemed that it was deliberately contravening the rules and legal action under S. 48 of the Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as the Act, would be taken against it. The petitioner sent a reply to the said notice which is Annexure-2 to the writ application. The petitioner claimed that it was manufacturing biscuits and thereafter selling them. It purchased only such materials which were necessary for manufacture of biscuit but did not sell goods other than biscuit. As biscuit was not a notified agricultural produce it was not necessary for the petitioner to obtain a licence. Respondent No. 3 sent another notice (Annexure-3) dated 25th of September, 1976 to the petitioner referring to the letter (Annexure-2) of the petitioner and stating that as the petitioner was a trader within the meaning of S. 2 (1) of the Act it was necessary for it to obtain a licence as required by R. 98 of the Bihar Agricultural Produce Markets Rules, 1975 (hereinafter referred to as 'the Rules'). It was further stated therein that as the petitioner was purchasing notified agricultural produce which were used in biscuit and stored them in its premises till biscuit was made out of them it was necessary for the Agricultural Produce Market Committee, Patna City (respondent No. 2) to get details of the purchases made by the petitioner, fees paid by it and notified agricultural produce kept in its stock. According to the rules, it was the buyer who had to pay the market fee and as the place of manufacture of the petitioner was situated in the main bazar area it was necessary for the petitioner to be a licensee. It was, however, made clear that as biscuit was not a notified agricultural produce, respondent No. 2 would not realise any market fee on its sale. Respondent No. 3 sent another notice (Annexure-4) dated 30th November, 1976 to the petitioner that as the petitioner had not by that date obtained the licence nor given any valid reason for not getting a licence and having purchased 400 tins of vegetable oil for Rs. 69,600/- on 20th May, 1976 from M. D. C. M. Co. but having not paid the market fee of Rs. 696/- at the rate of 10 per cent by itself or through M. D. C. M. Co., the petitioner must obtain a licence at once and pay the arrears of market fee. The petitioner prays for quashing of Annexures 1, 3 and 4.

2. The substance of the case of the petitioner, as made out in the main petition, is that it merely purchases some

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of the notified agricultural produce but does not sell any notified agricultural produce and as such it is not a trader within the meaning of the terms as defined in S. 2 (1) (w) of the Act. Only traders were required to obtain licence under R. 98 and the petitioner was, therefore, not liable to obtain a licence. It has further been stated in the petition that directions issued by the respondents to obtain licence were arbitrary, illegal and invasive of the liberties of the petitioner in curtailment of its right to carry on trade and business.

3. A counter-affidavit has been filed on behalf of respondents 2 and 3. It is stated, inter alia, therein that the petitioner admittedly purchases and stores notified agricultural produces for the manufacture of biscuits and carries on business of purchase of agricultural produce and sells goods prepared out of said produce. It further states that the petitioner also sells some of the notified agricultural produce which becomes either excess or not required for its purpose. It is submitted in the counter-affidavit that even if the petitioner only purchases agricultural produce in course of its business and sells products made out of it, it is a trader and liable to obtain licence. It has further been averred that the Act is intra vires and the demand by respondent No. 2 does not infringe the petitioner's right to carry on trade and business.

4. A reply to the counter-affidavit has been filed on behalf of the petitioner in which it is stated that the statement in the counter-affidavit that the petitioner sells some of the notified agricultural produce which becomes excess or not required for its purpose is entirely false and has been made in order to mislead the Court. Some further grounds have been taken in this reply to counter-affidavit challenging the vires of the Act.

5. The main arguments which were advanced by Mr. Balbhadra Prasad Singh appearing on behalf of the petitioner and learned Solicitor-General appearing on behalf of the respondents were on the question whether the petitioner was a trader or not within the meaning of the term as defined in S. 2 (1) (w) of the Act. Learned Solicitor-General did not put emphasis on the averment made in the counter-affidavit that the petitioner also sells notified agricul-tural produce which remains in excess with him. In order to appreciate respective arguments of learned counsel appearing for the parties it is necessary to quote the definition of the expression "trader" as given in S. 2 (1) (w) of the Act :

" "Trader" means a person ordinarily engaged in the business of buying and selling agricultural produce as a principal or as a duly authorised agent of one or more principals and includes a commission agent or a person ordinarily engaged in the business of processing of agricultural produce."

According to Mr. Balbhadra Prasad Singh, the word "and" between the words "buying" and "selling" has to be read conjunctively and only such a person is trader for the purposes of the Act who is ordinarily engaged in the business of buying and selling agricultural produce. In other words, who buys agricultural produce as well as sells agricultural produce. A person who merely buys agricultural produce but does not sell it or sells agricultural produce without buying it is not a trader. According to learned Solicitor-General, the word "and" has been used disjunctively and a person who is ordinarily engaged in the business of either buying or selling agricultural produce is a trader. There was also a controversy at the bar as to the meaning of the clause "a person ordinarily engaged in the business of processing of agricultural produce." According to learned Solicitor-General, as the petitioner is ordinarily engaged in the business of preparing biscuits out of agricultural produce it is engaged in the business of processing agricultural produce and, therefore, is a trader for the purposes of the Act. According to Mr. Balbhadra Prasad Singh, the petitioner is not engaged in the business of processing of agricultural produce but it is engaged in the business of manufacturing biscuit which is not agricultural produce. Mr. Singh drew a distinction between the expression "processing" and "manufacturing" and submitted that manufacturing of biscuit was not processing of agricultural produce as biscuit itself was not an agricultural produce. It may be stated here that the Act also defines in S. 2 (1) (a) "agricultural produce" as follows:

" "agricultural produce" includes all produce, whether processed or non-processed of agriculture, horticulture, animal husbandry and forest specified in the Schedule."

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Maida, sugar and vanaspati oil which the petitioner admittedly purchases for preparing biscuits are specified as agricultural produce in the schedule but biscuit itself is not specified as an agricultural produce in the schedule.

6. In support of his contention that the word "and" has to be read conjunctively Mr. Balbhadra Prasad Singh in the first place relied on the following observations in the Mersey Docks and Harbour Board v. Henderson Brothers, ((1888) 13 AC 595) :

"In the first place I know no authority for such a proceeding unless the context makes the necessary meaning of "or" "and," as in some instances it does; but I believe it is wholly unexampled so to read it when doing so will upon one construction entirely alter the meaning of the sentence, unless some other part of the same statute or the clear intention of it requires that to be done, as in the case of Fowler v. Padget, ((1798) 7 TR 509), where the Act of Jac. 1, c. 15, made it an act of bankruptcy for a trader to leave his dwelling-house to the intent or whereby his creditors might be defeated or delayed. These words if construed literally would have made every trader commit an act of bankruptcy if he casually left his dwelling-house and some creditor called for payment during his absence. It may indeed be doubted whether some of the cases of turning "or" into "and" and vice versa have not gone to the extreme limit of interpretation, but I think none of them would cover this case. Here, not only is "or" changed into "and", but the whole sentence is practically struck out, since the construction insisted on reads it thus (leaving out the words altogether) : "Vessels arriving in ballast, but trading outwards, and also vessels built within the port of Liverpool shall be liable to the rates payable in respect of the most distant of all the ports to which they shall trade outwards."

Mr. Singh also relied on the decision of the Supreme Court in Ishwar Singh v. State of U.P., (AIR 1968 SC 1450). He specially referred to para 11 of the said decision which reads as follows:-

"Now if the expression "Substances" is to be taken to mean something other than "medicine" as has been held in our previous decision it becomes difficult to understand how the word "and" as used in the definition of drug in S. 3 (b) (i) between "medicines" and "substances" could have been intended to have been used, conjunctively. It would be much more appropriate in the context to read it disconjunctively. In Stroud's Judicial Dictionary, 3rd Edn. it is stated at p. 195 that "and" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of or. Sometimes, however, even in such a connection, it is, by force of a context, read as "or". Similarly in Maxwell on Interpretation of Statutes, 11th Edn., it has been accepted that "to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions "or" and "and" one for the other."

On the basis of the observations above quoted from the two judgments relied on by him, Mr. Singh wanted us to accept his contention that the word "and" should ordinarily be interpreted to have been used conjunctively.

7. Learned Solicitor-General for the respondents did not challenge the correctness of the aforesaid contention of Mr. Singh. He submitted that at times, the word "or" has to be given the meaning of "and" and "and" has to be given the meaning of "or". According to him, what meaning should be given to "and" and "or" depends on the context in which they have been used as well as the purpose behind the enactment of the statute in which they are used. He submitted that for that purpose one may have to read the entire statute. He pointed out that his contention that sometimes the word "and" has to be interpreted to have been used disjunctively is established by para 11 itself of the judgment of the Supreme Court in Ishwar Singh Bindra's case, (AIR 1968 SC 1450). Learned Solicitor-General placed before us passages from Craies on Statute Law Seventh Edition, at page 161 and pages 212 to 216. The passage at page 161 is as follows :

"The more modern statute contains, in the form of an interpretation clause, a little dictionary of its own, in which it endeavours to define, often arbitrarily, the chief terms used. Any ambiguity in the definition of such terms can rarely be solved otherwise than by examination of the statute itself, or other enactments with which it is to be read by reason of its subject-matter or the direction of the legislature."

At pages 212-16 the learned author deals with interpretation clauses in detail pointing out that such clauses may extend the meaning of words but ordinary

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meaning is not taken away by clause extending the meaning of word; sometimes interpretation clauses are inserted ex abundanti cautela and interpretation clause is not necessarily applicable on every occasion when word interpreted is used in Act. The learned author relying on Jobbins v. Middlesex County Council, ((1949) 1 KB 142) has said that definition section ought to be construed as not cutting down the enacting provisions of an Act unless there is absolutely clear language having he opposite effect. Learned Solicitor-General, also placed before us passages from Maxwell on Interpretation of Statutes, Eleventh Edition, pages 229-31 where the learned author deals with the topic under the heading "The conjunctions" "or" and "and". He placed special reliance on the following passage :

"To carry out the intention of the legislature, it is occasionally found necessary to read the conjunctions "or" and "and" one for the other. The Disabled Soldiers Act, 1601 (c. 3) for instance, in speaking of property to be employed for the maintenance of "sick and maimed soldiers", referred to soldiers who were either the one "or" the other, and not only to those who were both."

8. Learned Solicitor-General placed strong reliance on the decision of the Supreme Court in Sri Krishna Coconut Co. v. East Godavari Coconut and Tobacco Market Committee, (AIR 1967 SC 973) where the words ''bought and sold" in Madras Commercial Crops Markets Act were subject-matter of interpretation. Learned Judges of the Supreme Court said that interpretation should be such which would result in validity of provision rather than its invalidity and which would give effect to manifest intention of legislature enacting the statute. They held that the words "bought and sold" aim at transaction whereunder dealer buys from producer who brings to market his goods for sale, i.e., the transaction is one resulting in buying by one and selling by other and that the words do not aim at transactions which have dual aspect, viz., buying by dealer from producer and selling of these identical goods by dealer to his customers within notified area. According to learned Solicitor-General, this decision of the Supreme Court was almost settler on the point. He maintained that the Act was brought into existence to provide for the better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Bihar and for matters connected therewith and it was intended that market fee should be levied and collected on the agricultural produce bought or sold in the market area. He drew our attention in this connection to the preamble of the Act and S. 27 of the Act. Section 27 says that the Market Committee shall levy and collect market fees on the agricultural produce bought or sold in the market area, at the rate of rupee one per Rs. 100/- worth of agricultural produce. He submitted that the provisions of S. 27 for levying and collecting market fees on purchase as well as sale of the agricultural produce cannot be given full effect if the expression "buying and selling" in S. 2 (1) (w) of the Act is given a meaning as contended on behalf of the petitioner that it aims at transactions which have dual aspect, namely, buying of agricultural produce by a dealer from a seller and selling of agricultural produce by the dealer to his customers. Learned Solicitor-General also relied on the definition of the word "trade" in S. 2 (1) (v) as under :-

" 'Trade', means any kind of transaction of sale and purchase or any kind of remuneration on sale and purchase of any agricultural produce."

According to him, applying the ratio decidendi of the Supreme Court decision in Krishna Coconut Co's case, transaction of "sale and purchase" in this definition will mean whereunder a dealer buys from a person who brings to market his goods for sale, i.e., the transaction is one resulting in buying by one and selling by another. In view of the decision of the Supreme Court I find no difficulty in accepting this contention of learned Solicitor-General as to the interpretation of the expression "transaction of sale and purchase" in S. 2 (1) (v) of the Act.

9. Now, "Trader" ordinarily means one who does trade. Therefore, "buying and selling" in S. 2 (1) (w) of the Act has to be given the same meaning on sale and purchase in S. 2 (1) (v) of the Act. An interpretation reading the word "and" in between the words "buying" and "selling" as "or" or at least that the transaction of buying and selling need not necessarily be by the same person in respect of the agricultural produce but it may also include such transactions where buyer is one person and the seller is another person will also give

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full effect to the intention of the legislature of levying and collecting market fees on the agricultural produce bought or sold in the market area as envisaged by S. 27 of the Act. In this connection our attention was drawn by Mr. Balbhadra Prasad Singh, learned counsel for the petitioner, to R. 82 of the Rules which while providing that the Market Committee shall levy and collect market fee, on agricultural produce bought or sold in the market area as envisaged by S. 27 of the Act further provides as follows:

"(ii) If the buyer is a licensee, he shall within a week of the purchase, deposit the market fee, with the Market Committee.

(iii) If the seller is a licensee and the buyer is not a licensee, the seller shall realise the market fee from the buyer and shall within a week deposit the same with the Market Committee.

(iv) If neither the buyer nor the seller is a licensee, the buyer shall deposit the market fee with the Market Committee or to its authorised officer or to staff or to any person authorised by the Market Committee.

(v) The Market Committee may authorise any of its officers or staff or any other person to collect market fee directly from the buyer or his agent."

According to Mr. Singh, this rule shows that market fee can be collected in all cases of purchase or sale irrespective of the fact whether the buyer or seller is a licensee or not and, therefore, it is not necessary to give an interpretation to the words "buying and selling" in S. 2 (1) (w) of the Act as contended by learned Solicitor-General for giving full effect to the provisions of S. 27 of the Act. The rule appears to have been made in such a way for realisation of market fee even in cases of stray purchases and sales. A person can be called upon to obtain a licence only if he is engaged in the business of buying and/or selling agricultural produce. Business indicates continuity. If a person buys or sells agricultural produce occasionally, then he cannot be said to be engaged in the business for the purposes of S. 2 (1) (w) of the Act and cannot be called upon to obtain a licence. Hence merely on account of R. 82, the contention of learned Solicitor-General as to the interpretation of S. 2 (1) (w) of the Act cannot be rejected.

10. Learned Solicitor-General further contended that if the interpretation as contended by learned counsel appearing on behalf of the petitioner was accepted, then the validity of the definition of "Trader" as given in S. 2 (1) (w) of the Act may be challenged on the ground that it makes a discrimination between different persons doing business of buying agricultural produce for one who buys and sells the agricultural produce will be liable to obtain a licence but another who buys the agricultural produce but sells it after transforming it into another goods which is not agricultural produce will not be liable to obtain a licence even though the business of his buying the agricultural produce may be much more than that of one who buys agricultural produce and sells it in the same form. According to learned Solicitor-General, the definition in S. 2 (1) (w), therefore, has to be given an interpretation as contended by him to make it intra vires. There also appears substance in this contention of learned Solicitor-General. I would accordingly hold that the petitioner firm which is ordinarily engaged in the business of buying agricultural produce is a trader within the meaning of the terms as defined in S. 2 (1) (w) of the Act.

11. As stated earlier, arguments were also advanced by learned counsel for the parties as to the meaning of the clause "engaged in the business of processing of agricultural produce." In support of his contention that the petitioner was not engaged in the business of processing of agricultural produce but of manufacturing of biscuits which was admittedly not an agricultural produce. Mr. Singh placed reliance on the following decisions : (i) Boulton v. Bull, ( (1795) 126 ER 651), (ii) Union of India v. Delhi Cloth and General Mills Co. Ltd., (AIR 1963 SC 791) and (iii) The Secy., Madras Gymkhana Club Employees' Union v. Management of the Gymkhana Club, (AIR 1968 SC 554). These decisions were cited to show that distinction between "processing" and "manufacturing". To appreciate the point raised by Mr. Singh it will suffice to quote para 14 from the decision of the Supreme Court in Union of India v. Delhi Cloth and General Mills which is as follows:-

"The other branch of Mr. Pathak's argument is that even if it be held that the respondents do not manufacture "refined oil" as is known to the market they must be held to manufacture some kind of "non-essential vegetable oil" by

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applying to the raw material purchased by them, the processes of neutralisation by alkali and bleaching by activated earth and/or carbon. According to the learned Counsel 'manufacture' is complete as soon as by the application of one or more processes, the raw material undergoes some change. To say this is to equate 'processing' to 'manufacture' and for this we can find no warrant in law. The word 'manufacture' used as a verb is generally understood to mean as 'bringing into existence a new substance' and does not mean merely 'to produce some change in a substance', however minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrases, Vol. 26, from an American Judgment. The passage runs thus:-

'Manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use."

There can be no doubt that the two words 'processing' and 'manufacturing' cannot be equated. Manufacturing means bringing into existence a new substance whereas processing means merely bringing out some changes in the substance. Thus each case of processing is not a case of manufacturing whereas in each case of manufacturing there is element of processing. According to learned Solicitor General, in manufacturing biscuits which is not an agricultural produce the petitioner is engaged in the business of processing of agricultural produce such as Maida, sugar and vanaspati oil. In order to appreciate respective contentions of learned counsel appearing for the parties we put certain questions to them and asked them to illustrate their view point. While learned counsel for the petitioner maintained if maida is made of wheat it is processing of maida; according to learned Solicitor General, it is processing of wheat into maida. In view of my finding that the petitioner is trader within the meaning of the term as defined in S. 2 (1) (w) of the Act as it is ordinarily engaged in the business of buying agricultural produce, decision of the question under discussion is not of much importance, but I am inclined to hold even on this question in favour of the respondents that the petiioner while engaged in the business of manufacturing of biscuits is also engaged in the business of processing of agricultural produce such as maida, sugar and vanaspati oil.

12. Mr. Balbhadra Prasad Singh appearing on behalf of the petitioner also submitted that in case his argument as to the interpretation of S. 2 (1) (w) of the Act was not accepted, in the alternative, he would challenge the vires of the Act on the ground that the provisions thereof are invasive of the liberties of the petitioner being in curtailment of the petitioner's right to carry on trade and business as guaranteed by the Constitution of India. He drew our attention to the averments made in paragraphs 12 and 13 of the petition in this regard and Arts. 301 and 304 of the Constitution of India. It appears that in M/s. B. and K. Traders v. State of Bihar, (1975 BBCJ 1) vires of the Act were challenged on the ground that it contravened the provisions of Arts. 301 and 304 of the Constitution. The argument was rejected by a Bench of the Court holding that provisions of those articles were not attracted and even if they were attracted, the restrictions imposed were reasonable within the meaning of Art. 19 (6) as well as Article 304 (b) of the Constitution. According to Mr. Singh, as the constitutional validity of the Act was challenged in the petition, if the petition could not succeed on his contention as to the interpretation of S. 2 (1) (w) of the Act, the case should be heard by a Bench of not less than five Judges as provided in sub-Art. (3) of Art. 228-A of the Constitution. Since the challenge to the constitutional validity of the Act on the same ground has been rejected by a Bench of the Court before coming into force of Article 228-A of the Constitution, it cannot be claimed by the petitioner that as a question as to the constitutional validity of the Act which is State law has been raised in this petition, it must be heard by a Bench of the Court consisting of not less than five Judges unless we are inclined to think that the earlier decision was not correct and requires reconsideration. It may be stated here that in B. and K. Traders' case, the petitioner of that case went to the Supreme Court for special leave against the judgment of this Court and leave was refused. The contention that once the constitutional validity of State law is raised the matter has to be heard by a Bench of five or more Judges irrespective of earlier decisions

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of the Court cannot be accepted. If that is accepted the result may be that even if there are earlier decisions of five Judges given after coming into force of the Constitution (Forty-Second Amendment) Act, the matter may have to be again heard by a Bench of five or more Judges. Such an interpretation will lead to absurdity and cannot be given to sub-Art. (3) of Art. 228-A of the Constitution. Following the reasons given in B. and K. Traders' case I hold that the Act is not ultra vires on account of contravention of provisions of Arts. 301 and 304 of the Constitution and the petitioner is not entitled to insist that this case must be heard by a Bench of not less than five Judges in accordance with provisions of Art. 228-A of the Constitution.

13. Before closing the judgment I would like to observe that even if I would have held with the petitioner on the question of interpretation of Section 2 (1) (w) of the Act, it would not have been possible to quash Annexure-4 in its entirety for even as a buyer the petitioner was liable to pay market fee on 400 tins of vegetable oil purchased by it on 20th of May, 1976.

14. For the foregoing reasons, the application fails and is dismissed. In the circumstances of the case, however, there will be no order as to costs.

S. K. CHOUDHURI, J. :- I agree.

Application dismissed.

AIR 1977 PATNA 136 "Belsund Sugar Co. v. State"

PATNA HIGH COURT

Coram : 2 SHAMBHU PRASAD SINGH AND NAGENDRA PRASAD SINGH, JJ. ( Division Bench )

The Belsund Sugar Co. Ltd., Riga and another, Petitioners v. The State of Bihar and others, Respondents.

Civil Writ Jur. Cases Nos. 3296 of 1975 and 111 of 1976, D/- 20 -4 -1976.

(A) Bihar Agricultural Produce Markets Act (16 of 1960), S.27(2) - AGRICULTURAL PRODUCE - 'Buyer' - Purchase of sugarcane from the specified area by Sugar Company for manufacture of sugar under the Bihar Sugar Cane (Regulation of Supply and Purchase) Ordinance - There is some element of volition even in such transactions to conform to the requirement of 'sale' - The Company is a "buyer" and therefore liable to pay market fee.

Bihar Sugar Cane (Regulation of Supply and Purchase) Ordinance

AIR 1972 SC 87. Foll. (Para 9)

(B) Bihar Agricultural Produce Markets Act (16 of 1960), S.15 - AGRICULTURAL PRODUCE - CONTRACT - SALE OF GOODS - "Sale" - Sugar Company having its registered office at Calcutta and its factory within the "market area" - Contract at Calcutta for sale of unascertained quantity of sugar - Quantity appropriated to such a contract only at the factory when they are earmarked for despatch to the purchaser concerned - In view of Ss.18 and 23 of Sale of Goods Act, 'sale' takes place within the market area making the purchaser of such sugar liable to pay market fee.

Sale of Goods Act (3 of 1930), S.18 and S.23. (Para 10)

(C) Bihar Agricultural Produce Markets Act (16 of 1960), S.15 - AGRICULTURAL PRODUCE - SALE - ESSENTIAL COMMODITIES - "Sale" - Supply of bulk of sugar produced by Sugar Company to Food Corporation of India in accordance with order of Central Government under the provisions of the Levy sugar Supply (Control) Order 1972 - Price determined under the provisions of Sugar (Price Determination) Order 1972 - Even in such transaction a transfer does take place for a price which is a "sale".

Levy Sugar Supply (Control) Order (1972)

AIR 1972 SC 87, Foll. (Para 11)

(D) Bihar Agricultural Produce Markets Act (16 of 1960), Pre.AGRICULTURAL PRODUCE - LEGISLATIVE COMPETENCE - Constitutionality - It is covered by Entry 28, List II, Sch.7 of Constitution.

Constitution of India, Sch.7, List 2, Entry 28.

The Act is covered by Entry No. 28 "Market and Fairs" of State List and, as such, there is no question of legislative incompetence on the part of the State Legislature in enacting the Act.

1975 BBCJ 1, Foll. (Para 12)

It is difficult to hold that the Act, in pith and substance, deals with industries as such. The object of the Act is to regulate buying and selling of agricultural produce by establishing markets for agricultural produce in the State of Bihar, and, while doing so, its incidentally making the purchaser of sugarcane or sugar liable to pay market fee cannot be said to be an Act concerning an industry. (Para 12)

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(E) Constitution of India, Art.254(1) - Bihar Agricultural Produce Markets Act (16 of 1960), Pre.AGRICULTURAL PRODUCE - ESSENTIAL COMMODITIES - REPUGNANCY BETWEEN STATUTES - Applicability - No question of its provisions being repugnant to provisions of Essential Commodities Act (1955) - Art.254(1) not attracted.

Essential Commodities Act (10 of 1955), Art.254(1)

Art.254 has no application to cases where the conflict is between two Acts made by Parliament and the State Legislature having competence to legislate the same on the principle of pith and substance. The repugnancy referred to in Art.254 of the Constitution is in connection with Acts when Parliament and the State Legislature both are legislating in respect of any of the entries in the Concurrent List (List III). Bihar Agricultural Produce Markets Act (16 of 1960) has been enacted under Entry No. 28 of the State List. As such, there is no question of its provisions being repugnant to the provisions of the Essential Commodities Act, which is a Central Act, to attract the provisions of Art.254. AIR 1947 PC 60 and AIR 1957 SC 297 and AIR 1976 SC 1031, Rel on; AIR 1972 SC 1738, Distinguished. (Para 13)

(F) Constitution of India, Art.246 - Bihar Agricultural Produce Markets Act (16 of 1960), Pre.AGRICULTURAL PRODUCE - LEGISLATIVE COMPETENCE - LEGISLATURE - AGRICULTURAL PRODUCE - Constitutionality - Not invalid on ground of unauthorised encroachment over the territory of the Union.

Once it is held that the State Legislature had legislative competence to enact the law in question any incidental conflict with any Central Act will not make the provisions of the State Act ultra vires. AIR 1947 SC 297, Foll. (Para 15)

(G) Bihar Agricultural Produce Markets Act (16 of 1960), S.15 - AGRICULTURAL PRODUCE - Scope.

Even if S.15 is held to be inoperative so far as sugar is concerned, the whole Act need not be held to be void and unworkable. Sub-s.(2) of S.15 itself says that the condition regarding sale by open auction can be exempted by the Board in cases of particular description of produce. (Para 16)

(H) Bihar Agricultural Produce Markets Act (16 of 1960), S.2(w) - AGRICULTURAL PRODUCE - SALE - "Trader" - Purchase of sugarcane by Sugar Company from cane growers under the Bihar Ordinance No. 43 of 1976 - There is "sale" and the Company is "trader" inasmuch as it is ordinarily engaged in the business of buying agricultural produce from Cane Growers.

Bihar Ordinance No. 43 of 1976

AIR 1972 SC 87, Foll. (Para 17)

(I) Constitution of India, Art.264 - AGRICULTURAL PRODUCE - LICENSE - STATE - Licence Fee - Co-relationship between amount realised and services rendered - Licence fee under Bihar Agricultural Produce Markets Act (16 of 1960) - Validity.

A fee is a sort of return or consideration for services rendered and as such there has to be an element of quid pro quo in the imposition of fee and if necessary the authority realising the fee may be called upon to show the co-relationship between the fee levied and the services rendered by it to the person who is required to pay the fee and in this respect it differs from 'tax' where the amount realised merges into the general fund. However, it is not possible to show with mathematical exactitude the co-relationship between the amount realised as fee from one particular person and the services rendered to him. Fee is realised from hundreds and thousands of persons and corresponding services are also rendered to hundreds and thousands. In that situation in many cases it may be impossible to show any direct co-relationship except that the person who has paid the fee has derived benefit in return. (Para 18)

Although the Bihar Agricultural Produce Markets Act was passed as early as in the year 1960, if is being implemented only recently. The provisions of the Act themselves conceive of development of market areas which can provide adequate facilities to purchasers and sellers of the agricultural Produce. In usual course, it is bound to take some time when full benefit of the scheme can be derived by all concerned. (Para 20)

If within a reasonable time the Market Committees concerned are not able to provide corresponding benefits to the sugar Companies, they will be justified in moving the proper authorities or the High Court on the ground that there is no co-relationship between the amount of fee realised from them and the facilities provided to them. (Para 20)

(J) Bihar Agricultural Produce Markets Rules (1960), R.82(iii) - AGRICULTURAL PRODUCE - Not ultra vires the provisions of the Bihar Agricultural Produce Markets Act (16 of 1960).

Sub-s.(2) of S.27, of the Act itself says that the market fee chargeable u/sub-s.(1) of S.27 shall be payable by the buyer in the manner prescribed. R.82(iii) of the Rules prescribes the manner in which the buyer, who is not a licensee, shall pay the market fee. In other words, R.82 (iii) only prescribes the machinery for realisation of the market fee from a buyer

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who is not a licensee but is purchasing the agricultural produce from the seller who is a licensee. At no stage the liability to pay the market fee shifts from the buyer to the seller. In such a situation the seller is merely a collecting agent. Such provisions are not uncommon where in the exigencies of the situation an Act or a rule appoints a collecting agent for a tax or fee. (Para 21)

(K) Constitution of India, Art.254 - REPUGNANCY BETWEEN STATUTES - Applicability - Control orders made by Central Government.

Per Shambhu Prasad Singh, J.:-

Control Orders made by the Central Government under the delegated powers are undoubtedly laws binding on the citizens, but they cannot be said to be laws made by Parliament and unless such Control Orders are existing laws they ought not to prevail over laws made by Legislatures of the State, if there be any repugnancy in the provisions of the two on account of Art.254(1) of the Constitution. (Para 23)

Cases Referred : Chronological Paras

AIR 1976 SC 1031 : (1976) 1 SCC 466 13, 23

AIR 1975 SC 846 : 1975 Tax LR 1455 18

AIR 1975 SC 2037 : 1975 Tax LR 2013 18

1975 BBCJ 1 12, 18

AIR 1973 SC 724 : 1973 Tax LR 581 18

AIR 1972 SC 87 : 1972 Tax LR 1603 9, 11, 17

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AIR 1970 SC 2000 : (1971) 1 SCR 671 8, 9, 11

AIR 1968 SC 478 : (1968) 1 SCR 479 9

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AIR 1963 SC 1062 : (1963) 3 SCR 893 21

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AIR 1961 SC 459 : (1961) 2 SCR 537 21

AIR 1957 SC 297 : 1957 SCR 399 13, 15, 23

AIR 1955 SC 79 : (1955) 1 SCR 810 21

AIR 1947 PC 60 : 74 Ind App 23 13

AIR 1940 Bom 65 : 42 Bum LB 10 (FB) 21

K.D. Chatterji, K.N. Gupta, K.D. Prasad and Anup Kumar Verma, (in C. W. J. C. No. 3296/75) and Som Nath Chatterjee, K.N. Gupta, K.D. Prasad and Anup Kumar Verma, (in C. W. J. C. No. 111/76), for Petitioners; Lalnarayan Sinha, Solicitor-General of India, Ram Balak Mahto, Govt. Pleader No.4 and Harendra Prasad, and Akhileshwar Prasad Singh, J. C. to G. P. No.4, for Respondents in both the Petns.

Judgement

NAGENDRA PRASAD SINGH, J.:- In these two writ applications the petitioners are two sugar factories. They challenge the authority of the respondent-Agricultural Produce Market Committees to issue directions to the petitioner-Companies to obtain licences in accordance with the provisions of the Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as the 'Act') and the Bihar Agricultural Produce Markets Rules, 1975 (hereinafter referred to as the 'Rules'), on the ground that the provisions of the Act and the Rules are not applicable to sugar factories, and, if they are applicable, they are ultra vires.

2. According to the Belsund Sugar Company Ltd., (petitioner in C. W. J. C. No. 3296 of 1975), it has its factory at Riga in the district of Sitamarhi, within the State of Bihar, and its registered office at Calcutta in the State of West Bengal, at Riga, the factory is engaged in the manufacture of sugar; but, as neither any purchase of sugarcane nor sale of sugar takes place within the market area established by the respondent Market Committee, the provisions of the Act and the Rules are not attracted. According to the petitioner, the purchase of sugarcane for manufacture of sugar is completely regulated by Ordinances passed by the State Government from time to time known as the Bihar Sugar-cane (Regulation of Supply and Purchase) Ordinance, in terms whereof the petitioner has to purchase sugarcane from a particular area at a fixed price, which cannot amount to 'sale'. So far as the sale of "free sugar" is concerned, according to the petitioner, it takes place at Calcutta and only despatch of sugar is made from the factory site. So far as sale of "levy sugar" is concerned, according to the petitioner, it has to supply it to the persons nominated by the Central Government under the provisions of Levy Sugar Supply (Control) Order, 1972; and, in such transactions there is complete absence of free volition on the part of the petitioner; and, as such it cannot amount to 'sale' in the eye of law. In the aforesaid circumstances, according to the petitioner, even though no sale or purchase takes place within the area of the respondent Market Committees, respondent No. 2 issued a notice, dated the 5th November, 1974, calling upon the petitioner to take a licence from the Committee in accordance with the provisions of the Act and to pay the requisite licence fee. A copy of the said letter is Annexure-"2" to

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the writ application. A reminder was sent by a letter, dated the 11th December, 1974, from respondent No. 2 threatening legal action against the petitioner. A copy of the said letter is Annexure-"3" to the writ application. The petitioner, by its letter, dated the 13th December, 1974, informed the Market Committee that the matter had been taken up for discussion with the State Government. A copy of the said letter is Annexure-"4" to the writ application. The respondent Market Committee, by its letter, dated the 13th January, 1975, again insisted that the petitioner should obtain a licence, failing which legal action would be taken against it. A copy of the said letter is Annexure-"5" to the writ application. The petitioner prayed for further time till the matter was finally decided by the State Government. But, by letter, dated the 20th November, 1975, the respondent Market Committee directed the petitioner not to purchase sugarcane from the growers in the Market Committee area till the licence was obtained. A copy of the said letter is Annexure-"9" to the writ application. According to the petitioner, the aforesaid communications have been issued by the respondent Market Committee without any authority of law and amount to arbitrary invasion on the right of the petitioner to carry on trade and business.

3. Messrs. Motihari Sugar Factory (petitioner in C. W. J. C. No. 111 of 1976) is also a company which manufactures sugar at Motihari in Bihar and its registered office is at Calcutta in the State of West Bengal. This petitioner also has challenged, on more or less similar grounds, the authority of the respondent Market Committee to ask the petitioner to take a licence, and has also questioned the right of the respondent Market Committee to realise the market fee from the petitioner.

4. Counter-affidavits have been filed on behalf of the respondent Market Committees and the respondent Marketing Board. According to the respondents, as the purchase of sugarcane and the sale of sugar by the petitioners take place within the market areas, the petitioners have to obtain a licence and they are liable to pay market fees in accordance with the provisions of the Act and the Rules, which became applicable no sooner the State Government, in exercise of the powers conferred on it by Section 4 of the Act, issued the notifications declaring the areas in question as market areas. The market fee is payable by the 'buyer' in the manner prescribed, whenever there is sale within the market area, in the principal market yards and sub-market yard or yards. Although the fee is payable by the 'buyer', yet in cases where the buyer is not a licensee and the seller is a licensee, the seller has to collect the fee from the buyer and to deposit the same with the Market Committee concerned.

5. As common questions of law and fact are involved in these two writ applications, they have been heard together and are being disposed of by this common judgment.

6. Mr. K. D. Chatterji, learned counsel appearing for the petitioner in C. W. J. C. No. 3296 of 1975, has strenuously challenged the claim made on behalf of the respondents that there is sale of sugarcane by the cane growers to the petitioner, on the one hand, and thereafter there is sale of sugar by the petitioner to purchasers, on the other. In this connection learned counsel has drawn our attention to the different provisions of the Bihar Sugarcane (Regulation of Supply and Purchase) Ordinance, which has been promulgated from time to time in more or less similar language, and it regulates the production, supply and distribution of sugarcane intended for use in sugar factories; and has submitted that the provisions of the said Ordinance completely regulate the transaction in respect of sugarcane, inasmuch as they fix the area from where the sugarcane is to be procured, the person from whom it is to be procured and the price that has to be paid by the petitioner, and, as such, leaving no element of free volition, which is an integral part of sale; and unless there is a sale, there is no question of payment of the market fee. In this connection learned counsel has drawn our attention to Section 31 of the Bihar Sugarcane (Regulation of Supply and Purchase) Ordinance, 1976 (Ordinance No. 43 of 1976), which empowers the Cane Commissioner to issue an order by notification in the Official Gazette, declaring any area to be a reserved area for the purpose of supply of sugarcane to a particular factory. Section 32 makes it obligatory on the sugarcane growers and the factory concerned to supply and purchase, as the case may be, quantity of sugarcane fixed by the order of the Cane Commissioner. Section 43 makes it incumbent on the factory to make payment of the price of the sugarcane as may be prescribed. The supply

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of sugarcane is further controlled by the provisions of the Bihar Sugarcane (Distribution and Movement Control) Order, 1966, an order framed in exercise of the powers under Section 3 of the Essential Commodities Act, where a licence has to be taken by an unit before making purchase of sugarcane for manufacture of sakkar, khandsari sugar etc., which is to be done in accordance with the direction of the Cane Commissioner. According to the petitioner, in such a situation when there is supply of sugarcane to the factory of the petitioner, this does not amount to 'sale' in the eye of law.

7. In support of the assertion that in such a situation no sale takes place, reliance has been placed on the case of M/s. New India Sugar Mills Ltd. v. Commr., of Sales Tax, Bihar, (AIR 1963 SC 1207). In that case a question arose as to whether the transaction of despatches of sugar by the petitioner-Company, pursuant to the direction of the Controller, amounted to 'sale' within meaning of the Sale of Goods Act, 1930. In that connection it was observed in the majority judgment as follows:-

"According to Section 4 of the Sale of Goods Act to constitute a sale of goods, property in goods must be transferred from the seller to the buyer under a contract of sale. A contract of sale between the parties is therefore a prerequisite to a sale. The transactions of despatches of sugar by the assessee pursuant to the directions of the Controller were not the result of any such contract of sale. It is common ground that the Province of Madras intimated its requirements of sugar to the Controller, and the Controller called upon the manufacturing units to supply the whole or part of the requirement to the Province. In calling upon the manufacturing units to supply sugar the Controller did not act as an agent of the State to purchase goods; he acted in exercise of his statutory authority. There was manifestly no offer to purchase sugar by the Province and no acceptance of any offer by the manufacturer. The manufacturer was under the Control Order left with no volition; he could not decline to carry out the order; if he did so he was liable to be punished for breach of the order and his goods were liable to be forfeited. The Government of the Province and the manufacturer has no opportunity to negotiate, and sugar was despatched pursuant to the direction of the Controller and not in acceptance of any offer by the Government."

It was further observed:

"Mere compliance with the despatch instructions issued by the Controller, which in law the assessee could not decline to carry out, did not amount to acceptance of an offer. A contract of sale postulates exercise of volition on the part of the contracting parties and there was in complying with the orders passed by the Controller no such exercise of volition by the assessee."

8. A similar view was taken in the case of M/s. Chitter Mal Narain Das v. Commr. of Sales Tax, (AIR 1970 SC 2000) while examining the provisions of the U. P. Wheat Procurement (Levy Order) 1959, saying that under the said Procurement Order the obligation to deliver wheat arose out of statute and there was no volition of the licensed dealer, and, as such, there was no 'sale'.

9. On their face, the aforesaid observations of the Supreme Court do help the contention raised on behalf of the petitioner; but I shall immediately indicate that the ratio of those cases is not applicable to the facts of the present case. In the case of New India Sugar Mills Ltd., (AIR 1963 SC 1207) the Supreme Court was examining a statute relating to taxation on sale in which the transaction must conform to the strict definition of 'sale'. In the present case, the relevant provisions of the Act and the Rules levy fee on the transaction of sale and purchase within the market area. Apart from that, a larger Bench of the Supreme Court in the case of Salar Jung Sugar Mills Ltd. v. State of Mysore, (AIR 1972 SC 87) had to consider the question as to when a sugarcane grower supplies sugarcane to a sugar factory in accordance with the terms, conditions and price fixed by different statutory orders, whether a 'sale' takes place. In that connection the aforesaid decisions in New India Sugar Mills Ltd. and Chitter Mal Narain Das, (AIR 1963 SC 1207 and AIR 1970 SC 2000) (supra) were examined and it was held that nonetheless there is some element of volition even in such transactions to conform to the requirements of 'sale'. In the case of Salar Jung Sugar Mills Ltd., (supra) the decisions in Indian Steel and Wire Products Ltd. v. State of Madras, (AIR 1968 SC 478) and Andhra Sugars Ltd. v. State of Andhra Pradesh, (AIR 1968 SC 599), which had taken the view that, even when the transactions of sale are governed by statutory provisions, a 'sale' takes place, were approved, and it was observed as follows:-

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"44. The Control orders are to be kept in the forefront for appreciating the true character of transactions. It is apparent that the area is restricted. The parties are determined by the order. The minimum price is fixed. The minimum quantity of supply is also regulated. These features do not complete the picture. The entire transaction indicates that the parties agree to buy and sell. The parties choose the terms of delivery. The parties have choice with regard to obtaining supply of a quantity higher than 95 per cent. of the yield. The parties can stipulate for a price higher than the minimum. The parties can have terms for payment in advance as well as in cash. A grower may not cultivate and there may not be any yield. A factory may be closed or wound up and may not buy sugarcane. A factory can reject goods after inspection. The combination of all these features indicates that the parties entered into agreement with mutual assent and with volition for transfer of goods in consideration of price. Transactions of purchase and sale may be regulated by schemes and may be liable to restrictions as to the manner or mode of sale. Such restrictions may become necessary by reason of co-ordination between production and distribution in planning the economy of the country. The contention of the appellants fails. The transactions amount to sales within the meaning of the Mysore Sales Tax Act."

In my opinion, it is futile on the part of the petitioner to urge that, when it purchases sugarcane from the specified area at the price fixed, for crushing in its factory, it is not a 'buyer' within the meaning of the Act and liable to pay market fee.

10. It was then submitted that, so far as the sale of 'free sale sugar' is concerned, the situs of sale is not at any part of the market area, but at Calcutta, the registered office of the petitioner, where the transactions are finalised the factory site simply supplies as per order of the Company issued from its registered office. In that connection an application was filed on the 6th March, 1976, giving the details of the sale. In paragraph 7 of the said petition it was stated:-

"7. That on the conclusion of these sales, sale notes or sale memos were issued by the petitioner's Head Office to the said purchaser, who, in turn, issued to the petitioner's Head Office 'despatching Advices' mentioning the nominee to whom the delivery was to be given. On receipt of the despatching advices from the purchaser, the Head Office issued delivery orders to the nominee as well as to the factory at Riga. On the basis of the said orders the nominee of the purchaser takes the delivery at the factory."

Assuming that the same procedure is followed in respect of all transactions relating to 'free sale sugar', the question is, can it be said that, in such a situation, the sale takes place at Calcutta? It is not in dispute that the alleged sale at Calcutta is in respect of an unascertained goods, inasmuch as the sale is in respect of sugar produced or to be produced, but not earmarked at the time the transaction is finalised. In such a situation, the provisions of Sections 18 and 23 of the Sale of Goods Act are attracted. Sections 18 and 23 of the Sale of Goods Act read as follows:-

"18. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained."

"23 (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract."

From paragraph 7 of the application quoted above it appears that at Calcutta there is a contract for sale of unascertained quantity of sugar and the said quantity of sugar is appropriated only at the time of delivery. To be more specific, at that time the quantity of sugar which is to be supplied to the purchaser is not ascertained out of the bulk of sugar which may have been produced or was likely to be produced. They are appropriated to such a contract only at the factory site when they are earmarked for despatch to the purchaser concerned. In view of Sections

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18 and 23 of the sale of Goods Act, no property in goods is to be transferred to the buyer unless and until the goods are ascertained and unconditionally appropriated to the contract. In my opinion, this appropriation to the contract takes place at the factory site when, in pursuance of the contract, the petitioner delivers goods to the buyers or to any carrier for the purpose of transmission to the buyers. In that view of the matter, the 'sale' takes place within the market area making the purchaser of such sugar liable to pay market fee.

11. It was then submitted on behalf of the petitioner that the bulk of sugar produced by it is supplied to the Food Corporation of India, in accordance with the order of the Central Government under the provisions of the Levy Sugar Supply (Control) Order, 1972, and such supply is entirely governed by the directions of the Central Government issued from time to time in respect of the quantity of sugar, the person or organisations or the State Governments to be supplied at a price not exceeding the price determined under the provisions of sugar (Price Determination) Order, 1972 and any such supply cannot amount to 'sale' within the market area. In this connection again complete absence of volition on the part of the seller has been urged, as was urged in connection with the purchase of sugarcane. No doubt, similar argument in connection with the U. P. Wheat Procurement (Levy) Order, 1959, was upheld by the Supreme Court in the case of Chitter Mal Narain Das (AIR 1970 SC 2000) (supra); but later in the case of Salar Jung Sugar Mills Ltd., (AIR 1972 SC 87) (Supra) the aforesaid case of M/s. Chitter Mal Narain Das was not followed. Even in such transactions which are governed by the terms of the Levy Order, a transfer does take place for a price, which is a 'sale' in the eye of law. In my opinion, whenever the petitioner-Company accepts supply of sugarcane from the canegrowers, a sale takes place in which the petitioner is a buyer, and whenever it delivers sugar to the purchasers, sale takes place no sooner the sugar is earmarked and appropriated to the contract and in such cases the petitioner-Company is a seller.

12. It was further urged that Sugar industry is an industry under the control of the Union and, in view of Entry 52 of the Union List, Parliament has exclusive jurisdiction over the industries the control of which by the Union has been declared by Parliament by law to be expedient in the public interest, and, as such, the State Legislature is not competent to legislate and make provisions in connection with such industries and any such provision made in respect of such industries has to be declared as void. In this connection learned counsel for the petitioner submitted that, if the provisions of the Act are held to be applicable to sugar industries, then the Act will be deemed to be under Entry No. 24 of the State List, that is, an Act relating to an industry, which, in view of declaration by Parliament referred to above, is not permissible. In my opinion, it is difficult to hold that the Act, in pith and substance, deals with industries as such. The object of the Act is to regulate buying and selling of agricultural produce by establishing markets for agricultural produce in the State of Bihar, and, while doing so, its incidentally making the purchaser of sugarcane or sugar liable to pay market fee cannot be said to be an Act concerning an industry. A Bench of this Court in M/s. B. and K. Traders v. State of Bihar, (1975 BBCJ 1) has considered as to under which entry of the State List the Act in question falls and it has held that it is covered by Entry No. 28 "Markets and Fairs" and, as such, in my opinion, there is no question of legislative incompetence on the part of the State Legislature in enacting the Act in question.

13. Learned counsel for the petitioner then submitted that, if it is held that the provisions of he Act are applicable even to purchase of sugarcane and sale of sugar made by the petitioner, then the Act and the Rules have to be declared void, in view of the fact that there is repugnancy between the provisions of the Act, read with the Rules, and the provisions of the Control Orders made in exercise of the powers conferred by Section 3 of the Essential Commodities Act by the Central Government; and both operate into the same field regarding sale and purchase of sugar. According to petitioner in such a situation, the State Act must be deemed to be void in view of Article 254 (1) of the Constitution of India. It is difficult to accept this argument. Article 254 has no application to cases where the conflict is between two Acts made by Parliament and the State Legislature having competence to legislate the same on the principle of pith and substance. The repugnancy referred to in Article 254 of the Constitution is in connection

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with Acts when Parliament and the State Legislature both are legislating in respect of any of the entries in the Concurrent List (List III). I have already held that the Act in question has been enacted under Entry No. 28 of the State List. As such, there is no question of its provisions being repugnant to the provisions of the Essential Commodities Act, which is a Central Act, to attract the provisions of Article 254. Reference in this connection may be made to the cases of Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., Khulna, (AIR 1947 PC 60), A. S. Krishna v. State of Madras, (AIR 1957 SC 297) and Kerala Electricity Board v. M/s. Midland Rubber and Produce Co. Ltd., (1976) 1 SCC 466 = (AIR 1976 SC 1031). In the aforesaid case of A. S. Krishna, while interpreting sub-section (1) of Section 107 of the Government of India Act, 1935, which was similar to Article 254 (1) of the Constitution, it was observed as follows:-

"For this section to apply, two conditions must be fulfilled: (1) The provisions of the Provincial law and those of the Central legislation must both be in respect of a matter which is enumerated in the Concurrent List, and (2) they must be repugnant to each other. It is only when both these requirements are satisfied that the Provincial law will to the extent of the repugnancy, become void. The first question, therefore, that has to be decided is, is the subject-matter of the impugned legislation one that falls within the Provincial List, in which case Section 107 would be inapplicable, or is it one which falls within the Concurrent List, in which case the further question, whether it is repugnant to the Central Legislation will have to be decided?"

The same view was reiterated in the case of Kerala State Electricity Board at page 478 (of SCC) = (at p. 1039 of AIR) (supra) in these words:-

"That the question of repugnancy can arise only with reference to a legislation falling under the concurrent list is now well settled."

14. Learned counsel for the petitioner, however, referred to another decision of the Supreme Court in State of Jammu and Kashmir v. M. S. Farooqi, (1972) 1 SCC 872 = (AIR 1972 SC 1738). The ratio of that case is not applicable, because in that case the Supreme Court had to deal with Article 254 of the Constitution as it was then applicable to Jammu and Kashmir, there being no Concurrent List. This is apparent from facts stated in paragraphs 9 to 12 of the judgment.

15. It was then urged that, even if it is held that Article 254 of the Constitution has no application in a situation where both the legislatures, in pith and substance, have legislative competence, still if some provisions of the two Acts are repugnant and conflicting, then the provisions of the State Act have to be held void as it will amount to unauthorised encroachment over the territory of the Union in view of Article 246 of the Constitution. In my opinion, there is no substance in this contention. Once it is held that the State Legislature had legislative competence to enact the law in question any incidental conflict with any, Central Act will not make the provisions of the State Act ultra vires. In this connection again a reference may be made to the aforesaid judgment in Prafulla Kumar Mukherjee and the judgment in the case of A. S. Krishna (AIR 1957 SC 297) (supra). In the case of A. S. Krishna, the Supreme Court observed:-

"When a law is impugned on the ground that it is ultra vires the powers of the legislature which enacted it, what has to be ascertained is the true character of the legislation. To do that, one must have regard to the enactment as a whole, to its objects and to the scope and effect of its provisions. If on such examination it is found that the legislation is in substance one on a matter assigned to the legislature, then it must be held to be valid in its entirety, even though it might incidentally trench on matters which are beyond its competence."

Learned Solicitor-General, however, submitted that, on the facts of the present case, the only conflict that has been pointed out on behalf of the petitioner is between Section 15 of the Act, on the one hand, and the provisions of the Sugar (Price Determination) Order, 1972 and the Sugar (Restriction on Movement) Order, 1972, on the other. According to him, Section 15 of the Act is not such an integral part of the Act that, even if it is held to be void or not applicable so far as the petitioner is concerned, the whole Act will become unworkable.

16. Section 15 of the Act reads as follows:-

"15 (1) No agricultural produce specified in the notification under sub-section (1) of Section 4 shall be bought or sold by any person at any place within the market area, other than the principal market yard or sub-market yard or yards

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established therein, except such quantity as may in this behalf be prescribed for retail sale or personal consumption.

(2) The sale and purchase of such agricultural produce in such areas shall notwithstanding anything contained in any law be made by means of open auction or tender system except in cases of such class or description of produce as may be exempted by the Board."

Sub-section (1) of Section 15 requires sugar, which is an agricultural produce, to be brought to the principal market yard or sub-market yard or yards for being sold, and sub-section (2) prescribes that the sale and purchase shall take place by means of open auction. According to the petitioner, it is not permissible for it to sell the sugar by public auction, because the price of such sugar has been fixed by the Sugar (Price Determination) Order, 1972, or by similar orders made from time to time. Similarly, neither is it permissible nor is it possible to carry all the sugar produced by the factory of the petitioner to the principal market yard or sub-market yard or yards. Learned counsel for the petitioner has submitted that this provision is the very soul of the Act inasmuch as it makes a provision for sellers and buyers to come to the market yard and sell and purchase articles by open auction. In my opinion, it is difficult to accept that, if this section is held to be inoperative so far as sugar is concerned, the whole Act will have to be held to be void and unworkable. Sub-section (2) of Section 15 itself says that the said condition regarding sale by open auction can be exempted by the Board in cases of particular description of produce. Apart from that, it has been stated on behalf of Respondents that the State Government has issued notification in exercise of the powers conferred by Section 42 of the Act exempting sugar from applicability of sub-section (2) of Section 15. Section 42 vests such power in the State Government. So far as Section 15 (1) regarding sale of sugar at the principal market yard or sub-market yard is concerned, during the course of hearing a notification, dated the 31st July, 1974, published in an extraordinary issue of the Bihar Gazette of that date, was brought to our notice to show that the premises of the Belsund Sugar Co. Ltd., have been declared as sub-market yard. It is stated that similar notifications have been issued so far as the other sugar companies are concerned. In that view of the matter, even if the petitioner-Company purchases sugarcane or sells sugar in the premises of the factory, which has been declared as sub-market yard, there is no question of violating the provisions of sub-section (1) of Section 15 of the Act.

17. It was also faintly submitted by the learned counsel for the petitioner that the petitioner cannot be said to be a 'trader' within the meaning of the Act, and as such it is not incumbent on it to have a licence. According to the learned counsel, when the petitioner purchases sugarcane from the cane growers, it has to do it as commanded by the provisions of the Ordinance referred to above (Ordinance No. 43 of 1976). In view of the fact that I have already held that whenever there is supply of cane by the cane-growers to the petitioner-Company, there is a 'sale', the petitioner will be deemed to be a 'trader' inasmuch as the petitioner is ordinarily engaged in the business of buying agricultural produce from the cane growers. In the aforesaid judgment of the Supreme Court in Salar Jung Sugar Mills Ltd., (AIR 1972 SC 87), while considering as to whether such sugarcane factories shall be deemed to be 'dealer' within the meaning of the Mysore Sales Tax Act when they purchase sugarcane from the cane growers, it was held that they will be deemed to be 'dealers' within the meaning of that Act. In that Act 'dealer' had been defined to mean a person who carries on the business of buying, selling, supplying or distributing goods for cash or for deferred payment. The definition of 'dealer' is more or less similar to the definition of 'trader' in the present Act and, as such, there should not be any difficulty in holding that the petitioner will be deemed to be a 'dealer' and as such it has to take a licence in accordance with the provisions of the Act.

18. Mr. Som Nath Chatterjee, who appeared for the petitioner in C. W. J. C. No. 111 of 1976, while adopting the arguments made on behalf of the petitioner in C. W. J. C. No. 3296 of 1975 raised another point that, even if the amount realised as market fee is held to be a 'fee', which he was not challenging in view of the aforesaid Bench decision of this Court in the case of M/s. B. and K. Traders (1975 BBCJ 1) (supra), there was no co-relationship between the amount realised as market fee and the services rendered by the Market Committee in question to the petitioner-Company. When objected to by learned Solicitor-General that there was no statement of facts in that context

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and only a ground had been taken in the, to amend the main writ application and to state that the peti­tioner-Company was not receiving any service from the Market Committee in lieu of the huge amount of market fee payable over the transactions entered into by the petitioner-Company. After hear­ing the parties, the prayer for filing an amendment petition was allowed. There­after, a main writ application, a prayer was made on behalf of the petitioner during the course of the hearing petition was filed on behalf of the petitioner and a reply thereto on behalf of the respondent-Market Committee. Learned counsel appearing for the peti­tioner submitted that the fact that there is no correlationship between the amount of fee charged and the nature of services rendered is a matter justiciable before this Court and in such a situation the onus is on the Market Committee to prove to the satisfaction of this Court that the market fee charged from the person con­cerned is not excessive or arbitrary and that can be co-related to the extent of services rendered. In this connection re­ference was made to the decisions of the Supreme Court in. The Indian Mica and Micanite Industries Ltd. v. State of Bihar, (AIR 1971 SC 1182); Secretary, Govern­ment of Madras, Home Department v. Zenith Lamps and Electrical Ltd., (AIR 1973 SC 724), State of Maharashtra v. Salvation Army, Western India Territory, (AIR 1975 SC 846) and Government of Andhra Pradesh v. Hindustan Machine Tools Ltd., (AIR 1975 SC 2037). Learned counsel laid great stress on the observa­tion in the case of Government of Andhra Pradesh, (AIR 1975 SC 2037 at 2044) to the following effect:-

"20. One cannot take into account the sum total of the activities of a public body like a Gram Panchayat to seek justification for the fees imposed by it. The expenses incurred by a Gram Panchayat or a Municipality in discharging its obli­gatory functions are usually met by the imposition of a variety of taxes. For justifying the imposition of fees the public authority has to show what services are rendered or intended to be rendered indi­vidually to the particular person on whom the fee is imposed. The Gram Panchayat here has not even prepared an estimate of what the intended services would cost it." It is well settled that fee is a sort of return or consideration for services render­ed and as such there has to be an element of quid pro quo in the imposition of fee and if necessary the authority realising the fee may be called upon to show the co-relationship between the fee levied and the services rendered by it to the person who is required to pay the fee and in this respect it differs from 'tax' where the amount realised merges into the gene­ral fund. However, it is not possible to show with mathematical exactitude the co-relationship between the amount rea­lised as fee from one particular person and the services rendered to him. Fee is realised from hundreds and thousands of persons and corresponding services are also rendered to hundreds and thousands. In that situation in many cases it may be impossible to show any direct co-relationship except that the person who has paid the fee has derived benefit in re­turn.

19. Now I propose to examine the materials on record to find out as to whe­ther any such co-relationship exists be­tween the amount of market fee to be paid by the petitioners and the corresponding benefits received by them. In this con­nection, as already pointed out above, a supplementary affidavit was filed on be­half of the petitioner on the 20th March, 1976. saying that no service whatsoever is rendered by the Market Committee for the market fee realised by it. According to petitioners the Zonal Development Council prepares the programme for deve­lopment of communication, irrigation and other agricultural facilities relating to sugar. No additional facilities whatsoever are received by the petitioner from the Market Committee in connection with the purchase of sugarcane. It was further sub­mitted that, in view of the declaration of the factory area of the petitioner itself as a market yard, now there is no question of establishment of any market yard or sub-market yard for sale or purchase of sugarcane or sugar by the respondent Market Committee. Section 15 (2) of the Act which makes provision for fixation of price by auction being not applicable to the sale and purchase of sugarcane and sugar, the petitioner does not derive any benefit on that account also. According to the petitioner, at the rate of Re. 1/- for Rs. 100/- worth of agricultural produce, the petitioner will have to pay about Rs. 5,00,000/- annually to the Market Committee; but the same has no co-relationship with the facilities contemplated, and in that sense the amount realised will cease to be 'fee' and will become "tax". An affidavit on behalf of the Marketing Board has been filed in reply to the aforesaid

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affidavit of the petitioner in which it has been stated that sugarcane farmers are spread over different villages and they are faced with the problem of transport from those villages to the factory site and due to lack of good roads they have to suffer inasmuch as the sugarcane loses its weight due to driage. On account of lack of proper arrangement within the factory premises the bullock-carts have to stay over-night. Keeping all these difficulties in consideration, the Market Committee has taken up the work of construction of link roads from the villages to the factory site which will benefit the sugarcane farmers as well as the factory concerned. The scheme has been finalised for construction of these link roads with the approval of the World Bank International Development Agency which is providing advances for meeting part of the cost of construc­tion of the market and the link roads. It has also been stated that lands needed for execution of the plan have been acquired. Details of ten link roads of ten kilometres each to serve every market have been also mentioned. According to the respondent-Market Committee, proper Marketing facilities provided near the factory site of the petitioner will be an incentive to the farmers of unreserved areas also which may supply sugarcane to the petitioner's factory. In that connection it has also been suggested that the development is at its initial stage and full benefit can be derived only after the same is fully implemented. A reply on behalf of the petitioner to the affidavit filed on behalf of the Marketing Board was filed on the 2nd April, 1976. In that even the claim about construction of the link roads to provide facilities to the farmers or to the petitioner-Company has also been challenged.

20. From the affidavits filed on behalf of the petitioner as well as the reply thereto filed on behalf of the Marketing Board if is obvious that for the present the petitioner is not being provid­ed with such facilities which may be held to have co-relationship with the amount of fee which the petitioner is paying or is liable to pay. Any benefit provided to the sugarcane growers is of no conse­quence, so far as the petitioner is con­cerned. But in this connection one thing has to be kept in view that, although the Act was passed as early as in the year 1960, it is being implemented only recent­ly. The provisions of the Act themselves conceive of development of market areas which can provide adequate facilities to purchasers and sellers of the agricultural produce. In usual course, it is bound to take some time when full benefit of the scheme can be derived by all concerned, In this connection another aspect was emphasised by the learned Solicitor-General that the Market Committee has no other source of income for development of its projects and any fee realised by the Market Committee is to be spent for the development of the market area and in this respect the facts of the present case differ from the facts of some of the cases of the Supreme Court referred to above, where the authorities concerned, who were collecting the fees, were also getting some grants from Government or some other bodies and they were enjoined by the provisions of the Act to provide those facilities out of the amount received by them. Under those circumstances, it was pointed out that there was no proper explanation as to how the amounts realised as fees were being spent by them for the benefit of the persons from whom such fees were realised. However, if within a reasonable time the Market Committees concerned are not able to provide corresponding benefits to the petitioner-Companies, they will be justified in moving the proper authorities or this Court on the ground that there is no co-relationship between the amount of fee realised from them and the fecilities provided to them

21. It was then submitted by Mr. Som Nath Chatterjee that Rule 82 of the Rules is ultra vires as it is beyond the scope of the Act. Relevant clauses of Rule 82 read as follows:-

"82. (i) The Market Committee shall levy and collect market fee on agricultural produce bought or sold in the market area at the rate of Re. 1/- per Rs. 100 worth of agricultural produce.

(ii) If the buyer is a licensee, he shall, within a week of the purchase, deposit the market fee with the Market Committee.

(iii) If the seller is a licensee and the buyer is not a licensee, the seller shall realise the market fee from the buyer and shall within a week deposit the same with the Market Committee.

(iv) If neither the buyer nor the seller is a licensee, the buyer shall deposit the market fee with the Market Commit­tee or to its authorised officer or to staff or to any person authorised by the Market Committee.

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According to learned counsel, R. 82 (iii) imposes a duty on the petitioner-Company, white selling sugar to the buyer, who is not a licensee, to realise the market fee from such buyer and to deposit the same with the Market Committee within a week, whereas u/S. 27 (2) of the Act the liability to pay the fee is on the buyer. According to learned counsel, the rule making authority cannot shift the liability from the buyer to the seller under a particular contingency, without there being a provision in the Act itself. In my opinion, there is no substance in the contention of the learned counsel. Sub-section (2) of S. 27 of the Act itself says that the market fee chargeable u/Ss. (1) of S.27 shall be payable by the buyer in the manner prescribed. R. 82 (iii) of the Rules prescribes the manner in which the buyer, who is not a licensee, shall pay the market fee. In other words, R. 82 (iii) only prescribes the machinery for realisation of the market fee from a buyer who is not a licensee but is purchasing the agricultural produce from a seller who is a licensee. In my opinion, at no stage the liability to pay the market fee shifts from the buyer to the seller. In such a situation the seller is merely a collecting agent. Such provisions are not uncommon where in the exigencies of the situation an Act or a rule appoints a collecting agent for a tax or fee. Under the Bihar Taxation on Passengers and Goods (Carried by Pubic Service Motor Vehicles) Act, 1961 and the Sales Tax Acts of different States taxes are realised by appointing collecting agents. Market fee, although not a tax in that sense, belongs to genus of tax; and merely because under certain contingencies the seller of such agricultural produce has been made the collecting agent of such fee from the buyer, in my opinion, the rule cannot be held to be ultra vires. Reference in this connection may be made to the well known case of Hin-gir-Rampur Coal Co. Ltd. v. State of Orissa, {AIR 1961 SC 459) and the case of Sir Byramjee Jeejeebhoy v. Province of Bombay, (AIR 1940 Bom 65) (FB). The rule-making authority has simply carried out the purposes of the Act by making the rule in question for the purposes of restricting the evasion of market fee by such buyers who are not licensees. It is well known that where a charging section is to be interpreted it should be interpreted strictly in favour of the subject But the same principle does not apply while construing a section which only provides the machinery for collection. In such a situation Courts have leaned in favour of the revenue so that the provisions of a valid Act are not frustrated due to some lacuna in the provision rela­ting to the machinery for collection of such taxes and fees. In this connection reference may be made to the following observation in the case of India United Mills Ltd. v. Commr. of Excess Profits Tax Bombay, (AIR 1955 SC 79 at 82):-

"That section is, it should be emphasised, not a charging section, hut a machinery section and a machinery section should be so construed as to effectuate the charging sections."

Similarly, in the case of Gursahai Saigal v. Commr. of Income-tax, Punjab, (AIR 1863 SC 1062) certain words were read into the section so as to make the provision workable. In the aforesaid case the provision in question laid down the machinery for assessing the amount of in­terest for which the liability was clearly created. The liability to pay the fee on the buyer has been created by sub-section (2) of S.27 of the Act. R.82 (iii) simply provides the machinery for collection of such fee, and I do not find any ground for holding that the said machinery is in any manner arbitrary or not sanctioned by law.

22. In the result, both the applications fail and they are dismissed; but, in the circumstances, there will be no order as to costs.

23. SHAMBHU PRASAD SINGH, J.:- I agree. Undoubtedly some of the ques­tions arising for decision in these two writ applications are interesting, but they appear to have been settled by the decisions of the Supreme Court which have been referred to in the judgment of my learned brother N. P. Singh, J. Of course, there are observations in the decision of the Supreme Court in the case of State of Jammu and Kashmir v. M. S Farooqi, (1972) 1 SCC 872 = (AIR 1972 SC 1738) which may support a contention that in Article 254 (1) of the Constitution the words "with respect to one of the matters enumerated in the Concurrent List" qualify only the expression "to any provision of any existing law" and not "to any provision of law made by Parlia­ment which Parliament is competent to enact". But these observations, as has rightly been pointed out by my learned brother, were made with reference to Article 254 as applicable to Jammu and Kashmir. In interpreting Article 254 (1)

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of the Constitution with reference to other States of the country the interpre­tation given to that Article by the Supreme Court in A. S. Krishna v. State of Madras, (AIR 1957 SC 297) and in Kerala Electricity Board v. M/s. Midland Rubber and Produce Co., Ltd., (1976) 1 SCC 466 = (AIR 1976 SC 1031) has to be followed. It is remarkable that in Kerala Electricity Board's case the interpretation given to Article 254 of the Constitution in A. S. Krishna's case in 1957 has been reiterated in spite of decision of the Supreme Court in State of Jammu and Kashmir v. M. S. Farooqi. Further, the repugnancy, if any, in the provisions of the Bihar Agricul­tural Produce Markets Act, according to the petitioners, is with the provisions of the Control Orders made by the Central Government in exercise of the powers conferred by Section 3 of the Essential Commodities Act. Article 254 (1) refers to repugnancy between provisions of and law made by the Legislature of a State and that of a law made by Parliament and not by the Central Government in exercise of powers conferred upon it under some law made by Parliament. Control Orders made by the Central Government under the delegated powers are undoubtedly laws binding on the citizens, but they cannot be said to be laws made by Parliament and unless such Control Orders are existing laws they ought not to prevail over laws made by Legislatures of the State, if there be any repugnancy in the provisions of the two on account of Article 254 (1) of the Constitution.

Petitions dismissed.

AIR 1965 PATNA 267 (Vol. 52, C. 73) "Thakur Prasad v. State of Bihar"

PATNA HIGH COURT

Coram : 2 V. RAMASWAMI, C.J. AND N. L. UNTWALIA, J. ( Division Bench )

Thakur Prasad Gupta and others, Petitioners v. State of Bihar and another, Respondents.

Misc. Judl. Case No. 1100 of 1964, D/- 20 -11 -1964.

(A) Bihar Agricultural Produce Markets Act (16 of 1960), S.4, S.15 - Constitution of India, Art.19(1)(g) - AGRICULTURAL PRODUCE - FREEDOM OF TRADE - CONSTITUTIONALITY OF AN ACT - Power of State Government to declare market area for agricultural produce - Provisions of S.4 of Bihar Act are constitutionally valid.

Looking to the various provisions of the Bihar Agricultural Produce Markets Act and the object of passing the Act, it cannot be said that S. 4 of the Act imposes unreasonable restrictions on the

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fundamental right guaranteed by Art. 19(1)(g) of the Constitution of India. Therefore, the provisions of the Act with regard to declaration of market areas must be held to be intra vires and constitutional. (Para 3)

(B) Bihar Agricultural Produce Markets Act (16 of 1960), S.18(ii), S.27 - Bihar Agricultural Produce Market Rules, R.61 - AGRICULTURAL PRODUCE - Market Committee has power to levy or collect market fees u/S.27.

There, is nothing in the language of Section 27 of the Act or rule 61 to suggest that the market committee cannot lawfully levy or collect market fees unless a market has been established in the first instance under S. 18(ii) of the Act. (Para 4)

However, the market committee has the power to levy and collect market fees only on such agricultural produce which is specified in the notification under Section 4 of the Act. The reason is that the language of Section 27 must be construed subjecta materies in the context and background of other sections of the Act, and, so construed, the power of the market committee to levy and collect market lees under Section 27 must be confined to the agricultural produce specified in the notification under Section 4 of the Act. AIR 1962 SC 97, Disting. (Para 4)

(C) Bihar Agricultural Produce Markets Act (16 of 1960), S.18(ii) - Bihar Agricultural Produce Market Rules, R.71 - AGRICULTURAL PRODUCE - R.71 is ultra vires S.18(ii).

Rule 71 of the Bihar Agricultural Market Rules is ultra vires S. 18(ii) of the Bihar Agricultural Markets Act, and must be held to be illegal. Rule 71 is ultra vires for two reasons. In the first place, the market committee has the power to Issue licenses under Section 18(ii) of the Act only after a market has been established under Section 18(i). In the second place, the power to issue license is confined to traders, commission agents, etc., operating in the market. Having regard to the definition of a 'market' in Section 2(h) of the Act and 'market area' in Section 2(i) of the Act, it is manifest that the market is a narrower conception than the market area and the market committee has no proper authority under Section 18(ii) of the Act to issue licenses to traders, commission agents, brokers etc., operating in the market area. (Para 6)

Cases Referred : Courtwise Chronological Paras

('59) AIR 1959 SC 300 (V 46) : 1959 SCJ 297, M.C.V.S. Arunachala Nadar v. State of Madras 3

('62) AIR 1962 SC 97 (V 49) : 1962 (2) SCR 659, Mohammad Hussain Ghulam Mohammad v. State of Bombay 3, 4

B.C. Ghosh and Mahendra Prasad Pandey, for Petitioners; Advocate General, Standing Counsel and Surendra Prasad, for Respondents.

Judgement

RAMASWAMI, C. J. :- The impugned legislation in this case is the Bihar Agricultural Produce Markets Act (Bihar Act XVI of 1960), hereinafter referred to as the impugned Act. The Act received the assent of the Governor on the 6th of August 1960. By a notification made under Section 4 of the Act the State Government declared the entire area of Buxar as the "Market area" (Annexure B to the writ application, dated the 19th September, 1963). By another notification dated the 8th April, 1964, the State Government notified the principal market yard and the Sub-market yard for the Buxar market area under Section 5 of the Act. The State Government also established a market committee by a notification under Section 6 of the Act on the 19th September, 1963. The petitioners are traders and commission agents for the sale and purchase of agricultural produce in Buxar in the Shahabad district. Their case is that respondent No. 2 had issued a notice on the 29th March, 1964, requiring them to obtain a licence for trading in agricultural produce. It is contended on their behalf that the provisions of the Act imposed unreasonable restrictions on the right of the petitioners to carry on business and there is violation of the guarantee contained in Article 19(1)(g) of the Constitution.

It was contended that the notification of the State Government declaring the market area under Section 4 of the Act and the action of the market committee in asking the petitioners to take out licences, (which are Annexures-B and A to the Writ applications), are ultra vires and illegal and must be quashed by grant of a writ in the nature of certiorari under Article 220 of the Constitution. It is also the case of the petitioners that the market committee has no lawful authority to levy and collect the market fees on the agricultural produce bought in the market area and the provisions of Rule 61 empowering the market committee to do so ultra vires.

2. In order to appreciate the constitutional question raised it is necessary to set out the relevant provisions of the impugned Act. The Act is described as "An Act to provide for the better regulation of buying and selling of agricultural produce and establishment of markets for agricultural produce in the State of Bihar and for matters connected therewith." Section 2(a) defines a "agricultural produce" as including "all produce whether processed or non-processed of agriculture, horticulture, animal husbandry and forest specified in the Schedule". Section 2(h) defines "market" as a market established under the Act for the market area and includes a market proper, a principal market yard and sub-market yard or yards, if any. Section 2(i) defines "market area" as any area declared to be a market area under Section 4. Section 2(o) defines the "principal market yard" as "any enclosure, building or locality within the market proper declared to be a principal market yard under Section 5." Section 2(t) defines a "Sub-market yard" as any enclosure, building or locality within the market proper declared to be a sub-market yard under Section 5. Section 2(k) defines "market proper" as "any area within the market area including all lands, with the buildings thereon, within such

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distance of the principal or sub-market yard, as the State Government may, by notification, declare to be a market proper under Section 5". Section 3 provides as follows :

"3. (1) Not-withstanding anything to the contrary contained in any other Act for the time being in force, the State Government may, by notification, declare its intention of regulating the purchase and sale of such agricultural produce and in such area, as may be specified in the notification.

(2) A notification under Sub-Section (1) shall state that any objection or suggestion which may be received by the State Government within a period of not less than two months to be specified in the notification, shall be considered by the State Government."

Section 4(1) states :-

"4. (1) After the expiry of the period specified in the notification issued under Section 3 and, after considering such objections and suggestions as may be received before such expiry and after holding such enquiry as it may consider necessary, the State Government may by notification declare the area specified in the notification under section a or any portion thereof to fee a market area for the purposes of this Act, in respect of all or any of the kinds of agricultural produce specified in the notification under Section 3.

The consequence of the establishment of a market area is given in Section 4(2) of the Act which states :-

"4. (2) On and after the date o£ publication of the notification under Sub-Section (1), or such later date as may be specified therein, no municipality or other local authority, or other person, notwithstanding anything contained in any law for the time being in force, shall, within the market area, or within a distance thereof to be notified in the Official Gazette in this behalf, set up, establish, or continue, or allow to be set up, established or continued, any place for the purchase or sale of any agricultural produce so notified, except in accordance with the provisions of this Act, the rules and bye-laws.

Explanation :- A municipality or other local authority or any other person shall not be deemed to set up, establish or allow to be set up, established or continued a place as a place for the purchase or sale of agricultural produce within the meaning of this section, if the seller is himself the producer of the agricultural produce offered for sale at such place or any person employed by such producer to transport the same and the buyer is a person who purchases such produce for his own use, or if the agricultural produce is sold ay retail sale to a person who purchases such produce for his own use."

Section 4(3) empowers the State Government at any time by notification to exclude from a market area any area or any agricultural produce specified therein or include in any market area any area or agricultural produce included in a notification issued under Sub-Section (1). S. 4(4) is in the nature of a saving clause and provides that nothing in the Act shall apply to a trader whose daily or annual turnover does not exceed such amount as may be prescribed. Section 5 deals with declaration of market yards and states :

"5. (1) For each market area there shall be one principal market yard and there may also be one or more sub-market yard or yards as may be necessary.

(2) The State Government may, by notification, declare :

(i) any enclosure, building or locality in any market area to be the principal market yard and other enclosures, buildings or localities in such area to be one or more sub-market yard or yards for the said market area; and

(ii) any area, including all lands, with me buildings thereon, within such distance of the market yard or yards as it thinks fit, to be market proper."

Section 6 provides that "for every market area the State Government shall, by notification, establish a Market Committee." Section 15 is important and is to the following effect :

"15. All agricultural produce specified in the notification under Sub-Section (1) of Section 4 brought into or produced or processed in the market proper, except such quantity for retail sale or consumption as may in this behalf be prescribed, shall pass through the principal market yard or sub-market yard or yards, as the case may be, and snail not be sold at any other place within the market proper and the sale and purchase of such agricultural produce in such yards shall notwithstanding anything contained in any law be made by means of open auction except in class or description of cases which may be exempted by the State Government.

Explanation :- For the purposes of this section, the seller shall be entitled, at his option to accept or reject any bid made at the open auction." Section 18 enumerates the objects and duties of the Market Committee.

Section 18 states as follows :

"18. Subject to the other provisions of this Act, the following shall be the objects and duties of the Market Committee :

(i) When so required by the State Government, to establish a market for the market area providing for such facilities as the State Government may, from time to time, direct in connection with the purchase and sale of the agricultural produce concerned :

(ii) where a market is established under sub-clause (i), to issue licenses in accordance with the rules to traders, commission agents, brokers weigh-men, measurers, surveyors, warehousemen and other persons including persons or firms engaged in the processing or pressing of agricultural produce concerned operating in the market :

(iii) to maintain and manage the principal market yard and sub-market yards and to control, regulate and run the market in the interests of the agriculturists and licensees in accordance with the provisions of this Act and the rules and the bye-laws made there under :

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(vii) to enforce the provisions of this Act, the rules and bye-laws; and

(viii) to perform such other duties and exercise such other powers as are imposed or conferred upon it by or under this Act, the rules or the bye-laws,"

Section 27 empowers the Market Committee to levy market fees. Section 27 states :

"27. (1) The Market Committee shall levy and collect market fees on the agricultural produce bought in the market area, at such rate not exceeding fifty naye paise per Rs. 100 worth of agricultural produce, as may be prescribed.

(2) The fee realised from the buyer under Sub-Section (1) shall be recoverable by the buyer from the seller as a market charge."

There is a historical background for the Bihar Act. The object of the legislation is to protect the producers of agricultural crops from being exploited by the middle men and to enable them to secure and fair return for their produce. The Royal Commission on Agriculture in India appointed in 1928 observed :

"That cultivator suffers from many handicaps : to begin with he is illiterate and in general ignorant of prevailing prices in the markets, especially in regard to commercial crops. The most hopeful solution of the cultivator's marketing difficulties seems to lie in the improvement of communications and the establishment of regulated markets and we recommend for the consideration of other provinces the establishment of regulated markets on the Berar system as modified by the Bombay legislation. The establishment of regulated markets must form an essential part of any ordered plan of agricultural development in this country. The Bombay Act is, however, definitely limited to cotton markets and the bulk of the transactions in Berar market is also in that crop. We consider that the system can conveniently be extended to other crops and, with a view to avoiding difficulties, would suggest that regulated markets should only be established under Provincial legislation."

The Royal Commission further pointed out :

"The keynote to the system of marketing agricultural produce in the State is the predominant part played by middlemen."

"It is the cultivator's chronic shortage of money that has allowed the intermediary to achieve the prominent position he now occupies."

In the Second Five Year Plan the Planning Commission also stressed the importance of the development of agricultural marketing. At page 276 the Planning commission observed as follows :

"The primary consideration for the development of agricultural marketing is so to re-organise the existing system as to secure for the farmer his due share of the price paid by the consumer and sub-serve the needs o£ planned development. To achieve these objects, malpractices associated with buying and selling of agricultural produce have to toe eliminated; arrangements made for the efficient distribution of marketable surpluses from producing to consuming areas and co-operative marketing has to be developed to the maximum extent possible. Rural marketing and finance have to be integrated through the development of market ting and processing on co-operative lines. Programmes for co-operative marketing and processing which have been drawn up so far for the second five year plan have been outlined in an earlier chapter. Mere it is proposed to refer to other aspects of agricultural marketing. It is estimated that co-operative agencies may be able to handle about 10 per cent of the marketable surplus by the end of the second plan. The rest of the surplus will continue to be sold through other marketing agencies. In the interest of the primary producer, therefore, the importance of regulating markets and market practices needs more emphasis. Moreover, the success of co-operative marketing itself depends on the efficiency with which regulated markets function. It has been observed that in states in which regulated markets have not been established to any extent, the cultivator is in a situation of much greater disadvantage than elsewhere."

In the statement of objects and reasons for the Bihar Act it has been observed :

"The importance of properly organised markets of agricultural and allied commodities, though long recognised, has once again been emphasised by the Planning commission. They have recommended that all the States which nave not done so should review the present position and draw up suitable programmes for regulating all important wholesale markets during the Second Plan. The need for legislation for regulating markets is all the greater in Bihar where the agriculturists have to depend in a large measure on the mercy of middlemen to whom they are obliged to sell their produce as soon as the harvesting season is over. The Arhatiyas and wholesale buyers enter into a secret understanding to exploit the unwary agriculturist and they prevent him from having correct informations as to the current sale prices of agricultural produce with the result that the agriculturist seldom gets a fair share of the price paid by the consumer for his produce. The main object of having regulated markets is to secure to the cultivator better prices, fair weighment and freedom from illegal deductions. A fair deal for his produce is a good incentive for an agriculturist to adopt improved agricultural programme."

3. The first question presented for determination in this case is whether the provisions of Section 4 of the impugned Act empowering the State Government to declare a market area in respect of all or any of the Rinds of agricultural produce specified in the notification is constitutionally valid. On behalf of the petitioners the argument was stressed that the restrictions imposed by Section 4, read along with Section 15, of the Act are unreasonable as there is an infringement of the fundamental rights of the petitioners guaranteed under Article 19(1)(g) of the Constitution. I am unable to accept this argument as correct. In my opinion this question is fully covered by the decisions of the Supreme Court in M.C.V.S. Arunachala Nadar v. State of Madras, AIR 1959 SC 300 and Mohammad Hussain Gulam Mohammad v. State of Bombay,

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1962 (2) SCR 659 : (AIR 1962 SC 97). In the first case the question at issue was the validity of the Madras Commercial Crops Markets Act (Madras Act 20 of 1933). It was contended on behalf of the appellants in the Supreme Court that the statute imposed unreasonable restrictions on the fundamental right of the appellants to carry on business.

The argument was rejected by a unanimous Bench of the Supreme Court and it was held that the impugned provisions of the Act imposed reasonable restrictions on the right of the appellants to do business and were constitutionally valid. The same principle has been laid down by the Supreme Court in the second case, 1962 (2) SCR 659 : (AIR 1962 SC 97). in that case the question debated before the Supreme Court was the constitutional validity of the Bombay Agricultural Produce Markets Act, 1939 (Bombay Act 22 of 1939). The Act was passed by the Bombay Legislature to provide for the better regulation of buying and selling of agricultural produce in the State of Bombay and the establishment of markets for such produce. Section 3 of the Act provided for the constitution of markets and market committees and gave power to the Commissioner by notification to declare his intention of regulating the purchase and sale of such agricultural produce and in such area as may be specified in the notification; and objections and suggestions were invited within a month of the publication of the notification.

Thereafter the Commissioner, after considering the objections and suggestions, if any, and after holding such inquiry as may be necessary, declared the area under Section 4(1) to be a market area for the purposes of the Act. The consequence of the establishment of the market area was given in Section 4(2) which laid down that after the market area was declared no place in the said area shall, subject to the provisions of Section 5-A, be used for the purchase or sale of any agricultural produce specified in the notification. After the declaration of the market area the State Government was given the power under Section 5 to establish a market committee for every market area. Thereafter under Section 5-AA it became the duty of the market committee to enforce the provisions of the Act and also to establish a market therein on being required to do so by the State Government, providing for such facilities as the State Government may from time to time direct, in connection with the purchase and sale of the agricultural produce.

In that case the petitioners challenged before the Supreme Court the validity of the Bombay Act End the rules framed there under, and in particular Section 4, Section 4-A, Section 5, Section 5-A and Section 5AA, which provided for the declaration of a market area and the establishment of a market, as unconstitutional on the ground that they placed unreasonable restrictions on their right to carry on the trade. The argument was rejected by a unanimous Bench of the Supreme Court and it was held that S. 4, S. 4-A, 5, S. 5-A and S. 5AA of the Act were constitutional and intra vires and did not impose unreasonable restrictions on the petitioners to carry on trade regulated under the Act. The main provisions of the Bihar Act with respect to declaration of market area, namely, Sections 4 and 15, are similar in material respects to Section 4, Section 4-A, Section 5, Section 5-A and Section 5-AA of the Bombay Act, and the principle laid down by the Supreme Court in 1959 (2) SCR 659 : (AIR 1962 SC 97) applies to the present case. It is also-manifest that the impugned provisions of the Bihar Act are also similar in material respects to those of the Madras Act, namely, Madras Act 20 of 1933, and the ratio of the Supreme Court decision in AIR 1959 SC 300 also governs the present case. It follows, therefore, that the provisions of the Bihar Agricultural Produce Markets Act (Bihar Act XVI of 1960) with regard to declaration of market area must be held to be intra vires and constitutional.

4. On behalf of the petitioners it was submitted in the next place that the market has been, established by the Market Committee under Section 18(11) of the Act and so the Market Committee has no power to levy or collect market fees on agricultural produce under Section 27 of the Act. In paragraph, 10 of the application it is also alleged by the petitioners that no facilities have been provided by the Market Committee; but in paragraph 10 of the counter-affidavit respondent No. 1 has said that the Market Committee has taken steps to safeguard the interests of the agriculturists. The Market Committee has appointed a number of staff who are always present in the market to see that the lots of the cultivators are properly weighed, that payments are made quickly by the purchasers and that the ruling prices are prominently displayed in the market area. A grading unit has also been set up to educate the cultivator in the method of grading and improving the quality of agricultural produce offered for sale. A dispute subcommittee has also been formed to decide disputes arising in the market between a purchaser and seller. Reference was also made in this connection to Rule 61 of the Bihar Agricultural Produce Markets Rules which states as follows :

"61. (1) The Market Committee shall levy and collect fees on agricultural produce bought in the market area at the rate of twenty-five naye paise per Rs. 100 worth of agricultural produce.

Explanation :- For the purposes of this rule, a sale of agricultural produce shall be deemed to Have taken place in a market area if it has been weighed or measured or surveyed by a licensed weigh-man, measurer or surveyor in the market area for the purposes of sale, notwithstanding the fact that the property in the agricultural produce has by reason of such sale passed to a person to a place outside the market area.

(2) The Market Committee shall also levy and collect license fees from traders, commission agents, brokers, weigh-men, measurers, surveyors, warehousemen and other persons operating in the market according to rates specified in sub-rule (3) of R. 71 and sub-rule (2) of Rule 73.

(3) No fees shall be levied on agricultural produce brought from outside the market area into the market area for use therein by the industrial concern situated in the market area or for export, and in respect of which a declaration has been made and a certificate has been obtained in form V :

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Provided that if such agricultural produce brought into the market area for export is not exported or removed there from before the expiry of twenty days from the date on which it was so brought, the Market Committee shall levy and collect fees on such agricultural produce from the person bringing the produce into the market area at such, rates as may be specified in the bye-laws.

(4) The seller who is himself the producer of the agricultural produce offered for sale and the buyer who buys such produce for his own household use, shall be exempted from payment of any fees under this rule."

It was argued on behalf of the petitioners that a market committee cannot lawfully levy and collect market fees unless a market has been established under Section 18(ii) of the Act. But I see no warrant for accepting this argument. Section 27 of the Act empowers the market committee to "levy and collect market fees on the agricultural produce bought in the market area". Rule 61 provides that the market committee shall levy and collect fees on the agricultural produce bought in the market area at the rate of twenty-five naiye paise per Ks. 100/- worth of agricultural produce. There is nothing in the language of Section 27 of the Act or Rule 61 to suggest that the market committee cannot lawfully levy or collect market fees unless a market has been established in the first instance. I, therefore, reject the submission of learned Counsel for the petitioners on this aspect of the case. It was also argued on behalf of the petitioners that Section 27 empowered the market committee to levy and collect market fees on all agricultural produce bought in the market area and not merely on the agricultural produce specified in the notification under Section 4 of the Act.

The expression "agricultural produce" is defined in Section 2(a) of the Act as including all produce, whether processed or non-processed of agriculture, horticulture, animal husbandry and forest specified in the schedule. It is manifest that the market committee has the power to levy and collect market fees only on such agricultural produce which is specified in the notification under S. 4 of the Act. The reason is that the language of Section 27 must be construed subjects materies in the context and background of other Sections of the Act, and, so construed, the power of the market committee to levy and collect market fees tinder Section 27 must be confined to the agricultural produce specified in the notification under S. 4 of the Act. Learned Counsel for the petitioners also referred in this connection to the decision of the Supreme Court in 1959 (2) SCR 659 : (AIR 1962 SC 97) with regard to Rule 53, framed under the Bombay Act 22 of 1939. It is true that the Supreme Court declared Rule 53 of the Bombay rules as not valid in so far as it enabled the market committee to fix any rate as it liked, but the reason was that under Section 11 of the Bombay Act the State Government had to prescribe the maximum rate by rule, and unless the maximum was fixed by the State Government it was not open to the market Committee to fix any fee at all.

In the present case the material facts are different. Section 27 of the Bihar Act bas itself fixed the maximum rate of fees at fifty naiye paise per Rs. 100/- worth of agricultural produce, and Rule 61 framed by the State Government has fixed the fees to be levied by the market committee at the rate of twenty-five naiyepaise per Rs. 100/- worth of agricultural produce. The reasoning of the Supreme Court with regard to Rule 53 of the Bombay Act has therefore no application to the present case.

5. It was also contended on behalf of the petitioners that the provisions of Bihar Act XVI of 1960 violate the freedom of trade and commerce contemplated by Article 301 of the Constitution, and as the previous sanction of the President for the introduction of the bill was not taken the statute is not saved by the provisions of Article 304(b) of the Constitution. In my opinion there is no substance in this argument. The State of Bihar has stated in the counter-affidavit that the previous sanction of the President was taken before the Bihar Act XVI of 1960 was introduced in the State Legislature. In the course of argument the Advocate-General also produced letter no. Part. 6(11)/58 of the Government of India, dated the 30th September, 1958, to indicate that the sanction, of the President under the provisions of Article 304 of the Constitution was given to the introduction of the bill in the State Legislature. I, therefore, reject the contention of the petitioners on this point.

6. It was finally submitted on behalf of the petitioners that the Market Committee could not issue licenses under R. 71 unless a market has been previously established. It was argued that R. 71 was ultra vire of S. 18(11) of the Act. In my opinion the argument of learned Counsel on this point is well founded. Rule 71(1) states that "no person shall do business as commission agent or trader in agricultural produce in a market area except under a licence granted by the Market Committee under the rule." Section 18(ii) of the Act states as follows :

"18. Subject to the other provisions of the Act, the following shall be the objects and duties of the Market Committee :

\* \* \* \* \* \*

(ii) where a market is established under Sub-clause (i), to issue licenses in accordance with the rules to traders, commission agents, brokers, weigh-men, measurers, surveyors, warehousemen and other persons including persons or firm engaged in the processing or pressing of agricultural produce concerned operating fn the market."

In my opinion Rule 71 is ultra vires for two reasons. In the first place, the Market Committee has the power to issue licenses under S. 18(ii) of the Act only after a market has been established under Section 18(i). In the second place, the power to issue license is confined to traders, commission agents, etc., operating in the market. Having regard to the definition of a "market" in Section 2(h) of the Act and "market area" in S. 2(i) of the Act, it is manifest that the "market" is a narrower conception than the "market area" and the Market Committee has no proper authority under S. 18(ii) of the Act to issue licenses to traders, commission

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agents, brokers, etc., operating in the market area. For both these reasons I am of opinion that R. 71 is ultra vires of Section 18(ii) of the Act and must be held to be illegal. It follows, therefore, that the notice issued by respondent No. 2. dated the 29th March, 1964 (Annexure-A to the writ application) requiring the petitioners to take out licenses under Rule 71 is illegal and ultra vires.

7. In conclusion I hold that the challenge made by the petitioners with regard to the constitutional validity of the impugned provisions of the Act and the provisions of Rule 61 fails, but the challenge of the petitioners with regard to the legal validity of Rule 71 succeeds. I would, therefore, allow this application in part and issue a writ in the nature of mandamus commanding the respondents not to enforce the provisions of Rule 71 against the petitioners till a market is properly established in law for the market area and till the rule is amended so as to bring it in conformity with Section 18(ii) of the Act.

8. I would accordingly allow this application to the extent indicated above, but there will be no order as to costs.

9. UNTWALIA, J. :- I agree.

Petition partly allowed.

AIR 1966 PUNJAB 139 (Vol. 53, C. 28) "Hukum Singh v. Ram Narain"

PUNJAB HIGH COURT

Coram : 2 S. S. DULAT AND D. K. MAHAJAN, JJ. ( Division Bench )

Hukam Singh Kundan Singh, Appellant v. Ch. Ram Narain Singh and others, Respondents.

Letters Patent Appeal No. 29 of 1965, D/- 20 -4 -1965. against order of Harbans Singh, J., in Civil Writ No. 1563 of 1963, D/- 5 -1 -1965.

(A) Constitution of India, Art.14 - Punjab Agricultural Produce Markets Act (23 of 1961), S.15 - EQUALITY - AGRICULTURAL PRODUCE - ELECTION - MISCONDUCT - INTERPRETATION OF STATUTES - Election of Members - Disqualification on ground of misconduct - Provision disqualifying member permanently though severe is not unconstitutional - Interpretation of Statutes - Section being plain, cannot be construed to limit disqualification to particular period. (Para 3)

(B) Constitution of India, Art.14 - Punjab Agricultural Produce Markets Act (23 of 1961), S.15 - EQUALITY - AGRICULTURAL PRODUCE - MISCONDUCT - Discrimination - Discrimination alleged on ground that only members of

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Market Committees under the Act incur permanent disqualification for misconduct unlike members of other local bodies like Municipal Committees - Held that offices of members under two Acts cannot be equated and no discrimination can be alleged.

Punjab Agricultural Produce Markets Act (23 of 1961), S.15. (Para 3)

(C) Punjab Agricultural Produce Markets Act (23 of 1961), S.15 and S.47 and S.3(5) - AGRICULTURAL PRODUCE - MISCONDUCT - Removal of member for misconduct u/S.11 of the repealed Punjab Act 5 of 1939 - Removal is deemed to be one u/S.15 so as to amount to a disqualification u/S.3(5).

Decision in Civil Writ No. 1563 of 1963, D/- 05-01-1965 (Punj), Affirmed. (Para 2)

Ram Sarup, with Surinder Sarup, for Appellant; H.L. Sibal, Senior Advocate, with S.C. Sibal and M.M. Punchhi, for Respondent No. 1; L.D. Kaushal, Deputy Advocate-General, with P.R. Jain, for Respondents (Nos. 2 to 4).

Judgement

S. S. DULAT, J. :- The appellant, Hukam Singh, was a member of the Market Committee at Bewari set up under the Punjab Agricultural Produce Markets Act, 1939. He was removed from that office by the State Government on account of misconduct under S. 11 of that Act. The order of the State Government was made on the 16th of June 1958. The Act of 1939 was repealed by the Punjab Agricultural Produce Markets Act, 1961, which Act replaced the previous Act. Elections to the Market Committee, Rewari, under the new Act were held during August 1963 and the appellant stood for election. An objection was taken that the appellant was disqualified on account of his removal for misconduct hut that objection appears to have been raised after the appellant's nomination had actually been accepted by the Returning Officer. Then followed the election at which the appellant was declared successful. One of the defeated candidates Ram Narain Singh thereupon brought a writ petition to this Court under Art. 226 of the Constitution challenging the legality of the appellant's election. The ground taken was that since the appellant had been removed from membership of the Market Committee on account of misconduct, he was ineligible to seek election under the Act of 1961 and his election was, therefore, unlawful. The writ petition was heard by Harbans Singh, J., sitting alone and the argument raised against the appellant's election prevailed, the learned Judge holding that the appellant was not eligible for election to the Market Committee under the Punjab Agricultural Produce Markets Act, 1961. On this view the petition was allowed by the learned Judge and the election of the appellant was set aside. Hence the present appeal under Cl. 10 of the Letters Patent.

2. Mr. Ram Sarup in support of the appeal points out that the previous Act of 1939 and the Act now in force since 1961 are not identical in their provisions which of course is so. The real resemblance and the only relevant one consists in S. 11 of the old Act which empowered Government to remove any member if that member was in Government's opinion guilty of misconduct or neglect of duty, and S. 15 of the new Act which similarly enables the State Government to remove any member if in its opinion he is guilty of misconduct or neglect of duty. These two provisions are identical in their content. The learned Single Judge has founded his conclusion on this similarity and not on the ground of any general similarity in the other provisions of the two Acts. What the Act of 1961 says quite clearly is that no person 'shall be eligible to stand for election to a Market Committee' if he has incurred any of the disqualifications mentioned in Sub-S. (5) of S. 3 and one of these contained in Cl. (c) is that he "has been removed under Sub-S. (7) or S. 15". The only question, therefore, is whether the appellant was removed under S. 15 of the present Act of 1961. Before the learned Single Judge it was suggested quite seriously that since the appellant was removed under the provisions of the earlier Act of 1939, it could not be said that he was removed under S. 15 of the present Act of 1961. The argument did not find favour with the learned Single Judge because S. 47 of the Act of 1961 says that, in spite of the repeal of the previous Act of 1939, everything done and every action taken under the repealed Act' shall be deemed to have been done or taken under the new Act. In view of this provision, that argument is not so seriously pressed before us by Mr. Ram Sarup. There is no doubt that the removal of the appellant for misconduct, although it in fact took place under the Act of 1939, is in law to be taken to have been made under the Act of 1961, S. 15. There is, therefore, no escape from the conclusion that the appellant had incurred the disqualification mentioned in Sub-S. (5) of S. 3 of the Act of 1961 and that operated against his capacity to stand for election as a member of the Market Committee.

3. Mr. Ram Sarup then says that this provision concerning disqualification on the ground of removal of the appellant for misconduct is so harsh in its effect that it should be held unconstitutional on the ground that it offends against Art. 14 of the Constitution. The argument is somewhat involved but in substance comes to this that because elected members in other Local Bodies like Municipal Committees, even if they are removed for misconduct, incur disqualification for a stated number of years while under the Punjab Agricultural Produce Markets Act of 1961 the disqualification would remain in force for ever, there has been discriminatory treatment accorded to persons like the appellant by the Punjab Agricultural Produce Markets Act and it should be struck down. It is not, however, clear how membership of a Market Committee can be equated with membership of a Municipal Committee, as, on the face of it, the two offices have nothing essentially in common and it is impossible to suggest, that the Legislature ought to have treated members of a Municipal Committee in the same manner as members of a Market Committee. It is not, therefore, right to say that in providing for this particular disqualification against the appellant, he and persons like him have been singled out

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for discriminatory treatment, since the situation of facts in their case and the case of members of !other Local Bodies is not identical. Nor is it possible to accept learned counsel's suggestion that just because the effect of the disqualification seems to be severe, it can be said that the provision embodying it could not have been enacted by the Legislature. No suggestion is in fact made against the competence of the State Legislature to have enacted the particular provision.

4. Finally, Mr. Ram Sarup suggests that we could, and perhaps should, read the provision in such a way as to limit the period of disqualification to a particular period of time. It is impossible for us to do so without either adding A lot of words to the Act or doing other violence to its plain language. As the Punjab Agricultural Produce Markets Act, 1961, stands, it is clear that the appellant had incurred a disqualification which made him ineligible for election to the Market Committee and it is, in the circumstances impossible for us to interfere with the decision of the learned Single Judge setting aside the appellant's election. This appeal must, therefore, fail and I would dismiss it but make no order as to costs in the circumstance.

5. D. K. MAHAJAN, J.: I agree.

Appeal dismissed.

AIR 1965 PUNJAB 33 (Vol. 52, C. 14) "Mukhtiar Chand v. Marketing Committee"

PUNJAB HIGH COURT

Coram : 2 I. D. DUA AND H. R. KHANNA, JJ. ( Division Bench )

Mukhtiar Chand son of Ralla Ram and another, Petitioners v. Marketing Committee Malout Mandi District Ferozepore and others, Respondents.

Civil Writ Nos. 1353, 1406, 1501, 1615 and 1826, 1963, D/- 25 -3 -1964.

(A) Punjab Agricultural Produce Markets Act (23 of 1961), Pre., S.43 - AGRICULTURAL PRODUCE - PREAMBLE - Exclusion of use of handscales not inconsistent with object of Act is disclosed in Pre.

Section 43(2)(x) fully discloses the legislative intent, in that, it expressly prohibits the use of hand-scales even from the subject-matter of rule which the State may frame for carrying out the purposes of the Act. The contention that the object and purpose of the Act do not extend to the exclusion of the use of hand-scales is on the language of the preamble itself untenable, though preamble of a statute cannot be used f or limiting the clear and unambiguous language of the enacting provision. It

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is a recognised rule that a preamble cannot affect the meaning of the enacting part except for a compelling reason and it is not a compelling reason that the enacting words go somewhat further than the preamble indicates. Better regulation of purchase and sale of agricultural produce clearly embraces within its fold regulation of the method of weighing the produce which would necessarily cover the exclusion of the use of hand-scales. It is, therefore, not inconsistent with the statutory object and purpose as disclosed in the preamble. (Para 4)

(B) Constitution of India, Art.19(1)(g), Art.19(6) - Punjab Agricultural Produce Markets (General) Rules (1962), R.26 - FREEDOM OF TRADE - AGRICULTURAL PRODUCE - CONSTITUTIONALITY OF AN ACT - Validity - Does not contravene Art.19(1)(g).

If experience has shown to the authorities concerned that weighing by hand-scales has led to malpractices, corruption, wastage of time and inconvenience, then it cannot be held that the impugned provision does not fall within Art. 19(6) of the Constitution and is unconstitutional being violative of Art. 19(1)(g). It is true that the High Court is fully empowered to come to its own decision whether or not the restriction imposed is reasonable but unless the restriction is clearly unreasonable, the High Court would not lightly declare it to be unconstitutional. In attempting to construe Article 19(6), it is essential to bear in mind the political, social and economic philosophy underlying the provision in question and this must, from its very nature, involve the adoption of a liberal rather than a literal mechanical approach to the problem. The broad object of the Punjab Agricultural Produce Markets Act is mainly to protect the producers of agricultural produce from being exploited by middlemen and profiteers and to enable them to secure a fair return for their produce. Rules 25 and 26 of the Punjab Agricultural Produce Markets (General) Rules, 1962 framed for this purpose clearly illustrate their usefulness and reasonableness. Looked at in this background prescribing under Rule 26 the use of only beam-scales (Kundas) is likely to reduce the chances of exploitation and constitutes a reasonable restriction on the right of trade or profession of weighmen. Changing over from hand-scales to beam-scales is not so difficult or so serious a hardship, as would justify the provision being struck down as unconstitutional. While determining the reasonableness of the restrictions imposed by law, the Court should not proceed on a general notion of what is reasonable in the abstract, or even on a consideration of what ?s reasonable from the point of view of the person or persons on whom the restrictions are imposed. The impugned provision excluding the use of hand-scales would thus seem to be constitutional and valid. AIR 1951 SC 118 and AIR 1961 SC 448 Distinguished; AIR 1659 SC 300 Rel. on. (Paras 5, 6, 7)

(C) Punjab Agricultural Produce Markets Act (23 of 1961), S.44 - AGRICULTURAL PRODUCE - CONSTITUTIONALITY OF AN ACT - Bye-laws under - Validity - Bye-laws to be valid must be made strictly in accordance with S.44.

In the sphere of delegation of legislative power, the manner prescribed for exercising the delegated power can be presumed to be directory, and indeed, such delegated power must be exercised strictly as directed or not at all There is close connection between delegated legislation and Rule of law. Dominance of expediency over Rule of law may tend to degrade it into an uncontrolled power and once an uncontrolled approach is allowed to function, it becomes difficult later to limit it or draw a line and the drift may unwittingly be undemocratic, with an incline towards authoritarianism. Bye-laws having been made under the delegated power of legislation under S. 44, in order to be valid and to have the force of law, must be made strictly in accordance with the said section and in pursuance of the authority delegated thereby.

Where the Chairman of the Board merely complied with the provisions of S. 44(3)(a) and Sub-Sections (b), (o), (d) and (e) were clearly ignored by him, the bye-laws must be held not to have been made in accordance with law delegating the power so as to be of binding effect. (Paras 12, 13, 14, 15)

Cases Referred : Courtwise Chronological Paras

('51) AIR 1951 SC 118 (V 38) : 1950 SCR 759, Chintamanrao v. State of M.P. 5

('59) AIR 1959 SC 300 (V 46) : 1959 SCJ 297, Alyemperumal Nadar v. State of Madras 5

('61) AIR 1961 SC 448 (V 48) : 1961 (1) Cri LJ 573, Abdul Hakim Quraishi v. State of Bihar 5

R. Sachar and R. N. Narula and Mohinderjit Sethi, for Petitioners; H. R. Sodhi, for Respondents Nos. 1 and 2; H. S. Doabia. Addl. Advocate General, for Respondent No. 3.

Judgement

DUA, J. :- These writ petitions (Civil Writs Nos. 1353, 1406, 1501, 1615 and 1826 of 1963) raise the same question of law and are, therefore, being disposed of by one judgment.

2. In Civil Writ No. 1353 of 1963, Shri Mukhtiar Chand, Petitioner No. 1 claims to be an ordinary resident of Malout Mandi, District Ferozepore and is by profession a Tolla (weighman) being also is member of the Tolla Mazdoor Union, Malout Mandi (petitioner No. 2). He has been earning his livelihood by this profession for the last 8 years. Weighing by hand-scale, according to his allegations, requires "a special kind of skill and adeptness" which he has acquired during the period that he has been working as a weighman. The Punjab Agricultural Produce Markets Act of 1939 (hereinafter called the 1939 Act) "provided for tailing out a licence for carrying out an occupation of a weighman" and the petitioner accordingly took out such licence which has been renewed every year ever since. The petitioner has been carrying out his profession as a weighman with the aid of hand-scales (Takri). The remuneration fixed by the Market Committee under the 1939 Act for petitioner No. 1 and for 2 paledars who assisted him in weighing was fixed at 81/2 annas on an out-turn of Rs. 100/-. It was split as under :

1. 31/2 annas for the weighman like the petitioner, and

2. 21/2 annas for each Paledar.

The petitioner and his two Paledars used to weigh on an average between 700 and 800 maunds per day, with the result that petitioner No. 1 was in a position to earn about Rs. 11/- per day; each Paledar earning about Rs. 7/- per day. The season for such work of weighman and Paledar lasts for about 5 months in a year, 3 months after Rabi and 2

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months after Kharif crops. The Punjab Legislature has now enacted the Punjab Agricultural Produce Markets Act of 1961 (hereinafter called the Act) which has repealed the 1939 Act. Since the enforcement of the Act, petitioner No. 1 and other weighmen like him are required to take licences under this Act for working as a weigh man in the notified market area, The petitioner has a valid and subsisting licence to work as a weighman with hand-scales at the old rates but the Marketing Committee, the State Agricultural Marketing Board and the State of Punjab (respondents Nos. 1 to 3) are interfering with his work and are not permitting him to work under the said licence for reasons which are not warranted by law. The petitioner has from 18-07-1963 been stopped by the Marketing Committee, respondent No. 1, from carrying on his business as a weighman with hand-scales at old rates and even prosecution has been launched against the dealer at whose shop the petitioner works. This has resulted in complete stoppage if the petitioner's business, with the result that he is unable to earn his livelihood. As a matter of fact, the whole of the market has been paralysed by this illegal action on the part of the respondents.

The State Agricultural Marketing Board, respondent No. 2, has, it is averred, sent a circular to respondent No. 1 and other Marketing Committees in the Punjab directing them that they should not permit any further use of hand-scales (Takri) by weighmen and they should be allowed to work only on the following remuneration :

(a) 6 Naya Paise for a weighman,

(b) 19 Naya Paise for Paledars.

In clause (b) just mentioned, it has been averred that there will be at least five Paledars if beam-scale alone as demanded by the respondents is to be used. On this rate, the daily remuneration of petitioner No. 1 would be reduced to Rs. 2.50 nP. per day whereas the remuneration of a Paledar would be reduced to Rs. 1.25 nP. per day. This reduction in their earnings is attributed by the petitioners to low rates as also the lesser quantity which can be weighed by petitioner No. 1 by working with beam-scales, for he would only be able to weigh about 400 maunds by means of beam-scales as against 700 to 800 maunds which he can weigh with the help of hand-scales (Takri).

It has been pleaded that the disparity in weighing with the two different kinds of scales has actually been demonstrated by weighmen at the markets of Kurali and Chandigarh in the presence of the representatives of the State Marketing Board, respondent No. 2, and the Minister for Agriculture, Punjab Government. It is on these allegations that the present petition has been filed and the main challenge has been based on the argument that there is no reasonable basis or justification for excluding the use of hand-scales and thereby depriving petitioner No. 1 of his means of livelihood; the existence of rational relation of the object of the impugned Act with the absolute prohibition of the use of hand-scales has also been emphatically questioned.

3. In the reply, on behalf of the respondents, it has been pleaded that weighing by hand-scales is an old crude method unsuited to modern progressive and changed conditions of markets established for the purchase and sale of agricultural produce. Experience has also shown that weighing by hand-scales leads to malpractices, corruption, inconvenience and wastage of time. A producer, who is generally an illiterate person coming from rural areas to sell his produce in the market is more likely to fall a prey to deceitful weighing by hand-scales, with the result that it has been considered in the interest of the producer to introduce an improved method of weighing by beam-scales. The remunerations, according to the reply, have been fixed under the bye-laws framed under the statute and the suggestion that there must be more than one Paledar in every case has been controverted. The petitioner has also been alleged to be hardly weighing more than 150-200 maunds per day and an average weighman, according to the reply, is estimated to be earning about Rs. 5/- or 6/- per day in peak season and lesser amount in slack season by hand-scales. The petitioner has been admitted to have taken out a licence to work as a weighman subject to the provisions of the Act but the licence does not carry any specific direction to the petitioner to work with any particular type of scales. The rates of remuneration were originally fixed under the byelaws framed under the Act of 1939.

The Act of 1961 was enforced on 26-05-1961 but the rules made thereunder were enforced from 11-07-1962. It is undoubtedly a condition of the licence that the licensee would comply with the provisions of the Act and the Rules and the bye-laws framed thereunder. Under Rule 26, in transactions of sale and purchase of agricultural produce in principal market yards and sub-market yards of the notified market area, only beam-scales or platform scales can be used; it is accordingly incumbent on the petitioner to use a beam-scale or a platform scale from 11-07-1962 onwards. The rates of remuneration for weighmen and other functionaries have also been modified to suit the prevailing conditions and circumstances. It is also admitted that the petitioner has been asked not to use hand-scales or charge old rates because he is bound under the law to use beam or platform scales only and also to charge in accordance with the new rates. No prosecution have, however, been launched, so far, against the petitioners or the dealer for non-use of beam-scales or for charging old rates, though the petitioner has rendered himself liable to such prosecution. According to the reply, 76 weighmen had started using the beam-scales, but after the stay order obtained by the petitioners in these proceedings, others have also taken again to weighing by hand-scales. Even before the enforcement of the rules mentioned above, beam-scales were used for weighing all agricultural produce like kapas and dry and green fodder, as indeed the test weighment of the produce was also conducted by beam-scales or platform scales. The new rates of remuneration have, it is pleaded, been fixed at Government level after mutual agreement between the representatives of different functionaries in market areas and the Government.

According to the reply, not only there is a saving of time by adopting beam-scales but chances of malpractices, inter alia, in counting have also been reduced. The remuneration fixed has been claimed to be reasonable and equitable and it, justiciable character is challenged. The right if the petitioner to use only hand-scales has been

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questioned and the system of licence to regulate the conduct of the petitioner's trade or occupation has been held to be lawful and in accordance with the Constitution. The principal market yards and sub-market yards are also claimed to have since been notified.

4. The learned counsel for the petitioners has, to begin with, questioned the right of the State to exclude the use of hand-scales and it is contended that the Act does not authorise such exclusion. The counsel has for this purpose emphasised that the Act has been enacted for the purpose of consolidating and amending the law relating to the better regulation of the purchase, sale, storage and processing of agricultural produce and also for the establishment of markets for agricultural produce in the State of Punjab. This purpose, according to the learned counsel, does not extend to a direction to the weighmen to use only hand-scales, (sic) He has taken us through the scheme of the Act and has contended that provision relating to the use of hand-scales (sic) is outside the statute. 1 am unable to sustain this broad contention. Section 43(1) empowers the State Government by notification to make rules for carrying out the purposes of this Act and Sub-Section (2) without prejudice to the generality of the power contained in Sub-Section (1) illustrates what such rules may provide for; clause (x) of this Sub-Section shows that such rules may provide for the place or places at which agricultural produce shall be weighed, the kind and description of bardana to be used and the quantity of the produce to be filled and of the scales, not being hand-scales (Takri), weights and measures which alone may be used in transactions in agricultural produce in a notified market area. This provision, in my opinion, fully discloses the legislative intent, in that, it expressly prohibits the use of hand-scales even from the subject matter of rules which State may frame for carrying out the purposes of the Act.

Our attention has not been invited to any provision of the statute nor to any principle of law which would lend support to the contention that the exclusion of the use of hand-scales from the markets is hit by or is obnoxious to the statutory scheme. The preamble of the Act on which reliance has been placed by the petitioners' learned counsel for supporting the contention that the object and purpose of the Act does not extend to the exclusion of the use of hand-scale; is on the language of the preamble itself untenable, though I should like to make it clear that preamble of a statute cannot be used for limiting the clear and unambiguous language of the enacting provision. It is a recognised rule that a preamble cannot affect the meaning of the enacting part except for a compelling reason and it is not a compelling reason that the enacting words go somewhat further than the preamble indicates. Better regulation of purchase and sale of agricultural produce, in my opinion, clearly embraces within its fold regulation of the method of weighing the produce which would necessarily cover the exclusion of the use of hand-scales. It is therefore, not inconsistent with the statutory object and purpose as disclosed in the preamble. The authorities cited by the petitioners do not go against this view and, therefore, not be discussed in detail.

5. The next attack is levelled against the vires of this provision and it has been eloquently urged that the exclusion of the use of hand-scales is not a reasonable restriction on the profession, trade, business or occupation of the petitioners. Reliance has been placed on Chintamanrao v. State of M.P., AIR 1951 SC 118, and it has been argued by reference to some observations at p. 119 that the impugned provision is so drastic in scope that it goes much in excess of the statutory object. The reported decision, in my opinion, is clearly distinguishable and is of little or no assistance of the petitioners. This would be clear from the following observations at p. 119 :

"Such a prohibition on the face of it is of an arbitrary nature inasmuch as it has no relation whatsoever to the object which the legislation seeks to achieve and as such cannot be said to be a reasonable restriction on the exercise of the right."

Thus said Mahajan, J. (as he then was) in the reported case:-

"The phrase 'reasonable restriction' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliberation, that is the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality."

Abdul Hakim Quraishi v. State of Bihar, AIR 1961 SC 448 is equally unavailing to the petitioners. It is stated in the reported case that the test of reasonableness should be applied to each individual statute impugned and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. After this test, the Court approved the passage quoted above from Chintamanrao's case, AIR 1951 SC 118. Applying the recognised test to the present case, in my view. It experience has shown to the authorities concerned, that weighing by hand-scales has led to malpractices, corruption, wastage of time and inconvenience, then it would seem to me to be somewhat difficult to hold, that the impugned provision does not fall within Article 19(6) of the Constitution and is unconstitutional being violative of Article 19(1)(g). It is true that this Court is fully empowered to come to its own decision whether or not the restriction imposed is reasonable but unless the restriction is clearly unreasonable, this Court would not lightly declare it to be unconstitutional. In attempting to construe Article 19(6), it is essential to bear in mind the political, social and economic philosophy underlying the provision in question and this must, from its very nature, involve the adoption of a liberal rather than a literal and mechanical approach to the problem. In Alyemperumal Nadar v. State of Madras, AIR 1959 SC 300 the Madras

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Commercial Crops Markets Act, 20 of 1963, was held to be the result of a long exploratory investigation by experts in the field, conceived and enacted to regulate the buying and selling of commercial crops which was held to be constitutional. It is true that the question of using hand-scales did not arise there, but that would be a matter of detail rather than of substance.

6. The broad object of the legislation like the present is mainly to protect the producers of agricultural produce from being exploited by middlemen and profiteers and to enable them to secure fair return for their produce. The legislation like the present has its foots in the attempt on the part of the nation to provide a. fair deal to the growers of crops and also to find a market for its sale at proper rates without reasonable chances of exploitation. Rules 25 and 26 of the Punjab Agricultural Produce Markets (General) Rules, 1962 framed for this purpose clearly illustrate their usefulness and reasonableness. Looked at in this background prescribing under Rule 26, the use of only beam-scales (Kundas) is likely to reduce the chances of exploitation and constitutes a reasonable restriction on the right of trade or profession of weighmen.

7. Shri Sachar very forcefully urged that use of hand-scales by weighmen is a specialized art involving long training and these weighmen may not be able easily to take to the beam-scales which are also no great improvement on hand-scales for purposes of exact weighment. On the material before us on the present record, I do not think it is possible to agree with the learned counsel. I am also inclined to take the view that changing over from hand-scales to beam-scales is not so difficult or so serious a hardship, as would justify the provision being struck down as unconstitutional. While determining the reasonableness of the restrictions imposed by law, the Court should not proceed on a general notion of what is reasonable in the abstract, or even on a consideration of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed. But for clause (6) of Article 19, sub-clause (g) of clause (1) would perhaps suggest an absolute right, it being expressed in general language. The person whose right is restricted may thus feel every restriction to be irksome, treating it as unreasonable. The question, however, cannot be decided exclusively from his point of view. It is to be considered whether the restriction is reasonable in the interests of the general public, meaning thereby for achieving the object in the interests of the community. One has to remember that the task of declaring a legislative provision to be unconstitutional is a delicate task and involving, as it does, a reflection on the wisdom of the legislative wing, it has to be undertaken with a sense of responsibility and after a sufficiently deep probe into the challenge. The Legislature is normally presumed to know as to what is good for the community by whose suffrage it has come into existence; though I do not for a moment doubt that the ultimate responsibility is with the Court and the Court cannot and must not shirk that solemn duty cast on it, if it comes to the conclusion that the restriction is unreasonable. The impugned provision excluding the use of hand-scales would thus seem to me Co be constitutional and valid.

8. The next challenge has been directed to the fixation of rates to be paid to the weighmen. In order to appreciate this challenge, it is necessary to reproduce Section 44 of the Act which empowers the Committee to make bye-laws, inter alia, for the remuneration of different functionaries :

"44. (1) Subject to any rules made by the State Government under S. 43, a Committee may, in respect of notified market area, make bye-laws for -

(i) the regulation of its business;

(ii) the conditions of trading;

(iii) the appointment and punishment of its employees;

(iv) the payment of salaries, gratuities and leave allowances to such employees;

(v) the delegation of powers or duties, to the Sub-Committee or Joint Committee or ad hoc Committee or any one or more of its members under S. 19; and

(vi) the remuneration of different functionaries not specifically mentioned in this Act, working in the notified market urea and rendering any service in connection with the sale, purchase, storage and processing of agricultural produce;

and may provide that contravention of any if such bye-laws shall be punishable, on conviction, with a fine which may extend to fifty rupees

(2) Where a Committee fails to make bye-laws, under this Section within sis months from the date of its establishment or the date on which this Act comes into force, whichever is later, the Board may make such bye-laws as it may think tit and the bye-laws so made shall remain in operation in that Committee.

(3) (a) Notwithstanding anything contained in this Act or the rules or bye-laws made thereunder, if the Chairman o! the Board considers that an amendment, alteration, rescission or adoption of a new bye-law is necessary or desirable in the interests or such Committee he may, by an order in writing to be served on the Committee by registered post, require the Committee, to make such amendment, alteration, rescission or adopt a new bye-law within such time as may be specified in such order.

(b) If the Committee fails to make any such amendment, alteration or rescission or to adopt the new bye-law within the time specified by the Chairman of the Board in his order under cl. (a), the Chairman of the Board may, after giving the Committee an opportunity of being heard, register such amendment, alteration, rescission or such new bye-laws, and issue a certified copy thereof to such Committee

(c) The Committee may, within one month from the date of issue of an order made under clause (b), appeal against such order to the State Government.

(d) Where an appeal is presented within one month from the date of the issue of an order under clause (b) registering an amendment, such amendment shall not come into force till the order is confirmed by the State Government.

(e) A certified copy of the amendment of the bye-laws registered by the Chairman of the Board under clause (b) shall, subject to the result of an appeal, it any, under clause (c) be conclusive evidence that the same has been duly registered and such amendment, alteration, rescission or a new bye-law shall be deemed to have been made by the Committee.

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(4) No bye-law or rescission of a bye-law or its alteration or amendment shall take effect until it has been confirmed by the Chairman of the Board and notified in the official gazette."

If as contemplated by Sub-Section (1) of this Section, the Committee fails to make rules within the time prescribed by Sub-Section (2), the Board constituted under S. 3 is authorised to make bye-laws as it may think fit. Sub-Section (3) lays down the manner of amending, altering, rescinding or adopting a new bye-law by the Chairman of the Board. Such a bye-law takes effect only when confirmed by the Chairman and notified in the official gazette. Section 3(14) also empowers the Board with the approval of the State Government to frame bye-laws for regulating its business at meetings and for assignment of duties to its Chariman and Secretary etc. and also for such other matters as may be prescribed, but this provision not having been relied upon by the respondents need not detain us. Rule 5 confers full power on the Board for framing bye-laws on certain matters specified therein including the subject of better marketing of agricultural produce etc. but this too is inconsequential for our purpose, having not been relied upon as a provision independently of S. 44 constituting as a source validating the bye-laws in question.

9. The contention raised by the petitioners briefly is that no bye-laws have been framed by the Committee nor have any bye-laws been framed by the Board in accordance with law and, therefore, the direction regarding remuneration of weighmen is not valid and hence, not binding. Bye-laws being delegated legislation, must be made strictly in accordance with S. 44 and if they are not shown to have been so made, they must be struck down as ultra vires, says Shri Sachar.

10. In reply the respondents learned counsel has referred us to bye-law No. 28(R-1) and has submitted that the bye-laws in order to be valid have merely to be confirmed by the Chairman as provided by S. 44(4) and the bye-law in question has in fact been so confirmed. It has been urged that there can be no objection to the Chairman sending the suggested bye-laws to the various Market Committees in the State and after their adoption by the Committee to confirm them and thereafter to enforce them.

11. It may be pointed out at this stage that since the position had not been fully clarified in the return, after hearing the arguments for some time, we desired the counsel for the respondents to let us have fuller information as to the procedure adopted for framing the bye-laws in question. The respondents' learned counsel has as a result produced the relevant correspondence and the resolutions passed by the various Committees. From the material produced, it is clear that on 22-07-1963, the Chairman, State Agricultural Marketing Board, Punjab, Patiala, sent a Circular No. 60 to all the Chairmen of Market Committees in the Punjab State whereby amendments and additions in the new bye-laws were forwarded to them with a direction to adopt the same and intimate by 03-08-1963 without fail. It was recited therein that if it was not received within the specified period, I shall be deemed to have been adopted by the Market Committee as circulated and the bye-laws would be notified in the gazette accordingly. Any amendment or suggestion, according to this circular, could be considered later on after the bye-laws had once been notified and enforced.

The Market Committee, Malout, adopted unanimously a resolution on 07-09-1963 adopting bye-laws referred to in Circular letter No. 60. The Market Committee, Karnal did so on 22-08-1963. The Market Committee, Rayya, sanctioned them on 08-08-1963 and the Tarn Taran Committee did so on 19-08-1963, forwarding the same on 07-09-1963. The Market Committee, Patti, however, was more prompt and adopted unanimously the said bye-laws on 27-07-1963. In the resolution of this Committee, It is also stated that the Board be informed that these bye-laws be notified immediately. The said bye-laws, as is clear from a copy of the gazette notification, are the subject-matter of a notification dated 09-08-1963 published in the Punjab Government Gazette Part III, D/- 30-08-1963. This notification shows that the bye-laws were confirmed and notified by the Chairman of the Board under the powers conferred by S. 44 and all other powers enabling him in this behalf.

12. What is stated above makes it crystal clear that the Chairman merely complied with the provisions of S. 44(3)(a) and Sub-Sections (b), (c), (d) and (e), appear to have been clearly ignored by him. Bye-laws having been made under the delegated power of legislation under S. 44, in order to be valid and to have the force of law, must be made strictly in accordance with the said Section and in pursuance of the authority delegated thereby. In case of failure of the Committee to amend, alter, rescind or adopt a new bye-law within the time specified by the Chairman of the Board, the Chairman could register such amendment, alteration, rescission or such new bye-law only after giving the Committee an opportunity of being heard and even then had to issue a certified copy thereof to the Committee in default so as to enable it to prefer an appeal against the Chairman's order to the State Government within one month from the date of the issue of the order. In case an appeal is preferred by the Committee from an order registering the amendment, such amendment could not come into force till the order is confirmed by the State Government.

13. From what has been stated above, it is clear that the bye-laws bear the D/-9-8-1963 and were actually published on 30-8-1963 long before they were adopted by the Malout Market Committee. They were also issued about 13 days before they were approved by the Karnal Market Committee. The Rayya Market Committee sanctioned the bye-laws on 8-8-1963 and were apparently forwarded on 13-08-1963 as appears to be suggested from its attestation by the Secretary of this Market Committee. It is the Market Committee of Patti alone which adopted the bye-laws on 27-7-1963 and which may be assumed to have been received by the Chairman of the Board before 9-8-1963, the date on which they were sent to the press for publication, the Tarn Taran Committee having also adopted the bye-laws only on 19-8-1963 and forwarded them on 7-9-1963. In the case of the Market Committee, Patti alone, therefore, it is possible to hold that the bye-taws were adopted before 30-8-1963, as desired and intimation sent to the Chairman who confirmed them

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in accordance with law. No other Committee appears to have approved or adopted the bye-laws and forwarded them to the Chairman for confirmation and enforcement in accordance with law before 9-8-1963, the date of the notification. In regard to those Committees, therefore, it cannot but be held that there was no compliance with S. 44(3)(b), with the result that the bye-laws in regard to them must be held not to have been made in accordance with law delegating the power so as to be of binding effect.

14. It may here be pointed out that Government under the Rule of law demands proper legal limits on the exercise of power and such power must be approved by the elected representatives of the people; in regard to the delegation of legislative power to the administrative wing of Government, it further demands that the delegated power must be exercised strictly in accordance with and within the four corners of the limits laid down by the delegating instrument, for, even the Legislature is not empowered to abdicate its constitutional obligation. The Constitution, it must never be forgotten, is supreme to all wings of the Government. Material deviation in this respect, therefore, cannot be overlooked in our parliamentary democracy where every legislative measure must ultimately be traced to the nation's representatives elected for the purpose of making laws. The extent to which it is not so traceable may well be described to be usurpation. It is not seriously argued that in the sphere of delegation of legislative power, the manner prescribed for exercising the delegated power can be presumed to be directory, and indeed, as at present advised, I am inclined to take the view that such delegated power must he exercised strictly as directed or not at all. It may be remembered that there is close connection between delegated legislation and Rule of law.

15. The Chairman of the Board in the case in hand appears to have been dominated by the urge of administrative expediency or convenience, ignoring that dominance of expediency over Rule of law may tend to degrade it into an uncontrolled power and once an uncontrolled approach is allowed to function, it becomes difficult later to limit it or draw a line and the drift may unwittingly be undemocratic, with an incline towards authoritarianism.

16. Before concluding, it may be pointed out that democracy in India appears to some extent to have inherited, and to be tempered with, the bureaucratic authoritative tendencies assuming supremacy over the Rule of law With this tendency taking root, there is a constant danger of the Rule of law getting unduly pushed in the background and possibly getting drawned in the clamour of real or supposed administrative and bureaucratic convenience or expediency. In order, therefore, speedily and successfully to eliminate and banish such tendencies, it is the solemn duty of all Republican citizens to protect the Rule of law - the sheet-anchor of our infant democracy; a duty which the citizens owe to themselves and to their posterity which will claim at their hands this, the best birth right and noblest inheritance of mankind; the duty of the administrator in this respect appears to be greater, for not only does he owe his office to the Rule of law but his official duty also enjoins him to act strictly in accordance with this Rule and thereby to sustain it. This duty postulates eternal vigilance by everyone if drift towards authoritarianism is to be arrested and avoided. Eternal vigilance, it must never be ignored, is the price of freedom under the Rule of law and once this freedom is lost, it becomes somewhat difficult to regain it.

The judiciary which, in a high sense, is the guardian of the conscience of the people as well as the upholder of the Constitution and the law of the land, is perhaps in this respect under a still more solemn obligation, for an administrator who is made to know that he must ultimately account to a judicial body for his actions, will tend to be a more responsible public official. This Court has thus from every point of view, a constitutional obligation to enforce the Rule of law and not lightly to ignore its breaches.

17. For the foregoing reasons, except in the case the Market Committee, Patti. I would allow the writ petitions in part and quash the order fixing remuneration of the weighmen. In other respects, all the writ petitions fail. In the Patti Market Committee, the impugned order must however, he held to be valid. On the facts and circumstances of the case, there would be no order as to costs.

18. H.R. KHANNA, J. :- I agree.

Order accordingly.

AIR 1965 PUNJAB 505 (Vol. 52, C. 161) "Amar Nath v. Sub-Divl., Officer"

PUNJAB HIGH COURT

Coram : 1 P. C. PANDIT, J. ( Single Bench )

Amar Nath Gupta, Petitioner v. Sub-Divisional Officer (Civil), Faridkot, Respondent.

Civil Writ No. 135 of 1965, D/- 11 -3 -1965.

Punjab Agricultural Produce Markets (Election to Market Committee) Rules (1961), R.8 - AGRICULTURAL PRODUCE - Requirement of attaching deposit receipt to nomination papers - Requirement is only directory - Actual deposit of security is substantial compliance with rule.

The actual deposit of the security and not the attaching of the receipt therefor is the condition precedent for the proper nomination of a candidate. For a valid nomination, the actual deposit of the security before the filing of the nomination paper is an essential condition. The production of the receipt therefor is only to prove that such deposit has been made. By its mere non-production, therefore, a nomination paper cannot be rejected. This rule is substantially complied with, if the .said deposit has actually been made, though the receipt therefor has not been attached along with the nomination paper. In this respect the rule is merely directory and not mandatory. (S) AIR J956 SC 140, Rel, on. (Para 3)

Cases Referred : Courtwise Chronological Paras

('56) (S) AIR 1956 SC 140 (V 13): 1956-2 SCR 1029, Pratap Singli v. Krishna Gupta 4

G. C. Mittal, for Petitioner; M. R. Agnihotri and B. S. Dhillon, for Asa Singhji, for Respondent.

Judgement

ORDER: This is a petition under Art. 226 of the Constitution filed by Amar Nath Gupta, challenging the order, dated 14th of August 1964, passed by the Sub-Divisional Officer (Civil), Faridkot, respondent, who was acting as the Returning Officer for the election to the Market Committee, Kot lapura, district Bhatinda, rejecting his nomination paper.

2. The petitioner is a partner of firm Des Raj Mohan Lal, situate at Kot Kapura. This firm is a licensee under S. 10 of the Punjab Agricultural Produce Markets Act, 1961 (Punjab Act No. 23 of 1901). Since the term of the members of the Market Committee, Kot Kapura, had expired, fresh elections to the said Committee had to be held. According to S. 12 of the Act, four members from persons licensed under S. 10 for the notified market area concerned had to be elected by persons licensed under that Section. Accordingly, the petitioner filed his nomination paper, duly completed in all respects, on Form 'E' under R. 7(2) of the Punjab Agricultural Produce Markets (Election to Market Committee) Rules, 1961, on 11th of August 1664, before the prescribed date (12th

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of August 1964). Before filing the nomination I wiper, he also deposited in the office of the notified market urea committee the election security, as required by R. 8, on that very day. The receipt for the same was not however, attached by him along with the nomination paper. According to the petitioner, tit the time of the filing of the nomination paper, he produced the said receipt before the respondent, who, however, asked him to keep the same with him and told him not to attach it with the nomination papers. The Returning Officer, however, it his return has stated that he had no knowledge whether the election security was deposited by the petitioner before the filing of the nomination paper and he never asked the petitioner to keep the security deposit receipt with him. At the time of the scrutiny of the nomination papers on 14th of August 1964 at Faridkot, the respondent rejected the nomination paper of the petitioner on the ground that there was no receipt indicating the deposit of the security. According to the petitioner, he reminded the Returning Officer of his having produced the original receipt on 11th of August 1964 when the latter had told him that it was not necessary to attach it with the nomination paper. The petitioner further asked for time to bring the said receipt from Kot Kapura, as he had not brought the same with him. The respondent, however, refused to allow any time for that purpose. According to the petitioner, he produced an affidavit before him giving the details of the deposit of the security, but the respondent refused to accept the same. These allegations of the petitioner are, however, denied by the respondent. Affording to him, it was the duty of the petitioner to produce the receipt, its without the same, he would have no basis to come to the conclusion that the deposit had actually been made.

3. It is common ground that the petitioner had as a matter of fact deposited the security of Rs. 20 on 11th of August 1964, as alleged by him. So the sole question for decision is whether his failure to attach the deposit receipt along with the nomination paper would necessarily result in its rejection. This will depend on the interpretation of R. 8, the relevant part of which runs thus-

"Each candidate nominated under the provisions of R. 7, shall, at or before the time of delivery of his nomination paper, deposit or cause to be deposited a sum or twenty rupees, with the Returning Officer or in the office of the Committee of the notified market area and produce a receipt from the Returning Officer or the Committee, as the case may be, along with the nomination paper. No candidate shall be deemed to be duly nominated unless such deposit has been made."

A plain reading of this rule would show that every candidate at or before the time of the delivery of his nomination paper is required to deposit a sum of Rs. 20 either with the Returning Officer or in the office of the Committee of the notified market area. A further duty is cast upon him to produce a receipt for the said deposit along with the nomination paper. The rule also states that no candidate shall be deemed to be duly nominated unless such deposit has been made. In other words, the actual deposit of the security and not the attaching of the receipt therefore is the condition precedent for the proper nomination of a candidate. As 1 read the rule, the essential condition for a valid nomination is the actual deposit of the security before the filing of the nomination paper. The production of the receipt therefore is on to prove that such deposit has been made, by its mere non-production therefore, a nomination paper cannot be rejected. There is a substantial compliance with this rule if the said deposit has actually been made, though the receipt therefore has not been attached along with the nomination paper, In this respect the rule is merely directory and not mandatory. If there was any doubt in his mind, the Returning Officer should have given the petitioner reasonable time to produce the said receipt. An enquiry into this matter could have been made by him, as envisaged in R. 9, which inter alia states that

"The Returning Officer shall examine the nomination papers at the time appointed in this behalf, hear objections, if any, presented by the objectors in person, to the eligibility of any candidate and take decision on these objections after such enquiry as he may consider necessary."

4. The view that I have taken above finds support from a decision of the Supreme Court in Pratap Singh v. Krishna Gupta, AIR 1956 SC 140. Their Lordships were dealing with certain provisions of the C. P. and Berar Municipalities Act and the rules made thereunder, according to which candidates for the office of President of the Municipal Committee were required to give their caste. This rule was, however, changed and instead of "caste" their "occupation" had to be entered, An objection was raised by one of the candidates that the nomination papers of those candidates who had not entered their "occupation"' but had .given their "caste" should be rejected. The trial Judge held that the defect was not substantial and was curable. This decision was, however, reversed by the High Court on revision and it was held that the failure to comply with any of the provisions set out in the various rules was fatal and that in such cases the nomination paper must be rejected. While accepting the appeal against this decision, their Lordships of the Supreme Court held thus -

"Tendency of the Courts towards technicalities is to be deprecated; it is the substance that counts and must take precedence over mere form some rules are vita! and go to the root of the mailer; they cannot be broken; others are only directory and a breach of them can be overlooked provided there is substantial compliance with the rules read as whole and provided no prejudice ensues; and when the legislature does not itself state which is which judges must determine the matter and. exercising a nice discrimination, sort out one class from the other along broad-bused, commonsense lines.

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Reading Rule 9(1)(iii)(c) in the light of S. 23, an omission to set out a candidate's occupation

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cannot said to affect 'the merits of the case'. This part of the form to be filled in by the candidate in only directory and is part of the description of the candidate; it does not go to the root of the matter so long as there is enough material in the paper to enable him to be identified beyond doubt."

5. In view of what I have said above, this petition succeeds and the impugned order is quashed. There will, however, be no order as to costs.

Petition allowed.

AIR 1962 PUNJAB 426 (V 49, C 118) "Firm A. I. Corporation v. Market Committee"

PUNJAB HIGH COURT

Coram : 2 TEK CHAND AND S. B. CAPOOR, JJ. ( Division Bench )

Firm Adarsh Industrial Corporation, Appellant v. Market Committee, Karnal, Respondent.

Civil Revn. No.213 of 1961, D/- 29 -1 -1962, against order of Sr. Sub-J., Karnal, D/- 29 -12 -1960.

Civil P.C. (5 of 1908), S.9 - Punjab Agricultural Produce Markets Act (5 of 1939), S.19, S.23, S.27 and S.31 - Punjab Agricultural Produce Markets Rules (1940), R.19A(4) and R.51 - CIVIL COURT - AGRICULTURAL PRODUCE - INJUNCTION - 'Expressly or impliedly barred' - Suit for injunction against Market Committee restraining it from recovering market fees on ground that levy was illegal and ultra vires - Jurisdiction of civil Court not barred - R.51 is ultra vires of S.31.

A Civil Court has jurisdiction to entertain a suit for permanent injunction restraining the defendant Market Committee from recovering the amount of market fee from the plaintiff as arrears of land revenue, on the allegation that the levy of market fee against the plaintiff in connection with the alleged purchase of paddy was illegal and ultra vires as no purchase of paddy had been made within notified market area. The jurisdiction of Civil Court is not barred either expressly or impliedly by the provisions of the Punjab Agricultural Produce Markets Act, 1939 or by Sec.158(2)(xiv), Punjab Land Revenue Act read with R.51 of the Punjab Agricultural prod Market Rules, 1940. (Para 25)

The Punjab Agricultural Produce Markets Act nowhere bars the jurisdiction of the Civil Court. Section 23 of the Act on the Other hand recognises the jurisdiction of a Civil Court, subject to the conditions specified in this section. Regarding recovery of sums as arrears of land revenue. Section 31 confines the process to sums due from a Market Committee to the Government. Section 158(2)(xiv), Punjab Land Revenue Act which excludes the jurisdiction of a civil Court in respect of collections or realisations made by Government as arrears of land revenue cannot apply to recoveries of fees made by the Committee. Further Rule 51 goes beyond the scope of the Act and is inconsistent with the provisions of S.31 which confines itself to recovery as arrears of land revenue, in respect of sums due from a Market Committee to the Government. (Paras 12, 13)

If a subject is to be deprived of his right to resort to ordinary Courts of law of his country, it must be so stated in the Act. Exclusion of the jurisdiction of the Civil Court is not to be inferred by a process of ratiocination resting on any statutory rules. AIR 1940 PC 105 and 1937 AC 139 and 1901-1 Ch 894, Ref. to; AIR 1951 SC 115 and AIR 1958 Andh Pra 131, Dist. (Para 13)

The mode of recovery as arrears of land revenue is a matter of legislative policy and the Legislature alone lays it down as part of the statute wherever it thinks it fit to provide such a mode of realisation. In this case, such a mode is contemplated by the Legislature, but is restricted by Section 31 to the recoveries of sums due from the Market Committee to the Government. It is not for the rule-making body to extend the scope of Section 31 and to include matters falling outside its purview. It is a well-recognised principle of interpretation that if the statutory rules or bylaws are in excess of the provisions of the statute, or, are in excess of or inconsistent with such provisions, then these provisions must be regarded as ultra vires the statute and cannot be given effect to : AIR 1934 Cal 537, Rel. on. (Para 18)

A bare mention in Rule 19A(4) that the order passed by the appellate authority shall be final and conclusive, cannot be interpreted to mean that the jurisdiction of the civil Court has been put an end to. If the assessment is not under the Act, then the rules will not apply and no adverse consequences can follow. (Para 18)

It is for the civil Courts to see whether the statutory tribunal has acted within or de hors the Act. The tribunal cannot arrogate to itself a jurisdiction which it does not possess, unless the statute expressly confers the power on the tribunal to determine whether a matter falls within its jurisdiction or not. AIR 1941 Lah. 200. Ref.1958-1 Mad LJ 73, Dist. (Para 21)

The rule making power which is delegated to the State Government under section 27 of the Punjab Agricultural produce Markets Act (5 of 1939) is with a view to carry out all or any of the purposes of the Act, and the rules have, therefore, to be consistent with the Act. The

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power to legislate on policy or principle cannot be delegated to the State Government as that is the peculiar function of the Legislature. AIR 1951 SC 332 and AIR 1954 SC 569, Ref, to.

Since Sec.31 is silent regarding sums due to a Market Committee from the licensees, the doctrine of expression unius est exclusio arteries - the express prevention of one thing implies the exclusion of another-and expressum facit cessare tacitum - what is expressed makes what is silent to cease - is attracted. (Paras 22, 24)

Cases Referred : Courtwise Chronological Paras

('51) AIR 1951 SC 115 (V 38) : 1951 SCR 145, Brij Raj Krishna v. S.K. Shaw and

Brothers 16

('51) AIR 1951 SC 332 (V 38) : 1951 SCR 747, In re Art. 148, Constitution of India and Delhi Laws Act, 1912 21

('54) AIR 1954 SC 569 (V 41) : 1955-1 SCR 290, Rajnarain Singh v. Chairman, patna Administration Committee 21

('40) AIR 1940 PC 105 (V 27) : ILR (1940) Mad 599, Secy, of State v. Mask and Co. 13

('58) AIR 1958 AP 131 (V 45) : 1958-1 Andh WR 348, Kalwa Devadattam v. Union of India 16

('34) AIR 1934 Cal 537 (V 21) : 151 Ind Cas 165, Barisal Co-operative Central Bank Ltd. v. Benoy Bhusan Gupta 17

('41) AIR 1941 Lah 200 (V 28) : ILR(1941) Lah 278, Lahore Municipality v. Munir-ud-Din Sheikh 19

('58) 1958-1 Mad LJ 73 : 70 Mad LW 936, Madurai Municipality v. Jagannatha Ayyar 20

('57) AIR 1957 Punj 58 (V 44) : 58 Pun LR 490, Custodian General of Evacuee Property, New Delhi v. Harnam Singh 15

(1868) 3 Ex 172, North Stafford Steel, Iron and Coal Co. v. Ward 22

(1901) 1901-1 Ch 894 : 70 LJ Ch 571, Stevens v. Chown. 13

(1937) 1937 AC 139 :1936-3 All ER 1243, R. and W. Paul Ltd. v. Wheat Commission 13

Anand Saroop and R.S. Mittal, for Petitioner; H.S. Doabia and S.S. Sodhi, for Respondents.

Judgement

TEK CHAND J.: -

This matter has come up before this Bench on a reference made by a learned Single Judge as he considered that the questions arising in this case are such as should be disposed of by a larger Bench.

2. These are two cases which can conveniently be disposed of by a single judgment as the questions to which they give rise are identical. In Civil Revision No.213 of 1961 the plaintiff is styled as Adarsh Industrial Corporation and in Civil Revision No.214 of 1961 the plaintiff is firm Jhandu Mal Tara Chand of Karnal. The defendant in both the cases is the Market Committee, Karnal.

3. Adarsh Industrial Corporation had Instituted a suit for a permanent injunction alleging that the defendant-committee by its resolution dated 9th March.1960 had levied a sum of Rs.959-59 np. as market fee against the plaintiff in connection with the alleged purchase of paddy from 6th October, 1959 to 3rd January, 1960. After the above amount had been levied, the defendant-committee applied to the Collector, Karnal, to recover the said amount from the plaintiff as arrears of land revenue. The plaintiff claimed that the purchase of the paddy had been made from Pehowa which was outside the notified market area of Karnal and that no purchase of paddy had been made within the notified market area and, therefore, no fees could be legally levied on such a purchase. It was denied that any transaction or bargain was struck within the notified market area. The contention of the plaintiff is that the levy of the fees by the defendant is illegal, ultra vires, and the fee cannot, therefore, be legally recovered. On these allegations the plaintiff prayed for a decree for permanent injunction restraining the defendant from recovering the amount of Rs.959-59 nP. as the market fee from the plaintiff.

4. In the other suit instituted by Jhandu Mal Tara Chand the allegations and the prayer are similar. In their case the defendant-committee had levied an amount of Rs.524.30 nP. as market fee in connection with the alleged purchase of paddy. The contention of the plaintiff was that the paddy had been purchased from Kurukshetra, Mathlauta and Pehowa, which were places outside the notified market area of Karnal.

5. In both the cases, the defendant-committee admitted the levy of the fee, but maintained that the civil Court had no jurisdiction to question the powers of the collector under the provisions of the Punjab Land Revenue Act. It was asserted that the purchase of paddy was liable to payment of market fee at Karnal as it was "contracted for, bought, weighed and delivered within the jurisdiction of Market Committee of Kamal''. It was also maintained by the defendant that the order levying market fee was an appealable order and as no appeal had been filed against that order it had become final and could not be challenged in the civil Court.

6. In each case, five issues were framed by the trial Court, but we are concerned with the first issue, which is as under-

"Whether the civil Court has got jurisdiction to entertain this suit?"

7. The trial Court expressed the view that a fee due to the Market Committee was recoverable as arrears of land revenue through the Collector under Rule 51 of the Punjab Agricultural Produce Markets Rules and the fees levied by the Market Committee were recoverable as arrears of land revenue. It also expressed the view that under S.78 of the Land Revenue Act the person against whom the proceedings were taken might deny his liability for the arrears or any part thereof and after making a protest in writing at the time of payment he could institute a suit in a civil Court for the recovery of the amount so paid. The plaintiff had, therefore, to pay the amount of the fee under protest first and then, institute a suit for its recovery. Reference was also made to Sec.158, clause (14) of that Act which barred the jurisdiction of the civil Court. Consequently, the plaint was returned to the plaintiff. This order was challenged

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but the Senior Sub-Judge dismissed the appeal.

8. The matter was then taken up in revision in this Court and the learned Single Judge has referred the question arising in this case for hearing before a Division Bench.

9. Before dealing with the arguments, it will be convenient to refer to the relevant provisions of the Punjab Agricultural Produce Markets Act (5 of 1939) and the Rules made there under. Section 19 authorises the Market Committee to levy fees on agricultural produce, bought or sold by licensees in the notified area. Section 23 requires two months' notice for instituting suit against any Market Committee or any member or employee thereof, etc., and the suit has to be instituted within six months from the date of accrual of the cause of action.

Section 27(1) confers power on the Government to make Rules consistent with the Act for carrying out all or any of the purposes thereof. Sub-section (2) of this section specifies items with respect to which rules may be made as, for instance, Item (vii), which refers to maximum fees which may be levied by the Market Committee in respect of agricultural produce bought or sold by the licensees in the notified market area and the recovery and disposal of such fees, and item (xxiv) refers to the realisation or disposal of fees recoverable under the Act or under the Rules of by laws. Section 30 provides appeals in cases in which power under Section 6 has been exercised by a gazette officer especially empowered in this behalf. Appeal lies to the Government. Section 6 deals with applications for licenses and fees to be paid and cancellation or suspension of licenses. Sections 6 and 30 taken together do not refer to an appeal from the decision of the Committee in a case like the present. Section 31 provides :-

"All sums due from a Market Committee to the Government may be recovered in the same manner as arrears of land revenue.''

This section is in marked contrast with the provisions of Section 41 of the Punjab Agricultural produce Markets Act (23 of 1961) which came into force on 28th May, 1961. Both parties are agreed that the latter Act does not apply to this case as the dues which are being claimed by the Market Committee are for an earlier period, that is, from 6th October, 1959, to 3rd January, 1960 prior to the enforcement of the latter Act. Section 41 of the Punjab Act 23 of 1961 runs as under:-

"41. Recovery of sums due to State Government from Committee -

(1) Every sum due from a Committee to the State Government or the Board shall be recoverable as an arrear of land revenue.

(2) Every Sum due to a Committee from any person shall be recoverable as an arrear of land revenue."

Under the provisions of Section 31 of the earlier Act, (Act 5 of 1939), recovery of sums as arrears of land revenue was confined to the amounts which were due from a Market Committee to the Government and did not include the cases of sums due to a Committee from any person. For the first time a sum due to a Committee from any person was made recoverable as arrears of land revenue by Section 41(2) of Punjab Act 23 of 1961. This distinction is material for examining the force of the argument based on the principle inclusion unius est exclusion arteries the inclusion of one is the exclusion of other.

10. I may now refer to the relevant provisions of the Punjab Agricultural produce Market Rules, 1940 Rule 19-A provides appeals against Market Committee's decision. An order passed by a Market Committee under the Act or the rules is made appealable at the instance of the aggrieved party to a gazette officer not below the rank of a Magistrate of the first class. Under sub-rule (4) the Order passed by the appellate authority has been made final and conclusive. Rule 51 requires

"a fee due to a Market Committee under the Act or these Rules or its by-lays shall, not withstanding any penalty imposed under Rule 52 be recoverable as arrears of land revenue through the Collector of the district within the boundaries of which the person liable to pay resides or within the boundaries of which the notified market area is situated."

11. The processes for recovery of arrears of land revenue are of a drastic character as will be seen from the provisions of Section 67 of the Punjab Land Revenue Act and include arrest and detention of the defaulter; and distress and sale of his movable property. Under Sec.158 on the Punjab Land Revenue Act, a civil Court shall not exercise jurisdiction, inter alia, over any claim connected with or arising out of the collection by the Government or the enforcement by the Government of any process for the recovery of land revenue or any sum recoverable as arrear of land revenue. The last mentioned provision, though referred to by the learned counsel for the respondent, does not appear to have any bearing in this case as it refers to exclusion of civil Courts' jurisdiction in a case connected with or arising out of the collection by the Government and not by any other body like the Market Committee.

12. I may now deal with the arguments addressed at the Bar. The Punjab Agricultural, Produce Markets Act (5 of 1939) nowhere bars the jurisdiction of the civil Court. Section 23 of the Act contemplates institution of a suit, but merely requires that a two months' notice must precede such an institution and the suit should be filed within six months of the accrual of the cause of action. The jurisdiction of a civil Court, subject to the conditions specified in this section, is recognised. Regarding recovery of sums as arrears of land revenue, section 31 confines the process to sums due from a Market Committee to the Government. Thus, from the perusal of the Act, it seems that neither has the jurisdiction of the civil Court been taken away nor the recovery as arrears of land revenue extends to "realization of the fee by the Committee from the licensee." This Omission has been supplied by Section 41, sub-section (2) of Punjab

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Act No.23 of 1961, the provisions of which do not apply to this case.

13. It was next urged that the jurisdiction of the civil Court is impliedly barred by the Punjab Agricultural Produce Markets Rules, 1940. It is argued that Rule 51 provides a procedure for recovery of fee due to a Market Committee as arrears of land revenue through the Collector of the district and therefore under Section 158 (2)(xiv) of the Punjab Land Revenue Act, a civil Court is prohibited from exercising jurisdiction over any claim, connected with or arising out of the collection by the Government, or, the enforcement by the Government of any process for the recovery of land revenue or any sum recoverable as arrear of land revenue.

This argument is unconvincing as the provisions which exclude the jurisdiction of a civil Court in respect of collections or realizations made by Government as arrears of land revenue cannot apply to recoveries of fees made by the Committee. This argument is also assailable on the ground that Rule 51 goes beyond the scope of the Act and is inconsistent with the provisions of Section 31 which confines itself to recovery as arrears of land revenue, in respect of sums due from a Market Committee to the Government. Of course, if the provisions of Section 41(2) of Punjab Act 23 of 1961 were to apply, this contention could not have prevailed, but admittedly the provisions of that Act do not cover this case. If a subject is to be deprived of his right to resort to ordinary courts of law of his country, it must be so stated in the Act. Exclusion of the jurisdiction of the civil courts is not to be inferred by a process of ratiocination resting on any statutory rules. It is a firmly established principle that the subject cannot be deprived of his right to resort to the Courts of law of his country except by express enactment. There are no words expressed in the Punjab Agricultural Produce Markets Act (5 of 1939) ousting the jurisdiction of the civil Courts.

This principle was applied by the House of Lords in R. and W. Paul Limited v. Wheat Commission, 1937, AC 139. In the case before the House of Lords it was provided by Sec.5(1) of Wheat Act, 1932, that the Wheat Commission were empowered to make bylaws for giving effect to the provisions of the Act, and without prejudice to the generality of the power conferred by sub-section (1), the by laws shall in particular provide ............ "(m) for the final determination by arbitration of disputes arising as to such matter as may be specified in the bylaws" Pursuant to these powers, the Wheat Commission made a bylaw, No.20, providing that a dispute arising between the Wheat Commission and any other person as to whether any substance is flour shall be referred to arbitration. After mentioning this, there was a provision to the effect that the Arbitration Act, 1889 shall not apply Lord Macmillan, referring to this provision in the by law said,

"I reach my conclusion that bylaw 20 is ultra vires ............ I find first that there are no express words in the Act ousting the jurisdiction of the Court, but only a power to make by-laws for the final determination by arbitration of disputes arising as to such matters as may be specified in the by-laws. I next find that the bylaw in question not only specifies as a matter to be determined by arbitration 'any dispute........ as to whether any Substance is flour' but goes on to provide that to such arbitration the Arbitration Act, 1889, shall not apply. The Arbitration Act is a statute of general application and it confers a valuable and important right of resort to the Courts of law. To exclude its operation from an arbitration is to deprive the parties to the arbitration of the rights which the Act confers. When a public general statute provides for the reference of disputes to arbitration, it is to be presumed that it intends them to be referred to arbitration in accordance with the general law as to arbitrations, with all the attendant rights which the general law confers. I do not think that when Parliament enacts by one statute that disputes under it are to be referred to arbitration it can be presumed to have empowered by implication the abrogation of another statute which it has enacted for the conduct of arbitrations. Rather the contrary. If this is intended express words to that effect are in my opinion essential, and there are here no such express words. I am accordingly of opinion that the Wheat Commission exceeded their powers when they made a bylaw that every dispute as to whether any substance is flour should be determined by an arbitration to which the Arbitration Act should not apply. I have only to add that the by-law must, in my opinion,be condemned as a whole and that it cannot be saved by the excision of the objectionable provision, which is not a severable but a vital part of the by-law."

In Stevens v. Chown, (1901) 1 Ch. 894 (904), Farwell J., observed:-

"There is nothing, even wheat a statute creates an entirely new right and gives a special remedy to prevent a Court having equitable jurisdiction from granting an injunction to restrain the infringement of a newly created statutory right unless the Act of Parliament creating the right provides a remedy which it enacts shall be the only remedy, subject only to this, that the right so created is such a right as the Court under its original Jurisdiction would take cognizance of". Lord Thankerton in Secretary of State v. Mask and Co. AIR 1940 PC 105, said:-

"It is a settled law that the exclusion of the jurisdiction of the civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

14. The Act has not committed to the rule making authority, or to the executive, the discretion of deciding whether the jurisdiction of the civil Courts is to be taken away. It is within the purview of the Courts to see that the power which a particular statutory body claims

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to exercise is one which falls within the four comers of the powers given by the Legislature. It is also the function of the Courts to see that the powers are exercised in good faith.

15. Section 48 of the Administration of Evacuee Property Act (31 of 1950) is in the following terms:-

"(1) Any sum due to the State Government or to the Custodian under the provisions of this Act, may be recovered as if it were an arrear of land revenue.

(2) For the purposes of Sub-section (1) the decision of the custodian as to the Sum payable to the State Government or to the Custodian shall be final."

It was held by a Letters Patent Bench of this Court in the Custodian General of Evacuee property, New Delhi v. Harnam Singh, 58 Pun LR 490 : (AIR 1957 Punj 58) that the summary remedy provided by section 48 must be restricted to the sums legally recoverable, that is, sums which were admitted or approved, to be due, and could not be extended to sums which were alleged or claimed to be due.

16. Mr. Harbans Singh Doabia for the respondents advanced an argument which does not appear to be founded either on the Act or on the statutory rules that the statutory tribunal, in this case the Market Committee, had the jurisdiction to determine if the matter fell within its jurisdiction or outside. He referred to certain cases which are distinguishable as there the jurisdiction of civil Courts was expressly barred under the statutes. One of such cases relied upon by Mr. Doabia was Brij Raj Krishna v. S.K. Shaw and Brothers, 1951 SCR 145 : (AIR 1951 SC 115), in which the language of section 11 of the Bihar (Lease, Rent and Eviction) Control Act (3 of 1947) was examined. Fazl Ali J., said -

''The Act empowers the controller alone to decide whether or not there is non-payment of rent and his decision on that question is essential before an order can be passed by him under section 11. Such being the provisions of the Act, we have to see whether it is at all possible to question the decision of the controller on a matter which the Act clearly empowers him to decide."

On the facts of the present case, this decision lends no assistance to the respondent. On similar grounds, the decision of Andhra Pradesh High Court in Kalwa Devadattam v. Union of India, AIR 1958 Andh Pra 131, is distinguishable. In that case, the assessee had defaulted in making the payment, and on this, the Income-tax Officer forwarded to the District Collector a certificate specifying the amount of arrears due from the assessee. The Collector then proceeded to recover from the assessee the amount specified under the Revenue Recovery Act and in the process of realisation of the arrears properties of the assessee were brought to sale. The plaintiffs, with a view to avoid the sale, brought an action in a Civil Court on the contention that the assessments were illegal and, therefore, did not bind them, and that their properties could not be sold for the realisation of arrears of tax. Referring to Sec.67 of the Income-tax Act, it was observed that the assessments were made under the Act, and a challenge to the assessments

in a Civil Court was intended to be excluded. Neither the decision nor the facts on which it was based provides any analogy for entertaining the respondent's contention in this case.

17. The mode of recovery as arrears or land revenue is a matter of legislative policy and the Legislature alone lays it down as part of the statute wherever it thinks it fit to provide such a mode of realisation. In this case, such a mode is contemplated by the Legislature, but is restricted by Section 31 to the recoveries of sums due from the Market Committee to the Government. It is not for the rule-making body to extend the scope of section 31 and to include matters falling outside its purview. The provisions of Rule 51 seems to go beyond the rule making power in so far as they are contrary to section 31 which, by implication, excludes recovery of fees payable to the Market Committee. It is a well recognised principle of interpretation that if the statutory rules or by laws are in excess of the provisions of the statute, or, are in excess of or inconsistent with such provisions then these provisions must be regarded as ultra vires the statute and cannot be given effect to vide Barisal Co-operative Central Bank Ltd v. Benoy Bhusan Gupta, AIR 1934 Cal 537.

18. It was then urged that the rules provide for appeals; and Rule 19-A (4) gives finality to the appellate decision. It was, therefore, argued on behalf of the respondent that exclusion of jurisdiction of the Civil Court is necessarily implied. But power of exclusion of jurisdiction can only be exercised by the Legislature and not by the rule making authority. The Act does not provide for exclusion of the jurisdiction of the Civil Courts. A bare mention in Rule 19 A that the order passed by the appellate authority shall be final and conclusive, cannot be interpreted to mean that the jurisdiction of the Civil Court has been put an end to. If the assessment is not under the Act, then the rules will not apply and no adverse consequences can follow.

19. It is for the civil Courts to see whether the statutory tribunal has acted within or de hors the Act. The tribunal cannot arrogate to itself a jurisdiction which it does not possess, unless the statute expressly confers the power on the tribunal to determine whether a matter falls within its jurisdiction or not. Section 225 of the Punjab Municipal Act (3 of 1911) illustrates this; it provides a remedy by way of appeal in certain cases to such an officer as the State Government may appoint or to the Deputy Commissioner and then proceeds to expressly exclude any other remedy except by way of such an appeal. It is also provided that the order of the appellate authority shall be final. It was held by a Division Bench of the Lahore High Court in Administrator, Lahore Municipality v. Munir-ud-Din Sheikh, AIR 1941 Lah 200 that the Civil Courts, in spite of section 225 of Punjab Municipal Act, could interfere with the discretionary orders of the Municipal Committee

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under section 193 (2) of the Punjab Municipal Act if those orders were an abuse of the power vested in the Municipal Committee. The Civil Courts could, under section 55 of Specific Relief Act, issue instructions to the Municipal Committee even in cases where section 45 of that Act did not apply.

20. Respondent's counsel has relied upon Madurai Municipality v. Jagannatha Ayyar, (1958) 1 Mad LJ 73, which is clearly distinguishable. There, section 354, sub-section (2) of the Madras District Municipalities Act clearly provided that no suit would lie against the Chairman and the Council of the Municipality when they had proceeded in the matter of assessment in accordance with the Act. It was held that a dispute as to the correct rental value in which an assessment could be made was not a matter within the civil Court's jurisdiction; and an erroneous assessment by a Municipality would not in itself amount to arbitrary exercise of the statutory power, if infect the enquiry as contemplated by the Act was held before the actual assessment. The distinguishing feature of the case is that the bar to the jurisdiction of the civil Court is expressly provided in the statute.

21. The rule-making power which is delegated to the State Government under Section 27 of the Punjab Agricultural Produce Markets Act (5 of 1939) is with a view to carry out all or any of the purposes of the Act, and the rules have, therefore, to be consistent with the Act. The power to legislate on policy or principle cannot be delegated to the State Government as that is the peculiar function of the Legislature. This matter was exhaustively discussed by the Supreme Court in the case In Re Art.148, Constitution of India and Delhi Laws Act, 1912, AIR 1951 SC 332, and that decision was further explained by the Supreme Court in Rajnaram Singh v. Chairman, Patna Administration Committee, AIR 1954 SC 569. Bose J., referring to the Delhi Laws Act case, AIR 1951 SC 332, said -

"In our opinion, the majority view was that an executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above; it cannot include a change of policy."

22. Fortified by these observations, I am of the view that Rule 51, which provides that a fee due to a Market Committee under the Act or the rules or its by-laws being made recoverable as arrears of land revenue through the Collector of the district, is inconsistent with section 31 of Punjab Agricultural Produce Markets Act (5 of 1939). The policy of the Act as clearly indicated by section 31 is that the recovery of sums as arrears of land revenue should be confined to dues payable to the Government from a Market Committee and not to sums payable to the latter by any person. It is significant that in the later enactment, Punjab Agricultural produce Markets Act (23 of 1961); sub-section (2) of section 41 enacted that besides sums due from a Committee to the State Government "every sum due to a Committee from any person shall be recovered as arrears of land revenue''. The lacuna in the former Punjab Act, 5 of 1939, which governs this case, was noticed and made up in the subsequent Act. There are a number of Acts expressly providing recovery of rates, taxes, cusses and fees, etc., as arrears of land revenue. For illustration reference may be made to section 29 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), section 10 of the Utilization of Lands Act (East Punjab Act 38 of 1949) section 12 of the Punjab Betterment Charges and Acreage Act (2 of 1952), section 85 of the Punjab Gram Panchayat Act, 1952 (4 of 1953), section 76 of the Punjab Panchayat Samitis and Zila Parishads Act (3 of 1961), and section 47 of the Indian Post Office Act (6 of 1898).

Learned counsel for the parties, despite opportunity having been given, have not been able to draw our attention to any provision where recovery as arrears of land revenue may be provided in statutory rules though no by the Act. Section 31 allows recovery of those sums as arrears of land revenue which are due from a Market Committee to the Government, but is silent regarding sums due to a Market Committee from the licensees, and to a situation like this the doctrine of expression unius est exclusion arteries - the express prevention of one thing implies the exclusion of another - and expressed facit cessare Tacitum - what is expressed makes what is silent to cease - is attracted. Willes, J., in North Stafford Steel, Iron and Coal Co. v. Ward, (1868) 3 Ex 172 at p.177, referring to this rule remarked that,

"if authority is given expressly, though by affirmative words, upon a defined condition, the expression of that condition, excludes the doing of the act authorised under other circumstances than those so defined: expression units est exclusion arteries.''

23. The result of the applicability of this principle of statutory construction is that if a statute enumerates the things upon which it is to operate, the things left unmentioned are excluded from its operation and effect; this may be illustrated by cases in which the matters over which the Courts jurisdiction are enumerated and those that are not included are deemed to have been excluded. Similarly, where an enactment forbids performance of certain things, only those matters which are expressly mentioned are treated as forbidden. Same is true where there is a direction in the Act that certain acts are to be done in a specified manner; any other unspecified mode of performance is impliedly prohibited. Courts have to be circumspect in applying the maxim the principle of which rests on the probable intention of the Legislature which may not have been clearly expressed. Where the law makers' intention is clearly revealed, the principle mentioned above cannot be resorted to as there cannot be an implied exclusion in the face of the plain language. The Courts turn to this principle in cases where the legislative intent is dubiously indicated

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I am also impressed by the fact that the recovery of a sum as land revenue is a drastic remedy involving the person owing the amount to grave consequences in case of default. The Legislature when drafting section 31 in its wisdom confined this remedy to a specific situation and did not apply this vigorous mode of realization to all kinds of recoveries under the Act. It was open to the Legislature to use a similar language as has been employed in section 41(2) of the latter Act, Punjab Act 23 or 1961, so as to include realization by this process of sums due to a Committee from any person. The above language of the Legislature can be construed to indicate that the legislative policy was to confine and restrict this special mode of recovery to the conditions specified in the particular provision. A statutory enactment like section 31 although expressed in affirmative language, has to be interpreted as implying a corresponding negative. A statute which requires the manner of realization of dues to the Government from a Market Committee as arrears of land revenue impliedly negatives such as exceptional and extraordinary mode of recovery in other cases not covered by the provision.

24. For reasons stated above, Rule 51 in the instant case is inconsistent with the legislative intention as can be gathered from the provisions of section 31 of the Act. Rule 51 provides for an operation excluded by section 31 and must, therefore, be struck down as ultra vires.

25. The result of the above discussion is that the contention of the petitioners prevails and the petition must be allowed. The issue, whether the Civil Court has got jurisdiction to entertain this suit, is answered in the affirmative and the case is remanded to the trial Court for decision on the remaining issues.

26. The costs of these proceedings will abide the event.

27. S.B. CAPOOR, J.: I agree.

Case remanded.

AIR 1960 PUNJAB 439 (V 47 C 160) "Ram Rachhpal v. Union of India"

PUNJAB HIGH COURT

(AT DELHI)

Coram : 1 A. N. GROVER, J. ( Single Bench )

Ram Rachhpal and others, Petitioners v. Union of India and others, Respondents.

Civil Writ Case No. 17-D of 1960, D/- 16 -3 -1960.

(A) Constitution of India, Art.14, Art.19(1)(g) - Bombay Agricultural Produce Markets Act (22 of 1939), S.4(2), Proviso , S.5A - EQUALITY - FREEDOM OF TRADE - AGRICULTURAL PRODUCE - CONSTITUTIONALITY OF AN ACT - Validity - Provisions are valid.

Under the Bombay Agricultural Produce Markets Act the powers of granting the licence have been conferred on the market committee which is a representative body and does not consist of a single individual. The market committee when refusing or cancelling a licence is to give reasons in writing and a copy of the order is to be supplied to the person affected. Further so far as refusal to grant cancellation or suspension of the licence are concerned, certain conditions and requirements have been laid down and the committee is not left with any unlettered and arbitrary powers in that respect. So far as the grant of the licence is concerned, the policy has been laid down by rule 73 of the Rules under S. 26. namely, the necessity for the efficient conduct of the market. Further there is a hierarchy of tribunals before whom the question of refusal to grant a licence or cancellation of it is and can be brought up which is an ample safeguard against the exercise of any arbitrary, unrestricted or unfettered power. It cannot, in these circumstances, be said that no standard has been laid down according to which the licensing power is to be exercised. Hence S. 4 (2) proviso or S. 5A of the Act cannot be held to be unconstitutional. AIR 1954 SC 224 and AIR 1954 Mad 621 Dist. (S) AIR 1956 Bom 21 Rel. on. (Para 6)

(B) Bombay Agricultural Produce Markets Act (22 of 1939), (extended to Delhi Territories) - AGRICULTURAL PRODUCE - CONSTITUTIONALITY OF AN ACT - REPEAL AND SAVINGS - MUNICIPALITIES - Validity - Act not repealed by Delhi Municipal Corporation Act (1957).

The Bombay Act is for the better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce. It is a special enactment for a specific purpose and object, whereas the provision contained in the Delhi Municipal Corporation Act is a general one. There is no repugnancy between the two enactments, and the Bombay Act cannot be held to be repealed pro tanto by the later Delhi Municipal Corporation Act. (S) AIR 1956 Bom 21 and AIR 1959 SC 300, Rel. on. (Para 7)

(C) Bombay Agricultural Produce Markets Act (22 of 1939), (extended to Delhi Territories) S.3, Proviso - AGRICULTURAL PRODUCE - MUNICIPALITIES - Consultation with Municipality - What constitutes - Consultation does not mean consultation with Chief Executive Officer of Delhi Corporation.

The word "municipality" is used in two senses in the proviso to S. 3. Where it refers to the local limits, it essentially has the meaning of a town, city or district possessed of privileges of local self government and when it is employed with reference to consultation, the only meaning it can have is the governing body of such a town or district. The Municipal Corporation of Delhi constituted under the Delhi Municipal Corporation Act is a municipality in the general sense of the word 'Municipality' and the consultation in the proviso to S. 3 would have reference to the corporation charged with the municipal government of Delhi consisting of councillors and aldermen. Consultation involves an exchange of views after full details and particulars of a scheme or a project have been placed before the person or body whose consultation is required. The consultation of the Corporation does not mean the consultation of its Chief Executive Officer, namely, the Commissioner who has not been shown to be competent to discharge the functions of the Corporation in this respect. (1947) 2 All ER 496 and (1948) 1 All ER 13, Rel. on. (Para 8)

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(D) Bombay Agricultural Produce Markets Act (22 of 1939), S.3, Proviso - AGRICULTURAL PRODUCE - Provision regarding consultation is directory and not mandatory.

There is nothing in the proviso to S. 3 except the prohibitory nature of the language employed that the necessary result and effect of not consulting the municipality concerned would be to make the notification issued by the Chief Commissioner under S. 3 (1) altogether null and void. The consultation with the municipality concerned was merely directory and would not render the notification illegal and void. AIR 1945 FC 67 and (S) AIR 1957 SC 912, Foll. (Para 9)

(E) WAIVER - Waiver - There can be no waiver of fundamental rights by a party and mere laches will not deprive him of that right.

AIR 1959 SC 149 and AIR 1959 Punj 544, Foll. (Obiter) (Para 10)

Cases Referred : Courtwise Chronological Paras

('54) AIR 1954 SC 224 (V 41) : 1954 SCR 803, Dwarka Prashad Laxmi Narain v. State of Uttar Pradesh 4

('57) (S) AIR 1957 SC 912 (V 44) : 1958 SCJ 150 State of U. P. v. Manbodhan Lal Srivastava 9

('59) AIR 1959 SC 149 (V 46) : 1959 SCJ 1207, Basheshar Nath v. Commr. of Income-tax, Delhi and Rajasthan 10

('59) AIR 1959 SC 300 (V 46) : 1959 SCJ 297, Arunachala Nadar v. State of Madras 7

(17) AIR 1917 PC 142 (V 4), Montreal Street Rly. Co. v. Normandin 9

('45) AIR 1945 FC 67 (V 32) : 1945 FCR 99, Biswanath Khemka v. Emperor 9

('56) (S) AIR 1956 Bom 21 (V 43) : ILR (1955) Bom 870, Bapubhai Ratanchand v. State of Bombay 6, 7

('54) AIR 1954 Mad 621 (V 41) : 1954-1 Mad LJ 117, P. P. Kutti Keya v. State of Madras 6

('59) AIR 1959 Punj 544 (V 46) : 1959-61 Punj LR 609, Bhagwat Dayal v. Union of India 10

(1947) 1947-2 All ER 496 : 91 SJ 533, Fletcher v. Minister of Town and Country Planning 8

(1948) 1948-1 All ER 13 : 64 TLR 25, Rollo v. Minister of Town and Country Planning 8

H. Hardy and D.D. Chawla, for Petitioners; M/s. R.S. Narula and Jitendra Lal, for Respondents.

Judgement

ORDER : This is a petition under Articles 226 and 227 of the Constitution in which it is necessary to state the facts in order to decide the points that arise for determination.

2. The Bombay Agricultural Produce Markets Act, 1939 (hereinafter referred to as the Act), was extended to Delhi territories on 25-7-1957. A notification under section 3 of the Act of intention of exercising control over purchase and sale of agricultural produce in the area known as Najafgarh Mandi which was previously within the juristiction of the Notified Area Committee but was later on brought within the jurisdiction of the Delhi Municipal Corporation on the enactment of the Delhi Municipal Corporation Act, 1957, was issued on 22-4-1959.

Thereafter a declaration was made under S. 4 specifying Najafgarh Mandi to be a market area for the purposes of the Act on 24-8-1959. On the same date the aforesaid market area was declared to be the principal market yard under S. 4 A (2). A market committee was established under section 6 (2) (b). That Committee issued a public notice to all shopkeepers dealing in agricultural produce in Najafgarh to obtain licences relating to purchase and sale of agricultural produce. The date for the applications for licences was specified in that notice. The petitioners who are nine in number instituted the present petition in this Court on 11-1-1960 praying mainly for appropriate writs or directions to the respondents requiring them to forbear from giving effect to and taking any action under the Act and the rules and bye-laws framed thereunder.

3. The first point that has been raised by the learned counsel for the petitioners relates to the validity of the Act.

4. It is submitted that the Act is invalid and unconstitutional as violative of Articles 14 and 19 (1) (g) of the Constitution. It is urged that the proviso appearing in section 4 (2) gives unfettered and unrestricted powers to the Chief Commissioner to grant a licence to any person to use any place in the market area for the purchase and sale of agricultural produce pending the establishment of a market Committee in such area. Section 5A gives similar power and discretion to the market Committee when a market is established in the matter of issuing licences. It is further pointed out that the proviso to section 5A makes it unnecessary for a licence to be granted by a market committee where a licence has already been granted by the Chief Commissioner under the provisions of sub-section (2) of section 4. The main challenge is founded on the decision of their Lordships of the Supreme Court in Dwarka Prashad Laxmi Narain v. State of Uttar Pradesh, 1954 SCR 803: (AIR 1954 SC 224). In that case under clause 4 (3) of the Uttar Pradesh Coal Control Order, 1953, the licensing authority had been given absolute power to grant or refuse to grant, renew or refuse to renew, suspend, revoke, cancel or modify any licence under that Order and the power could be exercised by any person to whom the State Coal Controller might choose to delegate the same. The petitioners' licence having been cancelled, the validity of the Coal Control Order was impugned. Their Lordships expressed the view that when power conferred on public officers was an arbitrary power unregulated by any rule or principle and it was left entirely to the discretion of particular persons to do anything they liked without any check or control by any higher authority, particularly in the matter of regulating trade or business in normally available commodities it could not but be held to be unreasonable. As the provision which gave that power to the Controller formed an integral part of the entire structure of the Control Order, the Order was struck down as unconstitutional in its entirety.

5. The learned counsel for the petitioners contends that certain bye-laws have been framed under section 27 of the Act and bye-law No. 22 gives the power to the market committee to grant licences. This bye-law provides for the form in which the applications for licences have to be made which have to be accompanied with full fee in all cases. Then the particulars are given which must appear in all applications for licences and clause (iv) gives power to the market committee to suspend or cancel the licence of any dealer or the commission agents for misconduct or insolvency or non-compliance with the requirements of the rules or the bye-laws or orders in writing of the market committee. Clause (vi) however, provides that every order of the market committee refusing the grant of a licence or suspending or cancelling a licence already granted shall be recorded in writing with a brief statement of reasons of the same and a copy of such order shall be supplied free to the person so affected on application by him to the market committee.

The grant of the licence under the bye-law is further made subject to the rules. The rules

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which have been framed under section 26 of the Act were promulgated prior to the bye-laws in August 1959. The relevant rules are 71 to 75. Rule 7l deals with licenced traders and general commission agents. It may be mentioned at this stage that according to the allegations contained in paragraph 1 of the petition the petitioners would fall within either of those categories. Other rules deal with other categories. Rule 74 provides for refusal, cancellation or suspension of licence and rule 75 provides for appeal against such action taken by the market committee to the Director or any other officer authorised by the Director in this behalf within the period specified in the rule.

Apart from the appeal, section 28 of the Act confers a power on the Chief Commissioner to call for proceedings of market committee and pass such orders as he thinks fit. It is open to the Chief Commissioner to delegate his powers under section 25 to any officer. It is in the light of these provisions that it has to be determined whether the Act can be regarded to be violative of either Art. 14 or Art. 19 (1) (g) keeping in view the observations of their Lordships of the Supreme Court in the case referred to before.

6. On giving the matter full consideration, I have little doubt that the provisions of the Act which have been impugned as unconstitutional cannot be held to be so nor can the Act be held to be invalid for these reasons. The powers of granting the licence have been conferred on the market committee which is a representative body and does not consist of a single individual. While exercising discretion in the matter of issuing licences it may not be possible to eliminate the element of arbitrariness in case of an individual but when there is a committee consisting of a number of individuals it is expected in normal course of business that they will not act on whim or caprice.

Then taking the provisions contained in the Act, the rules and the bye-laws to which reference has already been made it is clear that the market committee when refusing or cancelling a licence is to give reasons in writing and a copy of the order is to be supplied to the person so affected. Actually rule 74 provides that the committee is bound to communicate such a decision to the person concerned by delivering or tendering him personally a copy of such decision or order by sending the same to him by registered post. The party aggrieved can file an appeal under rule 75 to the Director or the officer authorised in this behalf. Finally the Chief Commissioner has the overall revisional powers by which he can correct or set right any errors or mistakes made by the subordinate authorites.

Thus there is a hierarchy of tribunals before whom the question of refusal to grant a licence or cancellation of it is and can be brought up which is an ample safeguard against the exercise of any arbitrary, unrestricted or unfettered power of the nature that could be exercised in the U. P. Coal Control Order case. It also appears from bye-law No. 22 that there is no specific provision with regard to refusal of a licence although clause (vi) indicates that the market committee might refuse the grant of a licence or suspend or cancel it in particular cases. The suspension or cancellation is, however, confined by clause (iv) to misconduct or insolvency or non-compliance with the requirements of the rules or the bye-laws or orders in writing of the market committee.

Therefore, so far as refusal to grant cancellation or suspension of the licence are concerned, it would seem that certain conditions and requirements have been laid down and the committee is not left with any unfettered and arbitrary powers in that respect. Rule 73 (3) provides that on receipt of an application together with the prescribed fee the market committee may after making such enquiries as may be considered necessary for the efficient conduct of the market, grant the licence applied for. Thus so far as the grant of the licence is concerned, the policy has been laid down by the rule itself, namely, the necessity for the efficient conduct of the market. It cannot in these circumstances be said that no standard has been laid down according to which the licensing power is to be exercised. Moreover, the provisions for an appeal and a revision further fulfil the essential requirements for making such laws constitutionally valid (vide Basu's Constitution of India, p. 240, Vol. I).

The validity of the Act which was originally enacted by the Bombay State and which has been extended to Delhi was impugned before the Bombay High Court in Bapubhai Ratanchand v. State of Bombay, ILR 1955 Bom 870 : ((S) AIR 1956 Bom 21), and it was held to be a valid piece of legislation. It may be mentioned that the point that has been agitated before me was not raised in the Bombay High Court. The validity of similar legislation which was in force in Madras, namely, the Madras Commercial Crops Markets Act, 1933, came up for consideration before Rajamannar C. J., and Venkatarama Aiyar J., in P. P. Kutti Keya v. State of Madras, AIR 1954 Mad 621. Some of the licensing provisions in that statute were held to be unconstitutional. In that case also the main reason why those provisions were struck down was that section 5 (4) (a) of that Act conferred power on the Collector to grant licences, suspend or cancel them in his discretion. There was no right of an appeal or revision given to anyone aggrieved by such refusal to grant or cancellation or suspension of the licence. Thus the contentions with regard to the constitutionality and validity of the provisions of the Act must fail.

7. The next point that has been raised is that the Act has been pro tanto repealed by the Delhi Municipal Corporation Act of 1957. Section 42 provides that it shall be incumbent on the Corporation to make adequate provision by any means or measures which it may lawfully use or take, for each of the following matters, namely.

"........................ (k) the construction and maintenance of municipal markets and slaughter houses and the regulation of all markets and slaughter houses;" it is submitted that the market area which has been established under the Act would be covered by the words "Municipal markets" or markets appearing in the aforesaid clause and because of the enactment of the aforesaid Act the Act itself which was enacted prior to it would be repealed pro tanto.

It is not possible to accede to this argument, particularly when it is borne in mind that the Act is for the better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce. The purpose and object of its enactment have been very fully discussed by Chagla C. J., in ILR 1955 Bom 870 : ((S) AIR 1956 Bom 21), referred to before, and with regard to the Madras Commercial Crops Markets Act, 1933, by their Lordships of the Supreme Court in Arunachala Nadar v. State of Madras, AIR 1959 SC 300. The Act is a special enactment for a specific purpose and object, whereas the provision contained in the Delhi Municipal Corporation Act is a general one. I am not at all satisfied

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that there is any repugnancy between the two enactments. This contention also must be rejected.

8. The third point that has been raised by the learned counsel for the petitioners relates to the notification that was issued under S. 3 on 22-4-1959. It was specifically alleged in paragraph 12 (v) of the petition that the condition precedent contained in proviso to section 3, namely, consultation with the municipality concerned had not been fulfilled before the notification was issued and that no such consultation had in fact been made nor was any resolution passed either by the Delhi Corporation, or its Standing Committee or any other authority competent in law to do so on behalf of the Corporation.

The respondents produced two letters, Exts. R. 3 and R. 2, to show that the Corporation had been consulted. Exhibit R. 3 is a letter dated 20-2-1959 sent by the Assistant Development Commissioner to the Commissioner, Delhi Municipal Corporation, saying that a comprehensive survey of the Najafgarh market was conducted with regard to the volume of trade, assembling, handling, and transportation of agricultural produce etc., prevalent in that market. It had been found that if the market was regulated under the Act, the producers and sellers would be benefited to the extent of lacs of rupees annually and in addition they would also be able to enjoy the facilities and amenities provided to them by the market committee. Before issuing notifications it was essential that the Corporation should be consulted as to whether there was any objection in regulating the market. The Deputy Commissioner who was performing the functions of the Commissioner, Delhi Municipal Corporation, wrote thus on 25-2-1959 :

"I am directed to say that we have no objection if the Najafgarh market is regulated under the Bombay Agricultural Produce Markets Act, 1939, (Act XXII of 1939)."

The learned counsel for the petitioners submits that consultation involves an exchange of views after full details and particulars of a scheme or a project have been placed before the person or body whose consultation is required. He has placed reliance on the manner in which consultation took place in Fletcher v. Minister of Town and Country Planning, 1947-2 All ER 496, and Rollo v. Minister of Town and Country Planning, 1948-1 All ER 13. Section 1 (1) of the English New Towns Act, 1946, laid down that if the Minister was satisfied after consultation with any local authorities that it was expedient in national interest that any area of land should be developed as a new town etc., he might make an order designating that area as the site of the proposed new town.

In the second case it was laid down by Bucknill L. J. that "consultation" meant that, on the one hand, the Minister must supply sufficient information to the local authority to enable them to tender advice, and, on the other hand, a sufficient opportunity must be given to the local authority to tender that advice. In the first case Morris J. expressed the view that the word 'consultation' was one that was in general use and no useful purpose would be served by formulating the words of definition. Nor would it be appropriate to seek to lay down the manner in which consultation must take place. If a complaint was made of failure to consult, it would be for the Court to examine the facts and circumstances of the particular case and to decide whether consultation was in fact held. Consultation might often be a somewhat continuous process and the happenings at one meeting might form the background of a later one.

It is apparent in the present case that there was hardly any consultation in the real sense of the word as there is nothing to indicate that any details and particulars of the survey which had been made of the Najafgarh market were sent to the Municipal Corporation or such other information was supplied with regard to the volume of trade, assembling, handling and transportation of agricultural produce as was available nor is there anything to show that it was the Corporation which took into consideration all the relevant factors and then directed the Deputy Commissioner to write the letter referred to before. There is a good deal of substance in the objection raised on behalf of the petitioners that the consultation of the Corporation did not mean the consultation of its Chief Executive Officer, namely, the Commissioner who has not been shown to be competent to discharge the functions of the Corporation in this respect. No resolution has been produced to show that the matter had received the consideration of the Standing Committee constituted under S. 45 of the Delhi Municipal Corporation Act or any other authority which could give the decision of the Corporation as such.

According to S. 3 of the Act the consultation necessary is of the municipality concerned. Now the word "municipality" does not appear in the Delhi Municipal Corporation Act which came into force in 1957. "Corporation" is defined by section 2 (7) of that Act which means the Municipal Corporation of Delhi established under that Act. It is contended by the respondents that the word "municipality" as defined in the Act is stated to include a notified area committee. It is thus confined to any municipality which has been established under any local or other enactment in any area to which the Act applies. Prior to the enactment of the Delhi Municipal Corporation Act, 1957, the Punjab Municipal Act, 1911, as extended to Delhi was in force and in that Act the word "municipality" was defined by Sec. 3 (9) to mean any local area declared by or under that Act to be a municipality.

The learned counsel for the petitioners maintains that the word "municipality" as employed in the Act is used in a general sense and that its dictionary meaning should be taken into consideration and it should not be confined to any particular definition given in the Punjab Municipal Act. According to the Shorter Oxford Dictionary, the word "municipality" has two meanings :

1. A town, city or district possessed of privileges of local self government, also applied to its inhabitants collectively.

2. The governing body of such a town or district.

In Webster's New International Dictionary the following meanings are given :

1. A town, city or other District having powers of local self-government, a municipal corporation; also, the community under the jurisdiction of a municipal government; specif.; a municipium.

2. The administrative area into which provinces are divided, comprising a number of barrios. It is true that in the definition of "municipality" given in section 2 (1) (viii) of the Act itself it is stated to include a notified area committee and the suggestion of the learned counsel for the respondents is that there was no need of including a notified area committee in the definition of "municipality" if the word was intended to be employed in a general sense and not in the specific sense of the definition contained in the Punjab Municipal Act. Reading the definition, however, as given in the Act and9 the use of the word "municipality"

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in the proviso to section 3, no doubt is left in my mind that the word "municipality" is used in two senses in the proviso. Where it refers to the limits, it essentially has the meaning of a town, city or district possessed of privileges of local self-government and when it is employed with reference to consultation, it cannot possibly have that meaning and the only meaning that it can have is the second meaning given in the Shorter Oxford Dictionary referred to before, namely, the governing body of such a town or district.

If the meaning of the word "municipality" is to be confined to the definition given in the Punjab Municipal Act then that could certainly apply to that word in the first part of the proviso with reference to the limits but it cannot be made applicable to the other part of the proviso where the consultation of the municipality has been made a condition precedent for issuing the notification under section 3. In the Punjab Municipal Act the governing body of a municipality is a committee which is separately defined by section 3 (4) to mean a municipal committee. Section 4 of that Act lays down the procedure for constituting a municipality which essentially has reference to the local area. The constitution of the Committee is provided for by section 11.

If the intention in section 3 of the Act had been to provide for consultation with the committee constituted under the Punjab Municipal Act, then the word "committee" would have been employed where consultation is mentioned in the proviso. In other words, instead of the words "except after consultation with the municipality concerned", the words "except after consultation with the committee of the municipality concerned" would have been found in the proviso. This shows that the legislature never intended that the consultation should be only of the body exercising functions of a committee under the Punjab Municipal Act over a local area defined to be a municipality under that Act. The use of the word "concerned" makes it further clear that the intention was to have the consultation of the governing body of a municipality used in the general sense according to its dictionary meaning. Sub-section (2B) of section 4 also lends support to this view.

It provides that on or after the date on which any area is declared to be a market area under sub-section (1), no municipality or any other local authority, notwithstanding anything contained in any enactment relating to such municipality or authority shall be competent to establish, authorise or allow to be established any place in the said area for the purchase or sale of any agricultural produce specified in the notification issued under subsection (1). The words "municipality or any other local authority" are used clearly in a general sense and would cover the Municipal Corporation of Delhi. Municipal Corporation is included in the meaning of the word "municipality" according to Webster's New International Dictionary (Supra). It cannot be denied that the Municipal Corporation of Delhi constituted under the Delhi Municipal Corporation Act is a municipality in the general sense of that word and the consultation in the proviso to section 3 of the Act would have reference to the corporation charged with the municipal government of Delhi consisting of councillors and aldermen.

9. The question still remains whether the notification issued under section 3 will be illegal and void in the absence of consultation with the municipality concerned. The learned counsel for the respondents contend that such consultation is merely directory and not mandatory and, therefore, even if the Chief Commissioner issued the notification without the consultation of the municipality concerned, the notification would not become illegal. My attention has been invited to a decision of the Federal Court in Biswanath Khemka v. Emperor, AIR 1945 FC 67, in which the provisions contained in section 256 of the Government of India Act, 1935, came up for consideration. That section was in the following terms :

"No recommendation shall be made for the grant of magisterial powers or of enhanced magisterial powers to or the withdrawal of any magisterial powers from, any person save after consultation with the District Magistrate of the District in which he is working, or with the Chief Presidency Magistrate, as the case may be."

The appointment of the Additional Presidency Magistrate trying the cases was made without consulting the Chief Presidency Magistrate and the contention raised was that the appointment was ineffective and inoperative for that reason. Their Lordships expressed the opinion that the consultation of the Chief Presidency Magistrate was not necessary and the authority to be consulted in pursuance of the direction contained in the section was the District Magistrate of the District in which the person concerned was working at the time when the recommendation was made. Although the consultation of the District Magistrate was required, it was observed that there was nothing on the record to indicate that such consultation did not take place. Their Lordships proceeded to observe as follows :

"We are further of the opinion that the direction laid down in section 256 is directory and not mandatory and that non-compliance with it would not, render an appointment otherwise regularly and validly made ineffective or inoperative. It seems to us that any other view would lead in many cases to results which could not have been intended by Parliament and would entail general inconvenience and injustice to persons who have no control over those entrusted with the duty of making recommendations for the grant of magisterial powers; see Montreal Street Railway Co. v. Normandin, AIR 1917 PC 142."

It is noteworthy that section 256 of the Government of India Act employed the words which were of as emphatic and prohibitory nature as the words employed in the proviso to section 3 of the Act. In State of U. P. v. Manbodhan Lal Srivastava, (S) AIR 1957 SC 912, the question was whether the provisions contained in Article 320 (3) (c) were mandatory, non-compliance with which would afford a cause of action to a civil servant in a Court of law. It was decided that although the word "shall" was used and although that word should be taken as mandatory in a general sense, it did not necessarily mean that in every case it should have that effect. The Federal Court judgment referred to above appears to have been accepted as laying down the correct law.

It is true, as stated in Crawford on "Statutory Construction" at p. 516, that the question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature have to be ascertained not only from the phraseology of the provision but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other, but there is nothing in the proviso to section 3 except the prohibitory nature of the language employed that the necessary result and effect of not consulting the municipality concerned would be to make

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the notification issued by the Chief Commissioner under section 3 (1) altogether null and void. It is significant that such words as prior consent or approval were not employed by the Legislature in the proviso. I am, therefore, of the opinion that the consultation with the municipality concerned was merely directory and would not render the notification issued under section 3 illegal and void.

10. One of the objections that was raised on behalf of the respondents which need not be decided but which may be mentioned is that the petitioners would not be entitled to any of the reliefs claimed in the petition on account of acquiescence, laches or delay. The learned counsel for the petitioners, however, submits that if the notification issued under section 3 was illegal and void, the subsequent notifications would be equally void and inoperative. with the result that the fundamental rights of the petitioners to carry on the business of merchants or commission agents in agricultural produce in the area concerned would be affected and in those circumstances acquiescence and delay would not disentitle the petitioners to appropriate reliefs.

Reference has been made in this connection to Bhagwat Dayal v. Union of India, 1959-61 Pun LR 609 : (AIR 1959 Punj 544) and Basheshar Nath v. Commissioner of Income-tax, Delhi and Rajasthan, AIR 1959 SC 149, in which cases it has been laid down that there can be no waiver of fundamental rights by a party and mere laches will not deprive him of that right. This question, however, needs no further discussion in view of what has been held above, namely, that non-compliance with the conditions laid down in the proviso to section 3 did not make the notification issued under that section or the subsequent notifications illegal and void.

11. In the result, this petition fails and is dismissed, but keeping in mind the nature of the points raised, I leave the parties to bear their own costs.

Petition dismissed.

AIR 2009 PUNJAB AND HARYANA 147 "Krishan Kumar Rohtas Kumar v. State of Haryana"

PUNJAB & HARYANA HIGH COURT

Coram : 2 M. M. KUMAR AND H. S. BHALLA, JJ. ( Division Bench )

M/s. Krishan Kumar Rohtas Kumar and Ors. v. State of Haryana and Ors.

C.W.P. No. 18176 of 2007, D/- 30 -4 -2009.

Punjab Agricultural Produce Market Act (23 of 1961), S.18, S.43 - Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules (2000), R.3(1)(iii) - AGRICULTURAL PRODUCE - ALLOTMENT OF PREMISES - DOCTRINES - EQUALITY - Allotment of plot in market area - Eligibility - Only those commission agents held eligible who held valid licence for years as on cut-off date - Fixation of static date for determining eligibility held unjust and arbitrary - In such case doctrine of 'severability' has to be applied in order to chop off the offending portion - Accordingly licensees having valid licence for at least five years on last date of submission application held eligible.

Constitution of India, Art.14.

Doctrines - Doctrine of severability - Applicability.

In the instant case Rule 3 of the Rules of 2000 had made eligible only those category (ii) licensee viz. commission agents for allotment of shops in case of already developed mandis who had valid licence of category (ii) for at least five years. The Rule further required that the condition for five year licence must be fulfilled on or before 1-1-2000. In such a case, the Rule makers cannot be imputed with the intention that they wanted a static date of eligibility by which an applicant should fulfill a particular period of time. The fixation of such a static date of determining the eligibility of a person would result into unjust and unfair consequences. A number of persons who have otherwise fulfilled the necessary requirement of completion of five years of holding licence of category (ii) would be rendered ineligible merely because they had obtained licence after 1-1-1995.

The object of the aforesaid condition of eligibility is to ensure that only authentic old and established Katcha Arhtiyas are granted the benefit of allotment of shops who have remained in business for sufficiently long time. It is with the aforesaid object that

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the Rule provide for five years old licence. The period of five years cannot be determined by fixing a date of 1-1-2000 when the application themselves are invited in the year 2007. In order to answer the twin test of Article 14 of the Constitution it has to be shown that those like the petitioners, who are left out of the group of eligible persons, constitute a distinct class from those who are grouped together by making them eligible. Such a classification is required to be founded on an intelligible differentia. The petitioners fulfilled the condition of five years like those who also fulfilled the condition of five years having licence on or before 1-1-1995. There is no intelligible differentia to create the classification between two categories by providing a superfluous date for determining the eligibility. There can be no rational nexus with the object of the legislation which aims at rehabilitating the five years old licencees. In such case doctrine of 'severability' has to be applied in order to chop off the offending portion.

Accordingly, words 'as on 1st January, 2000', appearing in Clause (iii) of sub-rule (1) of Rule 3 of the 2000 Rules, which were arbitrary and offended Article 14 of the Constitution and, therefore, they were severed from the rest of the Rule and the '.' (full stop) has to be put after the words 'five years'. Having held in the aforesaid manner, the general principle of law would apply and a licencee of category (ii) is required to have a valid licence for at least five years on the last date of submission of application. (Paras 11, 12, 14)

Cases Referred : Chronological Paras

AIR 2004 SC 4466 : 2004 AIR SCW 4778 14

AIR 1998 SC 2086 : 1998 AIR SCW 1957 9, 14

AIR 1967 SC 1301 12

AIR 1951 SC 318 14

Rakesh Nehra, for Petitioners; Ms. Ritu Bahri, DAG, Haryana (for No. 1) and C.B. Goel, for Nos. 2 to 4, for Respondents.

Judgement

M. M. KUMAR, J. :- The petitioners have approached this Court by filing the instant petition under Article 226 of the Constitution for quashing Survey Report in respect of Subzi Mandi, Charkhi Dadri, dated 20.11.2007 (P-13) and declaring them ineligible for allotment of shop plots being old licencees of Category (ii) (katcha arhtiya) under the provisions of the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 (for brevity, 'the 2000 Rules'). A further prayer has also been made for directing the respondents to allot shop plots to the petitioners on preferential basis on reserve price in the New Vegetable Market, Charkhi Dadri treating them eligible. The basic issue raised is 'whether the petitioners are required to have licence as katcha arhtiya for five years on the last date fixed for submitting application, which was 14.11.2007, or it is completion of five years as on 1.1.2000, which would expand the original period of five years to 12 years'.

2. Facts lie in a narrow compass. The petitioner-firms are engaged in the business of Commission Agent (katcha arhtiya) in Charkhi Dadri Town for different period. The petitioners have claimed that they are Category (ii) licence holder for doing the business of katcha arhtiya under Section 10 of the Punjab Agricultural Produce Market Act, 1961. They have been issued licences from time to time on payment of requisite fee as per provisions of Rule 17(6) of the Punjab Agricultural Produce Markets (General) Rules, 1962 (P-1 to P-11). Some of the petitioner-firms are stated to be doing their business for more than 10 years regularly.

3. On 8.10.2007, the Chief Administrator, Haryana State Agricultural Marketing Board-respondent No. 3 sent a communication to the Estate Officer-cum-Secretary, Market Committee, Charkhi Dadri-respondent No. 4 in relation to allotment of shop plots on preferential basis on reserve price to the eligible old licencees of category (ii) (katcha arhtiya) in the New Vegetable Market, Charkhi Dadri under the provisions of the 2000 Rules (P-12). The eligibility of old licencees was to be determined by the Allotment Committee. Accordingly, respondent No. 4 was asked to inform all the old licencees of category (ii) (katcha arhtiyas) working in the old notified market yard and to invite applications on Pro forma-'A' appended with the 2000 Rules and to determine their eligibility as per the provisions of Rule 3(1) of the 2000 Rules. After ascertaining eligibility, the list of eligible licencees was to be sent to respondent No. 3. In the letter dated 8.10.2007, detailed programme for conducting the draw of lots was also given, which shows that 14.11.2007 was the date by which the old licencees of category (ii) were required to submit their applications in Form-'A'. Their eligibility was to be determined

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by 19.11.2007 and the list of eligible old licencees was to be displayed by 23.11.2007. The applicant could file objections up to 28.11.2007 and speaking orders by the Allotment Committee after considering objections, were to be passed up to 3.12.2007. The draw of lots was to be held on 7.12.2007.

4. The petitioners submitted their applications to respondent No. 4, who after conducting a survey on 16.11.2007 and 17.11.2007 in the Subzi Mandi, Charkhi Dadri, prepared a Survey Report along with list of eligible and ineligible firms (P-13). All the petitioners were considered as ineligible and against their names, in the column of 'Description' it has been mentioned that 'Ineligible Licence after 1.1.95'.

5. The allotment of plots is regulated by the 2000 Rules and the basic reason for declaring them ineligible is that they do not fulfil the requirements of clause (iii) of sub-rule (1) of Rule 3 of the 2000 Rules (P-14), which postulates that only those category (ii) licencees would be eligible for allotment of plots who had valid licence of two years on the date of first auction in the case of mandis where some auctions have already been held, whereas in the case of already developed mandis where no auction have been held the licencees are required to have valid licence of category (ii) for at least five years as on 1st January, 2000. The said clause further prescribes that in the case of mandis to be developed in future, the licencee should have at least two years licence of category (ii) on the date of issuance of notification under section 4 of the Land Acquisition Act, 1894 (Act of 1894) or on the date of transfer of land to the Market Committee, if the land is obtained otherwise as the case may be. Clause (iii) of sub-rule (1) of Rule 3 of the 2000 Rules was further amended on 1.9.2008. However, the amendment would not govern the issue of allotment of plots as the last date for submission of application in the instant case was 14.11.2007.

6. The grievance of the petitioners is that they have been rendered ineligible for allotment of the sites in the New Vegetable Market under Rule 3 of the 2000 Rules, on the ground that their licences were not five years old on 1.1.2000 i.e., the date prescribed in the 2000 Rules although they fulfilled the eligibility condition of five years on the last date of submission of applications. They have submitted that fixation of date 1.1.2000 is wholly superfluous having no rationale with the object sought to be achieved.

7. In the written statement filed on behalf of respondent Nos. 2 to 4 the factual position as noticed above has not been denied. However, the respondents have justified rejection of the eligibility of the petitioners asserting that they do not fulfill the requirements of Clause (iii) of sub-rule (1) of Rule 3 of the 2000 Rules.

8. It is apposite to notice that while issuing notice of motion, this Court, vide order dated 30.11.2007, directed that the draw of plots to be held will be subject to further orders of this Court. On 11.2.2009, respondent Nos. 3 and 4 were directed to file an affidavit explaining as to how many sites have been reserved/earmarked in the New Vegetable Market, Charkhi Dadri for the old licencees and as to how many out of them have already been allotted. In compliance to the said order, the Executive Officer-cum-Secretary, Market Committee, Charkhi Dadri-respondent No. 4 filed an affidavit dated 17.3.2009. In paras 2 and 3 of the affidavit it has been pointed out that in the New Vegetable Market 47 shop plots were carved out. There were 34 licencees in the old vegetable market, who all have applied for allotment of plots in the New Vegetable Market and out of them only 20 were found eligible under the 2000 Rules. They have already been allotted the shop plots in the New Vegetable Market. Out of remaining 14 applicants whose applications were rejected, 13 approached this Court by filing instant petition and two other writ petitions, namely, C.W.P. No. 18891 of 2007 and 138 of 2008. It has been further mentioned that the remaining 27 plots were to be disposed of by open auction. In para 4 of the affidavit it has been mentioned that no plot was reserved/earmarked for the old licencees in the New Vegetable Market. Keeping in view the aforesaid position, this Court directed the respondents to reserve eleven plots for the petitioners of instant petition, vide order dated 17.3.2009. At the hearing, Mr. C.B. Goel, learned counsel for respondent Nos. 2 to 4 has stated that no draw of lot for the remaining 27 plots was held because the result of the instant petition was being awaited.

9. The colossal development and manifold increase in foodgrains has necessitated construction and development of new market

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areas. In their endeavour to develop new market areas, the old established traders are required to be rehabilitated. Hon'ble the Supreme Court in the case of Labha Ram and Sons v. State of Punjab, (1998) 5 SCC 207 : (AIR 1998 SC 2086), while interpreting the provisions of Punjab New Mandi Townships (Development and Regulation) Act, 1960, has laid down that the Government has inherent obligation to provide sufficient accommodation to all the existing licenced dealers having regard to the handicaps they suffered due to creation of the new market area. The aforesaid obligation could not be deemed to be discharged merely by allowing them to compete with the new entrant to the trade of foodgrains. It has been held that the Government may fixed a reasonable rate above the reserved price for such old licenced dealers.

10. By keeping in view the aforesaid object, it appears that the 2000 Rules have been framed by exercising powers under Section 43(1)(2)(iv) read with Section 18 of the Punjab Agricultural Produce Markets Act, 1961. The 2000 Rules provides rehabilitation of displaced old licencee and certain conditions to make them eligible for allotment of shops have been laid down. In the instant petition we are concerned with category (ii) licencee. Apart from other conditions, clause (iii) of sub-rule (1) of Rule 3 of the 2000 Rules has created a peculiar situation which has resulted in filing of the instant petition. In order to appreciate the controversy, it would be necessary to extract Rule 3(1)(iii) of the 2000 Rules, which reads thus :-

"3(1) All immovable properties in the markets developed by the Board or Market Committees shall be disposed of by way of allotment/transfer/open auction in accordance with the provisions of these Rules. The shops category (ii) of old market which is to be denotified, resulting in displacement of such licenced dealers of category (ii) on free-hold basis for conducting the business of sale and purchase of agricultural produce in the new markets, on the following terms and conditions, namely :

(i) and (ii) xxx xxx xxx

(iii) only those category (ii) licencees shall be eligible for allotment of plots who had valid licence of two years on the date of first auction, in the case of mandis where some auctions have already been held. In the case of already developed mandis where no auction have so far been held the licencees should have valid licence of category (ii) for at least five years as on 1st January, 2000. In the case of mandis to be developed in future, the licence (licencees?) should have at least two years' licence of category (ii) on the date of issuance of notification under section 4 of the Land Acquisition Act, 1894 (Act of 1894), or the date of transfer of land to the Market Committee, if the land is obtained otherwise as the case may be."

11. A perusal of the aforesaid Rule shows that only those category (ii) licencees are to be eligible for allotment of shops in case of already developed mandis that they should have valid licence of category (ii) for at least five years. The Rule further requires that the condition of five years' licence must be fulfilled on or before 1.1.2000. In other words the petitioners who have applied in response to the circular issued to the old licencees must have licence on or before 1.1.1995. The communication has been sent to the petitioner in the year 2007 and the last date of receipt of applications was fixed as 14.11.2007. In other words, the period of five years provided in the Rules has been blown up to 12 years merely because the date of 1.1.2000 has been fixed. The Rule makers cannot be imputed the intention that they wanted a static date of eligibility by which an applicant should fulfil a particular period of time. If such an intention is imputed to the framers of the Rules then every time applications are invited on the establishment of any new mandi then to become eligible a category (ii) licencee has to have licence on or before 1.1.1995 irrespective of the fact in which year the applications are being invited. The fixation of such a static date for determining the eligibility of a person would result into unjust and unfair consequences. A number of persons who have otherwise fulfilled the necessary requirement of completion of five years of holding licence of category (ii) would be rendered ineligible merely because they had obtained licence after 1.1.1995. It is true that some cut off date is required to be fixed but the same has to answer the basic requirements of Article 14 of the Constitution that it is not arbitrary. Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation. Such a classification must satisfy the twin tests, namely, (a) that the classification has been founded on an intelligible differentia which

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distinguishes persons or things that are grouped together from those that are left out of the group; and (b) that differentia must have a rational nexus to the object sought to be achieved by the statute in question. When we examine clause (iii) of sub-rule (1) of Rule 3 of the 2000 Rules, it becomes evident that the object of the aforesaid condition of eligibility is to ensure that only authentic old and established Katcha Arhtiyas' are granted the benefit of allotment of shops who have remained in business for sufficiently long time. It is with the aforesaid object that the Rule provide for five years old licence. The period of five years cannot be determined by fixing a date of 1.1.2000 when the applications themselves are invited in the year 2007. In order to answer the twin test of Article 14 of the Constitution it has to be shown that those like the petitioners, who are left out of the group of eligible persons, constitute a distinct class from those who are grouped together by making them eligible. Such a classification is required to be founded on an intelligible differentia. The petitioners fulfilled the condition of five years like those who also fulfilled the condition of five years having licence on or before 1.1.1995. There is no intelligible differentia to create the classification between two categories by providing a superfluous date for determining the eligibility. There can be no rational nexus with the object of this legislation which aims at rehabilitating the 5 years' old licencees. If we take the instance that 1.1.2000 has been fixed and a licencee in order to become eligible must have five years' old licence of category (ii), in such a case, in the year 2007 he would, in fact, have to require licence of 12 years.

12. It is well settled that if the fixing of a cut-off date is arbitrary and violative of Article 14 of the Constitution then such a provision cannot be sustained. In that regard we may place reliance on a judgment of Hon'ble the Supreme Court in the case of D.R. Nim v. Union of India, AIR 1967 SC 1301. A5-Judge Constitution Bench did not approve fixing of 19.5.1951 for the purposes of granting benefit of their continuous officiation in senior post. As a consequence, Superintendents of Police who were officiating earlier to that date were deprived of reckoning the earlier officiating period. Finding no justification for fixing the aforesaid date, the Constitution Bench in para 9 held that it was an artificial and arbitrary date having nothing to do with the application of the statutory rules. Hon'ble the Supreme Court further laid down that the Central Government could not 'pick out a date from a hat - and that is what it seems to have done in this case - and say that a period prior to that date would not be deemed to be approved by the Central Government' for the purposes of reckoning the earlier service. Therefore, we are of the view that fixing of date in the present case is wholly artificial in the context of allotment of shops in the year 2007. Such a date could not be sacrosanct for all times to come because it would become capricious and whimsical. Moreover, we find that the rule makers after realising the situation created by clause (iii) of sub-rule (1) of Rule 3 of the 2000 Rules, has amended the said rule on 1.9.2008 and substituted the same, which reads thus :-

Amended Clause (iii) of sub-rule (1) of Rule 3 :

"(iii) Only those category (ii) Licencees shall be eligible for allotment of plots who had valid license of four years on the date fixed for inviting applications for draw of lots."

13. A perusal of the aforesaid amended rule would show that a plain period of four years of holding of valid licence has been provided which is to be determined with reference to the date fixed for inviting the applications for draw of lots. Therefore, the rule makers have themselves rectified the situation by incorporating the amendment. The date to determine the eligibility has been deleted.

14. The question then is how to resolve the controversy in hand. It appears to us that the substantive part of the rule can be saved which would answer the subscription of Article 14 of the Constitution. The doctrine of 'severability' has to be applied in order to chop off the offending portion. The aforesaid doctrine was laid down by the Constitution Bench of Hon'ble the Supreme Court in the case of State of Bombay v. F.N. Balsara, AIR 1951 SC 318. Hon'ble the Supreme Court has also laid down that the doctrine of 'severability' can be safely applied when it is not possible to read down the provision. The aforesaid observations have been made by Hon'ble the Supreme Court in the case of Punjab Dairy Development Board v. Cepham Milk Specialities Ltd., (2004) 8 SCC 621 : (AIR 2004 SC 4466).

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Keeping in view the object of the 2000 Rules, background fact which has resulted in framing of the Rules and the observations of Hon'ble the Supreme Court in the case of Labha Ram and Sons, (AIR 1998 SC 2086) (supra), we feel that the date of 1.1.2000 has to be severed from the rules more so when the rule makers themselves have dropped the date and year for determination of eligibility of a licencee for allotment of a shop in a new market area. Accordingly, we declare that the words 'as on 1st January, 2000', appearing in clause (iii) of sub-rule (1) of Rule 3 of the 2000 Rules, are arbitrary and offend Article 14 of the Constitution and, therefore, they are severed from the rest of the Rule and the '.' (full stop) has to be put after the words 'five years'. Having held in the aforesaid manner, the general principle of law would apply and a licencee of category (ii) is required to have a valid licence for at least five years on the last date of submission of application. The aforesaid policy has also been followed by the rule makers when they amended the rule on 1.9.2008.

15. When the principle as laid down in the preceding para are applied to the facts of the present case then it becomes evident that petitioner Nos. 1 to 7 and 11 are found to be eligible as they had five years' old licence of category (ii) preceding the last date of submission of applications i.e. 14-11-2007, as is evident from the survey list (P-13). However, petitioner Nos. 8, 9 and 10 are not eligible because they were issued licences on 7.12.2002, 13.12.2002 and 20.12.2002 respectively. Accordingly, the cases of the aforesaid petitioners would deserve consideration at the hands of the respondents for allotment of shops in the new mandi area. It may be clarified that we have determined the eligibility only in terms of clause (iii) of sub-rule (1) of Rule 3 of the 2000 Rules and the eligibility of these persons shall be subject to fulfillment of other conditions as per law.

16. As a sequel to the above observations, the writ petition is allowed. Petitioner Nos. 1 to 7 and 11 are declared eligible in terms of clause (iii) of sub-rule (1) of Rule 3 of the 2000 Rules. If they are found eligible in all other respects as per Rules, their cases be considered for allotment of shops along with others. As the respondents have been awaiting the result of this petition, we deem it just and appropriate to direct that the needful shall be done within a period of two months from the date of receipt of a copy of this order.

17. The writ petition stands disposed of in the above terms.

Petition allowed.

AIR 2008 PUNJAB AND HARYANA 67 "Avjinder Singh Sibia v. S. Prakash Singh Badal"

PUNJAB & HARYANA HIGH COURT

Coram : 2 UMA NATH SINGH AND RAJIVE BHALLA, JJ. ( Division Bench )

Avjinder Singh Sibia v. S. Prakash Singh Badal and Ors.

CWP No. 10900 of 2007, D/- 29 -10 -2007.

Punjab Agricultural Produce Markets Act (23 of 1961), S.12A (as substituted by Amendment Act 5 of 2007) - AGRICULTURAL PRODUCE - AMENDMENT - DOCTRINES - APPLICABILITY OF AN ACT - Supersession of nominated committees - By virtue of Amendment Act of 2007 - Action not mala fide as Act has been passed to supersede all committees in State and not any individual market committee - As petitioner were nominated to Board and it was not selection or election, doctrine of pleasure would apply - Amendment Act not unconstitutional.

Doctrines - Doctrine of pleasure - Applicability.

The Amendment Act No. 5 of 2007 which had superseded all market committees with nominated members in State does not carry an element of mala fide, inasmuch as, it has been passed to supersede all such committees in the State and not any individual market committee. The Legislature in its wisdom has passed the Amendment Act superseding all market committees with nominated members and has not left it to administrative exercise of discretion of Government under S. 35 of the Act, and rightly so, because in that case, it would cast stigma on members of committee and under such circumstances, even though they are nominated, they would be entitled to a personal hearing. Though there is no specific mention about doctrine of pleasure in Act to be applicable, but in the facts and circumstances of the case, as the petitioner was nominated to Board and it was not a selection or election, the doctrine of pleasure may be read into the Act and would certainly apply, thus principle of natural justice as regards giving of hearing before removal from office in the absence of any stigma would not be attracted. Irrespective of doctrine of pleasure, Act No. 5 of 2007 whereby all the nominated market committees in State have been superseded is also justified on ground that nomination to an office which if made under a Statute can be taken away by suitable amendments in that statute as nomination does not create a fundamental right or common law right in favour of nominated member to continue in office.

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Besides, if exercise of legislative powers is bona fide, there is no reason for High Court to interfere with impugned enactment. Nomination to a committee is always made out of political expediency, therefore, its further continuance may depend upon statute whereunder member is nominated and by introducing suitable amendments in statute the same can be discontinued. Consequently there is no ground to hold the provisions of Punjab Act No. 5 of 2007 as unconstitutional, offending and ultra vires and thus it was held to be intra vires. AIR 1965 SC 1518, Disting. (Paras 14, 15, 16)

Cases Referred : Chronological Paras

AIR 2006 SC 1489 : 2006 AIR SCW 1392 11

AIR 2005 SC 1537 : 2005 AIR SCW 1086 10

AIR 2005 SC 4217 : 2005 AIR SCW 4986 : 2005 Lab IC 4194 11

AIR 2003 SC 2236 : 2003 AIR SCW 2685 9

AIR 2001 SC 695 : 2001 AIR SCW 337 7

AIR 1993 SC 1440 : 1993 AIR SCW 1254 : 1993 All LJ 536 7, 14

AIR 1974 SC 543 6

AIR 1974 SC 555 5

AIR 1965 SC 1518 (Disting.) 4, 14

AIR 1954 SC 245 15

M. S. Khaira, Sr. Advocate with B. S. Sewak and Dharminder Singh, for Petitioner; H. S. Mattewal, AG, Punjab with N. D. S. Mann, Addl. AG, Punjab, for Respondents.

Judgement

UMA NATH SINGH, J. :- The petitioner was nominated during the term of the previous Government as a member of Market Committee, Raikot (Ludhiana) on 16-2-2005 in exercise of powers under Section 12 of the Punjab Agricultural Produce Markets Act, 1961 (for short 'the Act') and other powers vested in the Governor of Punjab. He also became the Chairman of the said Committee, however, he has ceased to continue in office with issuance of the Punjab Ordinance No. 2 of 2007 by the present Government, which was later translated in to an enactment, being the Punjab Act No. 5 of 2007 substituting Section 12-A of the Act, whereby all the market committees in the State of Punjab have been superseded. The petitioner has, hence, sought to challenge the provisions of the Punjab Act No. 5 of 2007, on the ground that the procedures laid down under Section 35 of the Act have not been followed. Section 12-A of the Act after amendment by Act No. 5 of 2007 reads as follows :

"12-A. Supersession of nominated Committees-

On and from the commencement of the Punjab Agricultural Produce Markets (Amendment) Ordinance, 2007.

(a) all the Committees, constituted by way of nomination, under Section 12 as it existed immediately before such commencement, shall stand superseded;

(b) all the members including the Chairman and the Vice-Chairman of every Committee, shall cease to hold office;

(c) during the period of supersession of the Committees, all powers and duties conferred and imposed upon the Committee, its Chairman and other members by or under this Act, shall be exercised and performed by such officer, as the Government may appoint in that behalf; and

(d) all property vested in each Committee shall, until these are reconstituted, vest in the Government :

Provided that the Committees shall be reconstituted in accordance with the provisions of Section 12 within a period of six months from the date of supersession."

2. Thus, by amendment in the proviso to Punjab Act No. 5 of 2005 by the Act No. 5 of 2007, the period of three years has been substituted by a period of six months from the date of supersession. The other Section which also provides for supersession of Committees is Section 35 of the Act. The provisions of Section 35 of the Act read as under:

"35. Supersession of Committees-

(1) If, in the opinion of the State Government, a Committee is incompetent to perform or persistently makes default in performing the duties imposed on it by or under this Act, or abuses its powers, the State Government may, by notification, supersede the committee:

Provided that before issuing a notification under this sub-section, the State Government shall give a reasonable opportunity to the committee for showing cause against the proposed supersession and shall consider the explanations and objections, if any, of the committee.

(2) Upon the publications of a notification under sub-section (1) superseding a committee, the following consequences shall ensue:-

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(a) all the members including the Chairman and Vice-chairman of the committee shall, as from the date of such publication, be deemed to have ceased to be members of the committee;

(b) all assets of the committee shall vest in the Board and the Board shall be liable for all the legal liabilities of the committee subsisting at the date of its supersession up to the limit of the said assets;

(c) The State Government may, in its discretion, by order constitute either a new committee as provided under Section 12 or such other authority for the carrying out of the functions of the committee (and of its Chairman and other members) as the State Government may deem fit.

(3) (a) When the State Government has made an order under clause (c) of sub-section (2), the assets and liabilities defined in clause (b) of sub-section (2) vesting in the Board at the date of such order shall be deemed to have been transferred on the date of such order to the new committee or authority constituted as aforesaid.

(b) (i) Where the State Government by order under clause (c) of sub-section (2) has appointed an authority other than a new committee for the carrying out of the functions of the superseded committee, the State Government may, by notification, determine the period not exceeding one year for which such authority, shall act :

Provided that the term of office of such authority may be terminated earlier, if the State Government for any reason consider it necessary.

(ii) At the expiry of the term of office of such authority a new committee shall be constituted;

(iii) Upon such an order being made the assets and liabilities vesting in the authority thereby superseded, shall be deemed to have been transferred by such order to the new committee.

(4) Whenever the assets of a committee vest in the Board and no new committee or authority is appointed in its place the Board shall employ the balance of the assets remaining after the discharge of the subsisting legal liabilities of the committee or any object of public utility in the area specified in the notification issued under Section 6."

2A. As per the averments made in the writ petition, after formation of the present Government in February, 2007, it was decided to remove all the Chairman, Vice-Chairman and Members of the market committees nominated by the previous Government in the State. Thus, in exercise of powers under clause (1) of Articles 213 of Constitution of India, an Ordinance to that effect was issued to be followed by the Amendment Act No. 5 of 2007. Section 12-A of the Act and the consequent notification issued thereunder have been impugned herein mainly on the ground that the Amendment Act gives sweeping powers to the respondents to act arbitrarily with discrimination which is violative of Article 14 of the Constitution of India.

3. Heard learned counsel for the parties and perused the records.

4. The principal submission of learned senior counsel for the petitioner is that in case of nomination under a statute, the statute would contain such provisions that the continuance of tenure of office of a nominated member would be subject to pleasure of the Governor. He has cited a constitution Bench judgment of Hon'ble the Apex Court, reported in AIR 1965 SC 1518 (Ram Dial and others v. State of Punjab). In that case before the Hon'ble Supreme Court in appeal, provisions of Section 14(e) of the Punjab Municipalities Act (3 of 1911) were challenged on the ground of being discriminatory, and, thus, violative of Article 14 of the Constitution of India. The appellants therein had been elected to the Municipal Committee, Batala, in the elections held on 22-1-1961. Result of the elections was notified on 27-2-1961, and the elected members took oath on 16-3-1961 and started functioning with effect from that date itself. On 4-8-1961, certain notifications were issued, wherein it was mentioned that the Governor of Punjab in exercise of his powers was pleased to direct that the seats of all the appellants shall stand vacated from the date of publication of the notifications in the State Gazette in public interest. It was also directed that under sub-section (3) of Section 16 of the Act, the appellants shall stand disqualified for election for a period of one year w. e. f. the date so specified. In the appellants' writ petitions before this High Court, it had been contended that the impugned action was taken without issuing them a notice to show cause as to why their seats be not vacated, and thus, they were denied the right of hearing. The appellants came to

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know after issuance of notifications that the said notifications had been issued on the basis of a resolution passed by the outgoing members of the Municipal Committee on 13-3-1961 to the effect that the appellants had taken part in a demonstration on 10-3-1961 and had also broken some glass panes of the municipal building. It had also been contended in that writ petition that the out going Municipal Committee was dominated by the members of the outgoing political party, who were defeated by the appellants in the fresh elections held on 22-1 -1961. Accordingly, that resolution was passed with a mala fide intention to harm the appellants. In their writ petitions filed in this High Court, the appellants had taken various grounds while assailing the order of the Governor. However, the main point, which needed a decision and which could not be taken in the writ petitions was as to whether the provision of Section 14(e) of the Act was discriminatory and as such, hit by Article 14 of the Constitution of India. The appellants suffered an adverse order in the writ petitions. Being aggrieved, they filed Civil Appeals in the Supreme Court, and also a writ petition under Article 32 to urge the point of discrimination under Section 14(e) vis-a-vis Section 16(1) of the Act which could not be urged in the writ petitions. Hon'ble the Apex Court while deciding the civil appeals and the writ petition has discussed the relevant provisions of the Act and given reasons for allowing the Appeals and the writ petition in paras 3 to 7 of the judgment as under :

"(3) We are of the opinion that the appeals must succeed on this point. It is necessary in this connection to refer to Ss. 14 (e), 16 and S. 24(3) of the Act. The relevant part of S. 14(e) with which we are concerned provides that notwithstanding anything in the foregoing sections of Chapter III, which deals with constitution of committees, appointment and election of members, term of office of members of municipal committees, the State Government may, at any time, for any reason which it may deem to affect the public interest, by notification, direct that the seat, of any specified member, whether elected or appointed, shall be vacated on a given date, and in such case, such seat shall be vacated accordingly, notwithstanding anything in the Act or in the rules made thereunder. Further sub-section (3) of S. 16 provides that "a person whose seat has been vacated under the provisions of Section 14(e) may be disqualified for election for a period not exceeding five years". There is no provision for giving notice to a member against whom action is taken under S. 14(e) and he is not entitled to any hearing before action is taken against him. Further action can be taken against a member for any reason which the State Government may deem to affect the public interest.

(4) Section 16 is another provision which gives power to the State Government to remove any member of a municipal committee. This power is exercised for reasons given in Cl. (a) to Cl. (g) of S. 16(1). The proviso to S. 16(1) lays down that

"before the State Government notifies the removal of a member under this section, the reasons for his proposed removal shall be communicated to the member concerned, and he shall be given an opportunity of tendering an explanation in writing."

The proviso, therefore, requires a hearing before the State Government takes action under Section 16(1). Sub-section (2) of the S. 16 provides for disqualification and says inter alia that any person removed under S. 16(1) shall be disqualified for election for a period not exceeding five years. There is a slight difference here inasmuch as under this provision there must be disqualification for some period not exceeding five years, though if a member's seat is vacated under S. 14(e) the disqualification is entirely in the discretion of the State Government and is not imperative. That, however, has no effect on the question whether the relevant part of Section 14 (e) is unconstitutional as it is hit by Art. 14.

(5) Reference may now be made to S. 24 on which reliance has been placed on behalf of the State. Section 24(1) inter alia prescribes the oath before a member can begin to function. Section 24(2) lays down inter alia that if a person omits or refuses to take the oath as provided in sub-section (1) within three months of the date of notification of his election or within such further period as the State Government may consider reasonable, his election, becomes invalid. Sub-section (3) of S. 24 provides inter alia that where the election becomes invalid under sub-section (2), a fresh election shall be held. The proviso to sub-section (3) on which stress has been laid on behalf of the State lays down inter alia that the State Government

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may refuse to notify the election as member of any person who could be removed from office by the State Government under any of the provisions of S. 16 or of any person whom the State Government for any reason which it may deem to affect the public interests may consider to be unfitted to be a member of the committee, and upon such refusal the election of such person shall be void.

(6) The arguments on behalf of the appellants is that S. 16 which gives power to the State Government to remove a member provides that before that power can be exercised, reasons for the removal have to be communicated to the member concerned and he is to be given an opportunity of tendering his explanation in writing. So it is urged that before action can be taken to remove a member under S. 16, the proviso thereof requires that the member concerned is to be given a hearing as provided therein. The argument proceeds that the relevant part of S. 14(e) also provides in effect for the removal of a member though it actually says that the seat shall be vacated and that this removal has to be for any reason which in the opinion of the State Government affects the public interest. It is urged that when S. 16(1) provides for removal for reasons given in Cls. (a) to (g), that removal also is in the public interest. Therefore, there are two provisions in the Act one contained in S. 14(e) and the other in S. 16. Where the State Government takes action under S. 16(1), it has to give a hearing in terms of the proviso thereof to the member concerned, but if for exactly the same reason the State Government chooses to take action under Section 14(e) it need not give any opportunity to the member to show cause why he should not be removed. Further it is submitted that though S. 14(e) may be said to be wider inasmuch as Cls. (a) to (g) may in a conceivable case not completely cover all that may be included in the term "public interests", the removal for reasons given in Cls. (a) to (g) in S. 16(1) is in public interest and, therefore, what is contained in S. 16(1) is certainly all covered by S. 14(e). In consequence there are two provisions in the Act for removing a member, one contained in S. 16 where the State Government cannot remove the member without giving him a hearing in the manner provided in the proviso, and the other in S. 14(e) where no hearing is to be given and the member is not even called upon to show cause. Finally it is urged that it depends entirely on the State Government to use its powers either under S. 14(e) or under S. 16(1), where the two overlap and, therefore, there is clear discrimination, as the provision in S. 14(e) is more drastic and does not even provide for hearing the member concerned.

(7) We are of the opinion that these contentions on behalf of the appellants are correct. There is no doubt that the removal contemplated in S. 16(1) for reason in Cls. (a) to (g) thereof, as their content shows, is in the public interest and the proviso to S. 16(1) provides for a hearing in the manner indicated therein. On the other hand S. 14(e) which also provides for removal in the public interest makes no provision for hearing the member to be removed. Even if S. 14(e) is wider than S. 16(1), there is no doubt that all the reasons given in Cls. (a) to (g) are in the public interest and, therefore, even if the State Government intends to remove a person for any reasons given in Cls. (a) to (g) it can take action under S. 14(e) and thus circumvent the provisions contained in the proviso to S. 16(1) for hearing. Thus there is no doubt that S. 14(e) which entirely covers S. 16(1) is more drastic than S. 16(1) and unlike S. 16(1) makes no provision for even calling upon the member concerned to explain. In this view of the matter it is clear that for the same reasons the State Government may take action under S. 16(1) in which case it will have to give notice to the member concerned and take his explanation as provided in the proviso to Section 16(1), on the other hand it may choose to take action under S. 14(e) in which case it need not give any notice to the member and ask for an explanation from him. This is obviously discriminatory and, therefore, this part of S. 14(e) must be struck down as it is hit by Art. 14 of the Constitution."

5. Thus, as per the ratio of the judgment, Section 14(e) was held to be discriminatory and being hit by Article 14 of the Constitution for it did not envisage a provision for giving a show cause notice to members to explain before proceeding against them although the subject-matter of this Section was similar to the one as contained in Section 16(1), which contrarily provided for a show cause notice and hearing. Thus, the provisions of Section 14(e) of the Act were held to be more drastic and to that extent the Section was struck down by the Hon'ble Court. Learned senior counsel has also

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placed reliance on the judgment of Hon'ble the Apex court reported in AIR 1974 SC 555, para 85 (E. P. Royappa v. State of Tamil Nadu and another), to argue that where an Act is arbitrary, implicitly, it is unequal both according to political logic and constitutional law, and therefore, if it affected any matter relating to public employment, it would be violative of Article 14 of the Constitution. Para 85 being relevant part of the judgment is reproduced hereunder :

"The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground it is really in substance and effect merely an aspect of the second ground based on violation of Arts. 14 and 16. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Art. 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Art 14 is the genus while Art. 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14 and if it affects any matter relating to public employment, it is also violative of Art. 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reasons for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice : in fact the latter comprehends the former. Both are inhibited by Arts. 14 and 16."

6. While citing the judgment of Hon'ble the Apex Court, reported in AIR 1974 SC 543 (The State of Punjab and another v. Khan Chand), learned senior counsel has tried to build up a case on the basis of principle of law enunciated in that judgment that the Constitution has assigned to the Courts the function of determining as to whether the laws made by the Legislature are in conformity with the provisions of the Constitution. Para 12 of the judgment relied upon by the learned senior counsel reads as :

"It would be wrong to assume that there is an element of judicial arrogance in the act of the courts in striking down an enactment. The Constitution has assigned to the Courts the function of determining as to whether the laws made by the legislature are in conformity with the provisions of the Constitution. In adjudicating the constitutional validity of statutes, the Courts discharge an obligation which has been imposed upon them by the Constitution. The Courts would be shirking their responsibility if they hesitate to declare the provisions of a statute to be unconstitutional, even though those provisions are found to be violative of the Articles of the Constitution. Articles 32 and 222 are an integral part of the Constitution and provide remedies for enforcement of fundamental rights and other rights conferred by the Constitution. Hesitation or refusal on the part of the Courts to declare the provisions of an enactment to

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be unconstitutional, even though they are found to infringe the Constitution because of any notion of judicial humility would in a large number of cases have the effect of taking away or in any case eroding the remedy provided to the aggrieved parties by the Constitution. Abnegation in matters affecting one's own interest may sometimes be commendable but abnegation in a matter where power is conferred to protect the interest of others against measures which are violative of the Constitution is fraught with serious consequences. It is as much the duty of the Courts to declare a provision of an enactment to be unconstitutional if it contravenes any Article of the Constitution as it is theirs to uphold its validity in case it is found to suffer from no such infirmity."

7. By referring to another judgment of Hon'ble the Apex Court, reported in AIR 1993 SC 1440 (Om Narain Aggarwal and others v. Nagar Palika, Shahjahanpur and others), learned senior counsel contended that in the second proviso to the provision of the Act impugned therein, it was mentioned that the appellants were to hold office at the pleasure of the Governor/Government and the doctrine of pleasure discussed in the judgment supports his contention. In yet another judgment of the Hon'ble Court cited by learned senior counsel, which is reported in AIR 2001 SC 695 (Krishna Bulaji Borate v. State of Maharashtra and others), the contentions urged therein have been answered as under :

"7. In the present case, the appellant was appointed under sub-section (2) of Section 4 read with Clause (e) of sub-section (1) of Section 4 and was removed by order dated 9-2-2000 under Section 6 of the Act. Having considered the submissions for the parties and after perusing the language of the sections, we have no hesitation to hold, that the field of Section 6 and Section 10 are separate. The removal spoken under Section 6 is removal without any stigma while the removal under Section 10 is removal with penal consequences attaching stigma. If submission for the appellant is accepted, viz. Section 6 empowers and Section 10 lays down condition and procedure to remove then removal of trustee could only be for penal consequences and not otherwise. If that be so, there could be no reason to enact Section 6 as Section 10 covers such cases. It is significant, the removal under Section 6 is confined only to such Trustees who are covered under Clause (e) of sub-section (1) of Section 4 and who are also nominated by the State Government. Rights of Trustees falling under the aforesaid Clause (e) are rights created under a statute and hence that very creator can always limit or curtail such right. In such cases, if a Trustee is removed, he cannot project any grievance that no opportunity was given to him. If any right which is creature of statute, is limited or curtailed by that very statute, in the absence of any other right under that very statute or of the Constitution of India, such Trustee cannot claim any right based on the principle of Natural Justice.

8. The removal spoken here neither casts any stigma nor leads to any penal consequences. This clearly reveals doctrine of pleasure which is implicit in this section. In any statute expression of the will of the legislature may be explicit or it may be implicit. It is open for the Courts, while interpreting any provision to spell or read with other provisions of the statute if so intended to read implicitly, in the absence of any explicit words that subserve the intent of the legislature."

8. The provisions of Section 6 of the Act under challenge, contain a mention about the removal of the appellants at any time which rather appear to counter the point of law raised by learned senior counsel in the case on hand.

9. In the judgment reported in AIR 2003 SC 2236 (Bakhtawar Trust and others v. M. D. Narayan and others), at page 2245 para 31, which learned senior counsel has cited in support of his contentions, Hon'ble Supreme Court has held as :

"1. It was then urged on behalf of the respondents that a perusal of the Statement of Objects and Reasons for the Validation Act shows that the intention of the legislature was rather to render the decision of the High Court infructuous than to correct any infirmity in the legal position. For this, reliance was sought to be placed on the Statement of Objects and Reasons of the impugned enactment. It is well settled by the decisions of this Court that when a validity of a particular statute is brought into question, a limited reference, but not reliance, may be made to the Statement of Objects and Reasons. The Statement of Objects and Reasons may, therefore, be employed for the purposes of comprehending the factual background, the prior state of legal affairs,

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the surrounding circumstances in respect of the statute and the evil which the statute has sought to remedy. It is manifest that the Statement of Objects and Reasons cannot, therefore, be the exclusive footing upon which a statute is made a nullity through the decision of a Court of law."

10. Learned senior counsel has also cited another latest judgment of Hon'ble the Apex Court to draw support from the discussions about the nature of discretionary powers of the Governor of Mizoram in nominating four members of District Councils and Regional Councils as also the inclusion of doctrine of pleasure in the provisions of the Sixth Schedule to the Constitution. The decision is reported in AIR 2005 SC 1537 (Pu Myllai Hlychho and others v. State of Mizoram and others) and its relevant portions which have been placed reliance read as :

"8. The relevant provisions of the Sixth Schedule to the Constitution regarding the administration of tribal areas in the State of Assam, Meghalaya, Tripura and Mizoram are as follows :

"1. Autonomous district and autonomous regions.....................

2. Constitution of District Councils and Regional Councils- (1) There shall be a District Council for each autonomous district consisting of not more than thirty members of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage.

(2) ...............................

(3) Each District Council and each Regional Council shall be a body corporate by the name, respectively, of 'the District Council of (name of district)' and 'the Regional Council of (name of region), shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(4) to (6) ................................

6A. The elected members of the District Council shall hold office for a term of five years from the date appointed for the first meeting of the Council after the general elections to the Council, unless the District Council is sooner dissolved under paragraph 16 and a nominated member shall hold office at the pleasure of the Governor (Emphasis supplied).........................

(7) to (9) ......................

10. The above provisions show that under sub-paragraph (1) of Paragraph 2., the Governor of Mizoram is competent to nominate four members of MADC.

11. Sub-paragraph (6A) of Paragraph 2 further shows that the members thus nominated shall hold office at the pleasure of the Governor. The Governor is given powers to terminate the membership of the Council under sub-paragraph (6A) of Paragraph 2. The Governor is not given any discretion under Paragraph 20-BB, in respect of powers to be exercised under sub-paragraph (6A) of Paragraph 2. Under the discretionary powers of the Governor in discharge of his functions, the power to be exercised under sub-paragraph (6A) of Paragraph 2 is not included, whereas it is specifically mentioned that the power of the Governor to be exercised under sub-paragraph (1) of Paragraph 2 could be exercised in his discretion in the mode prescribed under paragraph 20-BB of the Sixth Schedule. Thus, these provisions would show that as regards the nomination of four members of the MADC. the Governor can exercise the discretionary powers whereas the power of termination of the members under sub-paragraph (6A) of Paragraph 2 is not left to the discretion of the Governor............."

11. Learned senior counsel has also relied upon a judgment of Hon'ble the Apex Court which is reported in 2005 (7) SCC 764 : (AIR 2005 SC 4217) (Ajit Kumar Nag v. General Manager (Pj) Indian Oil Corporation Limited, Haldia and others), to argue that this is a well settled principle of law that a provision which is otherwise legal, valid, and intra vires cannot be declared unconstitutional or ultra vires merely on the ground that there is a possibility of abuse or misuse of such powers. If the provision is legal and valid, it will remain in the statute book. Conversely, if the provision is arbitrary, ultra vires or unconstitutional, it has to be declared as such notwithstanding the laudable object underlying it. While arguing on the basis of the judgment of the Hon'ble Court reported in AIR 2006 SC 1489 (Bombay Dyeing and Mfg. Co. Ltd. v. Bombay Environmental Action Group and Ors.) page 1530 (Para 204), learned senior counsel submitted that an arbitrariness on the part of the Legislature in enacting a legislation in violation of Article 14 of the Constitution should ordinarily be manifest arbitrariness. What would be arbitrary exercise of legislative power would depend upon the provisions

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of the statute viz-a-viz the purpose and object thereof.

12. On the other hand, learned Advocate General for the State of Punjab while referring to reply of the respondent-State contended that the petitioner was nominated under Section 12 of the Act by the Government and he is not an elected representative. He also submitted that the act of supersession of market committees in the State is not by way of exercise of an executive power but is the result of operation of law enacted by the State Legislature within its legislative competence. And to exercise powers and for performance of duties of the committee under Section 12A(c) of the Act, an Administrator has been appointed for each such committee after taking into account the factors like providing a better service in public interest and to bring about economy in expenditure. As the present Government has been voted to power by the people, it is duty-bound to carry out the responsibility of implementing its policies as canvassed to the electorate before formation of the Government. Thus, the impugned legislation cannot be termed as unconstitutional in mala fide and arbitrary exercise of legislative powers. Moreover, the powers of supersession under Section 35 of the Act are to be exercised only on given grounds, whereas in the instant case, no such ground is necessary, nor been taken, in order to avoid stigma of incompetency attributable to all the nominated members of superseded committees, and rather by passing the impugned Amendment Act, all the market Committees in the State have been statutorily superseded. Learned Advocate General also took us to the relevant paras of written reply during course of his arguments and urged that the allegations made against the respondent State be put to strict proof as the Act impugned herein is a creature of a bona fide exercise of Legislative function of the State. Such an exercise of powers should not be attributed a motive of arbitrariness or mala fide. Moreover, powers under Section 35 of the Act are administrative powers to be exercised in individual cases, where a committee is found to be incompetent or is persistently making default in carrying out its functions. Hence, the provisions of Section 35 of the Act are not attracted in the present case. The State Legislature is empowered under Entry Nos. 5, 18 and 28 of the State list to supersede the committees in question by passing suitable amendments in the Act. The impugned Punjab Act No. 5 of 2007 has been passed by substituting existing Section 12A within legislative domain and competence of the State Legislature. It is not open to challenge the validity of the Amended Act, except on the ground of violation of provisions of Articles 14 and 254 of the Constitution of India and the petitioner has not made out any such ground either. In the light of the changed political scenario in the State after February, 2007, the existing market committees in the State no longer remained the representative bodies to serve the best interests of the people of the State of Punjab and the State Government apprehended gross-mismanagement and disturbance on account of party factionalism. Hence, the ordinance dated 18-5-2007, which was replaced by the Amendment Act, was issued to implement the commitments of the Government. It is also urged that the petitioner has no cause of action to invoke extraordinary jurisdiction of this Court under Article 26 of the Constitution of India and no such relief as prayed for could be granted thereunder. This is also a submission of learned Advocate General that the petitioner has no fundamental right to continue on the post of Chairman of the Committee, as he was only a creature of a statute.

13. We have carefully considered the rival submissions and perused the records of the case.

14. It appears that the petitioner was only a nominated member of the Market Committee, Raikot (Ludhiana), whereas in the Constitution Bench judgment of Hon'ble the Apex Court in the case of Ram Dial and others (AIR 1965 SC 1518) (supra) the appellants, who had been removed by a notification, were elected members of the municipality, and they had been removed on the ground of a resolution passed by outgoing members of the committee belonging to a different political party, who had lost their seats to the appellants in elections. Moreover, the provisions of Section 14(e) of the Punjab Municipalities Act No. 3 of 1911 had given unfettered discretion to the Government to remove elected representatives/ members of municipal committees without any notice to them, and/or without a right of hearing which, on the contrary, was envisaged under Section 16, a parallel provision, of the same Act which also provided for removal of a member of municipal committee in public interest. As regards the Amendment Act No. 5 of 2007 impugned herein which has superseded all the market

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committees with nominated members in the State, it does not seem to carry an element of mala fide, inasmuch as, it has been passed to supersede all such committees in the State and not any individual market committee. Further, provisions of Section 35 of the Act, which have been heavily relied upon by learned senior counsel for the petitioner, are to apply in individual cases, on the ground of incompetency. An order passed in exercise of powers under Section 35 would essentially be stigmatic in nature and, therefore, before passing any such order, it may require granting an opportunity of hearing to the aggrieved person. The Act in question has been passed by the legislature by exercising powers within its legislative competence and in no manner, it casts any stigma like the one in-built in the grounds under Section 35 of the Act. Moreover, we are also not inclined to accept the submission of learned senior counsel that the doctrine of pleasure would not apply if the statute provides for specific term of the office. This submission was also urged before Hon'ble the Apex Court which could not find favour vide the judgment reported in 1993 (2) SCC 242 : (AIR 1993 SC 144) (Om Narain Aggarwal and others v. Nagar Palika, Shahjahanpur and others). The arguments raised on behalf of the appellants are contained in para 9 of the judgment as under (Para 8 of AIR) :

"9. Learned counsel for the private respondents submitted that once the power of nominating the women members is exercised by the State Government, such nominated members cannot be removed prior to the completion of the term of the Board unless they are removed on the grounds contained under Section 40 of the Act. It was also contended that the State Government cannot be allowed to remove a nominated member at its pleasure without assigning any reason and without affording any opportunity to show cause. Once a women member is nominated she gets a vested right to hold the office of a member of the Board and the State Government cannot be given an uncanalised, uncontrolled and arbitrary power to remove such member. It is contended that such arbitrary and naked power without any guidelines would be contrary to the well established principle of democracy and public policy. It would hamper the local bodies to act independently without any hindrance from the side of the Government."

15. The Hon'ble Court in para 13 of the judgment held that the nominated members of the Board fall in a different class and cannot claim equality with the elected members. The Hon'ble Court has also held that even the highest functionaries in the Government, like the Governors, the Ministers, the Attorney General and the Advocate General, discharge their duties efficiently, though removable at the pleasure of the competent authority under the law, and it cannot be said that they are bound to become demoralised or remain under a constant fear of removal and as such do not discharge their functions in a proper manner during the period they remained in the office. This observation of the Hon'ble Court was given in answer to an additional argument raised in the case that in such cases, there would be a constant fear of removal at will of the State Government and is bound to demoralise the nominated members in discharge of their duties as members of the Board. The Hon'ble Court has also held that the right to seek an election or to be elected or nominated to a statutory body depends and arises under the statute. If such appointments have been made initially by nomination on political consideration, there can be no violation of any provision of the Constitution, in case the Legislature authorises the State Government to terminate such appointments at its pleasure and to nominate new members in their place. The nominated members do not have the will or authority of the persons to be affected by the act of such body. It also appears from the ratio of the judgment that as the provision challenged therein did not put any stigma on the performance or character of the nominated members, their removal without affording an opportunity did not offend any provision of the Constitution. Though in an earlier judgment reported in AIR 1954 SC 245 (State of Bihar v. Abdul Majid) while dealing with the doctrine of pleasure, the Hon'ble Court has held that to the extent of deviation from the doctrine of pleasure, a civil suit would be maintainable but in the Judgment of 1993 (supra), no such liberty appears to have been granted. Moreover, looking to the nature of appointment as being nominated, it would not be open to assail the amendment on the ground of livelihood and even if a party takes the plea of doctrine of livelihood, this being a question of private interest would have to yield to

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public interest. In the instant case, the Legislature in its wisdom has passed the impugned amendment superseding all the market committees with nominated members and has left it to the administrative exercise of discretion of the Government under Section 35 of the Act, and rightly so, because in that case, it would cast stigma on the members of the committee and under such circumstances, even though they are nominated, they would be entitled to a personal hearing. Though there is no specific mention about the doctrine of pleasure in the Act to be applicable in this case, but in the facts and circumstances of the case, as the petitioner was nominated to the Board and it was not a selection or election, the doctrine of pleasure may be read into the Act and would certainly apply, thus, principle of natural justice as regards giving of hearing before removal from office in the absence of any stigma would not be attracted. Irrespective of doctrine of pleasure, as argued by learned senior counsel, the impugned Act No. 5 of 2007 whereby all the nominated market committees in the State have been superseded is also justified on the ground that nomination to an office which if made under a Statute can be taken away by suitable amendments in that statute as a nomination does not create a fundamental right or a common law right in favour of a nominated member to continue in the office.

16. From the written statement submitted on behalf of the State detailing the reasons for introducing the amendment in the Act, it appears that there are valid reasons for the State Government, as discussed hereinabove to bring the amendment. Besides, if the exercise of the legislative powers is bona fide, there is no reason for this Court to interfere with the impugned enactment. As said hereinabove, nomination to a committee is always made out of political expediency, therefore, its further continuance may depend upon the statute whereunder the member is nominated and by introducing suitable amendments in the statute the same can be discontinued. As regards the settled principles of law as enunciated by Hon'ble the Apex Court in the judgments cited hereinabove, we are not oblivious of the fact that the mandate of these judgments have to be applied in similar set of facts and circumstances of a case and if a statute cannot stand on the anvil of such established principles of law applicable for testing the constitutional validity of its provisions, it need not be said that such a statute would not endure. However, if an Act passed by a State Legislature does not suffer from any incompetence and/or arbitrariness, and the actions taken thereunder do not cast any stigma on the affected person, this Court would be loath in exercising its powers under the writ jurisdiction.

17. In the premises discussed hereinabove, we do not find any ground to hold the provisions of the Punjab Act No. 5 of 2007 as unconstitutional, offending and ultra vires and thus it is held to be intra vires. Resultantly, the Civil Writ Petition No. 10900 of 2007 being devoid of merits, is, hereby, dismissed.

Petition dismissed.

AIR 2008 PUNJAB AND HARYANA 124 (DB) "Tek Chand v. State of Haryana"

PUNJAB & HARYANA HIGH COURT

Coram : 2 M. M. KUMAR AND T. P. S. MANN, JJ. ( Division Bench )

Tek Chand v. State of Haryana and Ors.

C. W. P. No. 17016 of 2007, D/- 30 -1 -2008.

Punjab Agricultural Produce Markets Act (23 of 1961), S.10 - Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules (2000), R.3(2-B), R.2(9) - AGRICULTURAL PRODUCE - EQUALITY - LICENSE - Kacha Arhtiya licence - Prohibition against issuance of Kacha Arhtiya licence for doing business in Booths in declared market yard - Not ultra vires R.2(9) or violative of Art.14 of Constitution.

Constitution of India, Art.14.

Provision to do business of sale and purchase of agricultural produce in booths has been prohibited because there is hardly any space in front of the booth to display the agricultural produce. Whenever Kacha Arhtiya in the market area has to sell the agricultural produce the whole produce is heaped in front of his shop for auction and thereafter the traders are to approach the Kacha Arhtiya at the time of auction to examine the produce. They bid for the produce according to the quality, moisture, maturity and a number of other factors. In the absence of any arrangement with the Kacha Arhtiya, who is sitting in a booth, for displaying the agricultural produce, it would not be possible for him to transact business. The Legislature has merely recognised the ground realities and practical difficulties which Kacha Arhtiya sitting in a booth is likely to face. Therefore, sub-rule 2(B) of Rule 3 of Rules of 2000 cannot be termed as ultra vires of Rule 2(9) or is controlled by it because Kacha Arhtiya means a dealer who offer his services to sell agricultural produce in consideration of commission but the mode of offering services to sell the agricultural produce is significantly associated with the arrangements available for displaying the agricultural produce. It is not possible to accept the plea that agricultural produce can be sold either in field where there is no opportunity to a prospective bidder to examine the produce nor it could be done by examining same in vehicle which carry the agricultural produce to the market area. The agricultural produce is heaped before the shop of Kacha Arhtiya after it has been subjected to cleaning and sieving process. In the absence of any space for cleaning and sieving, the Kacha Arhtiya sitting in a booth would not be able to perform all these functions. The impugned Rule is based on relevant considerations and therefore it does not suffer from the vice of arbitrariness and cannot be declared ultra vires of Article 14 of Constitution. (Para 4)

Cases Referred : Chronological Paras

(1997) CWP No. 14275 of 1997 D/-11-11-1997 2

Amit Jain, for Petitioner.

Judgement

M. M. KUMAR, J. :- In this petition filed under Article 226 of the Constitution prayer for quashing order dated 15-3-2007 (Annexure P. 2) has been made as the application filed by the petitioner for grant of Kacha Arhtiya (Category II) Licence has been declined by respondents. A further prayer for quashing letter dated 6-10-2000 (Annexure P. 3) has also been made which prohibits issuance of Kacha Arhtiya licence without separate premises in the declared market yard. The petitioner has still further prayed that sub-rule (2B) of Rule 3 of Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 (for brevity

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'Rules 2000') as amended on 11-11-2004 (Annexure P. 4) be declared as ultra vires of Punjab Agricultural Produce Markets Act, 1961 (for brevity the '1961 Act') and the Constitution.

2. Brief facts of the case are that the petitioner is in possession of booth No. 1 situated in New Grain Market, Madlauda, District Panipat. He purchased this plot vide allotment order dated 22-1-2007 for Rs. 16 lacs. With the object of carrying on the business of Kacha Arhtiya (Category II) from his own booth No. 1, he submitted an application dated 15-2-2007 to the Market Committee, Madlauda for issuance of licence in the name of Mandeep Trading Company. The application has been rejected vide order dated 15-3-2007 (Annexure P. 2) by the Market Committee on the ground that the application was not in Form 'A'. It in terms further mentioned that the petitioner could not be granted licence in view of amendment of Rule 3 of the Haryana State Agriculture Marketing Board (Sale of Immovable Property) Rules, 2000 which was made in 2004. It has further been represented that according to policy dated 6-10-2000 framed by the Haryana State Agricultural Marketing Board, respondent No. 2, no licence of Kacha Arhtiya is to be granted against a booth shop. It is claimed that the aforementioned policy has been held to be illegal. The petitioner has made reference to the amendment dated 11-11-2004 (Annexure P. 4) made by the respondent-State in Rules, 2000 to regulate the sale of immovable property developed and owned by the Market Committee after the year 2000. Sub-rule (2B) of Rule 3 of the 'Rules 2000' has been inserted after sub-rule (2A) which prohibits issuance of Kacha Arhtiya licence for category II. It is claimed that according to Rule 2(9) of the rules, Kacha Arhitiya has been defined to mean a dealer who in consideration of commission, offer services to sell agricultural produce. The petitioner has placed reliance on a Division Bench judgment of this Court rendered in CWP No. 14275 of 1997 (Pritpal Singh v. State of Haryana and others) decide on 11-11-1997.

3. We have heard learned counsel at some length and find that there is no element of illegality or constitutional violation in sub-rule (2B) incorporated in 2004 in 'Rules 2000'. It would be appropriate to read the rule, which in as under :

"(2B) Category (ii) licence i.e. Kacha Arhtiya shall strictly prohibited to do the business of sale and purchase of agricultural produce in booths because there is no space in front of the booths to display the agricultural produce. In booths, only the business of fertilizer, seeds, pesticides, karyana general store, tea shop, spare parts, hardware, electrical works etc. can only be carried out. The trade of meat shop, wine shop, atta chakki, process unit and other trade termed as offensive and dangerous under Section 128 of the 'Haryana Municipal Act, 1973 (Act 24 of 1973) shall be prohibited. In violation of the above, the shop/ booth along with amount deposited shall be resumed."

4. A perusal of the above rule shows that provision to do business of sale and purchase of agricultural produce in booths has been prohibited because there is hardly any space in front of the booth to display the agricultural produce. It is trite to observe that whenever Kacha Arhtiya in the market area has to sell the agricultural produce the whole produce is heaped in front of his shop for auction and thereafter the traders are to approach the Kacha Arhtiya at the time of auction to examine the produce. They bid for the produce according to the quality, moisture, maturity and a number of other factors. In the absence of any arrangement with the Kacha Arhtiya, who is sitting in a booth, for displaying the agricultural produce it would not be possible for him to transact business. The Legislature has merely recognised the ground realities and the practical difficulties which the Kacha Arhtiya sitting in a booth is likely to face. Therefore, we are not impressed with the submission that sub-rule (2B) of Rules 2000 is ultra vires of Rule 2(9) or is controlled by it because Kacha Arhtiya means a dealer who offer his services to sell agricultural produce in consideration of commission but the mode of offering services to sell the agricultural produce is significantly associated with the arrangements available for displaying the agricultural produce. It is not possible to accept the contention that agricultural produce can be sold either in the field where there is no opportunity to a prospective bidder to examine the produce nor it could be done by examining the same in the vehicle which carry the agricultural produce to the market area, We are further of the view that the agricultural produce is heaped before the shop of Kacha Arhtiya after it has been subjected to cleaning and sieving process. In the absence of any space for cleaning and sieving, the Kacha Arhtiya sitting in

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a booth would not be able to perform all these functions. The impugned Rule is based on relevant considerations and deserved to be upheld. We are further of the view that this Rules does not suffer from the vice of arbitrariness and cannot be declared ultra vires of Article 14 of the Constitution.

5. The judgment of the Division Bench in Pritpal Singh's case (supra) on which reliance has been placed by the learned counsel was rendered when no rule equivalent to sub rule (2B) of Rule 3 was on the statute book. Therefore, the aforementioned judgment cannot be considered as an 'authority' for the proposition that the rule is ultra vires of rule 2(9) of the Rules 2000 or any other Section of the 1961 Act. The writ petition is wholly misconceived and, therefore, the same is liable to be dismissed.

6. For the reasons aforementioned this petition fails and the same is dismissed.

Petition dismissed.

AIR 2000 PUNJAB AND HARYANA 187 "M.C.R. Flour Mills Pvt. Ltd. v. Chief Administrator, H.S.A.M. Board"

PUNJAB & HARYANA HIGH COURT

Coram : 2 N. K. SODHI AND N. K. SUD, JJ. ( Division Bench )

Mam Chand Roller Flour Mills Pvt. Ltd., Petitioner v. Chief Administrator, Haryana State Agricultural Marketing Board and others, Respondents.

Civil Writ Petn. No. 19467 of 1998, D/- 28 -3 -2000.

(A) Punjab Agricultural Produce Markets Act (23 of 1961), S.40, S.23 - Punjab Agricultural Produce Markets (General) Rules (1962), R.31(13)(i) - AGRICULTURAL PRODUCE - APPEAL - Appeal against assessed fee - Entertainment of - Condition precedent - R. 31(13)(1) imposing condition of payment of assessed fee for entertainment of appeal - Not ultra vires.

AIR 1992 SC 2279, Foll. (Para 5)

(B) Punjab Agricultural Produce Markets Act (23 of 1961), S.40, S.23 - Punjab Agricultural Produce Markets (General) Rules (1962), R.31(13)(i) - AGRICULTURAL PRODUCE - Assessed fee - Writ petition against - Dismissal on the ground that alternate remedy of appeal was available - Subsequent order by appellate authority - Writ petition against - Plea by petitioner in said petition that assessment order was not appealable under Act - Not tenable.

Constitution of India, Art.226. (Para 6)

(C) Punjab Agricultural Produce Markets Act (23 of 1961), S.40, S.23 - Punjab Agricultural Produce Markets (General) Rules (1962), R.31(13)(i) - AGRICULTURAL PRODUCE - Appeal - Assessment order passed by committee under S. 23 read with R. 31 - Is an order passed by committee under S. 13 - Is appealable.

Section 13 (1)(a) that a Committee is duty bound to enforce the provisions of the Act and the Rules and bye-laws made thereunder. While framing the assessment under Section 23 read with R. 31 the Committee is performing its duties under the Act and Rules and as such the assessment order passed under these provisions can clearly be held to be an order passed by the Committee under S. 13. In this view of the matter it cannot be said that an order of assessment made under R. 31 read with S. 23 was not covered by the orders against which appeal

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could be filed under S. 40. (Para 6)

(D) Punjab Agricultural Produce Markets Act (23 of 1961), S.40, S.23 - Punjab Agricultural Produce Markets (General) Rules (1962), R.31(13)(i) - AGRICULTURAL PRODUCE - APPEAL - Appeal - Entertainment of - Condition precedent, as to deposit of assessed fee - Appeal is entertained when admitted for consideration and not when it is filed - For determining whether appeal is to be admitted for hearing or not, date for hearing is to be fixed and opportunity of being heard is to be given to appellant - Dismissal of appeal on ground of non deposit of assessed fee, without affording opportunity of hearing - Not proper - However order dismissing appeal, not set aside as amount of assessed fee was not paid within period of limitation prescribed for filing appeal.

An appeal is entertained when it is admitted for consideration and not when it is filed. Further for deciding whether an appeal is to be admitted for hearing or not it would be necessary to fix a date of hearing and given an opportunity of being heard to the appellant. Therefore dismissing the appeal on the ground of non deposit of assessed fee without affording an opportunity of being heard to the appellant was not proper. However, in the facts and circumstances of the instant case, no useful purpose would be served by setting aside the order of the Chief Administrator dismissing the appeal on the ground of non deposit of assessed fee without first fixing a date of hearing, as the petitioner appellant has not deposited the assessed fee upto this date. The relevant provisions of the Act and the Rules clearly show that the period of limitation for filing an appeal provided in R. 40(2) is 30 days and there is no discretion given to the appellate authority to entertain an appeal beyond the period of limitation. Thus, even if the order of dismissal of appeal was to be set aside on the technical ground of not affording an opportunity of being heard to the petitioner, the same result will follow because even if the petitioner now deposits the assessed fee, the appeal will be deemed to have been filed on the date when the fee is so deposited. This admittedly would be beyond the period of limitation as per R. 40(2). In the absence of any discretion with the appellate authority to entertain a belated appeal, the appeal would have to be dismissed on the ground of limitation. AIR 1968 SC 48, Foll. (Paras 8, 9)

Cases Referred : Chronological Paras

National Insurance Company Limited, Athur v. Sengoda Gounder 1999 AIHC 1622 : (1999) 1 ICC 110 (Mad) 13

ANZ Grindlays Bank Ltd. Amritsar v. Municipal Corpn., Amritsar, (1999) 1 21 Pun LR 254 : (1999) 2 Rec Civ R 429 2, 11

State of Tamil Nadu v . E.P. Nawab Marakkadai, (1996) 100 STC 1 : (1996) 1 CTC 95 (Mad) 13

Shree Markande Metal (India) Pvt. Ltd. v. State of Haryana, (1995) 2 AIJ 743 (Punj and Har) 2, 12

Shyam Kishore v. Municipal Corporation of Delhi, AIR 1992 SC 2279 : 1992 AIR SCW 2764 (Foll.) 2, 5, 10

Lakshmiratan Engineering Works Ltd. v. Assistant Commr., AIR 1968 SC 488 7, 8,, 10

Bawan Ram v. Kunj Behari Lal, AIR 1962 All 42 8

Rajesh Bindal, for Petitioner; K.K. Gupta, for Respondent.

Judgement

N. K. SUD, J. :- The petitioner is a registered dealer under the Punjab Agricultural Produce Markets Act, 1961, (for short "the Act") and is dealing in the sale, purchase, storage and processing of agricultural produce within the notified market area of the Market Committee, Sadhaura in the State of Haryana. The Administrator, Market Committee Sadhaura made an assessment for the period 1-4-1996 to 31-3-1997 and determined the total market fee leviable on the petitioner at Rs. 1 , 62,836.89 out of which the petitioner had deposited a sum of Rs. 38,139.74. Thus, a sum of Rs. 1,24,697.15 was determined as recoverable from the petitioner. The petitioner was also held liable for payment of an equal amount as penalty for submitting a false return. The petitioner filed CWP 15384 of 1997 before this Court challenging the assessment order dated 12-9-1997. The said writ petition was dismissed on 13-10-1997 as not maintainable on the ground that an appeal was competent against the order of assessment and the petitioner had not availed of the remedy. The petitioner thereafter filed an appeal before the Chairman, Haryana State Agricultural Marketing Board, Panchkula. The appeal was accompanied by an application dated 14-10-1997 wherein it had been prayed that the recovery of the

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amount of market fee and penalty be stayed during the pendency of the appeal. The stay application and the appeal were dismissed by the Chief Administrator vide his order dated 22-10-1998 in the following terms :-

"There is mandatory provision in rule 31(13)(i) of P.A.P.M.(G) Rules 1962 to deposit Market Fee as due before entertaining an appeal by the competent authority. Since you have not deposited Market Fee, therefore, your appeal is dismissed. The stay application is also rejected."

2. It is against this order that the present writ petition has been filed. Shri Rajesh Bindal learned counsel appeared on behalf of the petitioner and contended that the Chief Administrator was not justified in dismissing the appeal and the stay application without granting an opportunity of being heard to the petitioner. According to him even though sub-rule (13)( i) of Rule 31 of the Punjab Agricultural Produce Markets (General) Rules, 1962, (for short "the Rules") provides that no appeal shall be entertained unless the amount of fee assessed has been deposited in full , yet when an application had been filed along with the appeal with a prayer to stay the recovery of the disputed demand, it was incumbent upon the Chief Administrator to first dispose of the stay application after affording an opportunity of being heard to the petitioner. In case he was not inclined to accept the prayer, he ought to have afforded an opportunity to the petitioner to deposit the fee. It was argued that the action of the Chief Administrator in dismissing the stay application and the appeal simultaneously was therefore, against the principles of equity and natural justice. For this purpose the learned counsel for the petitioner placed reliance on the decision of the Supreme Court in Shyam Kishore v. Municipal Corporation of Delhi, AIR 1992 SC 2279 and also on the decisions of this Court in ANZ Grindlays Bank Ltd., Amritsar v. Municipal Corporation, Amritsar, (1999) 121 Punj LR 254 and Shree Markande Metal (India) Pvt. Ltd. v. The State of Haryana 1995 (2) AIJ 743. It was then contended that the assessment had been framed for levy of tax and penalty under sub-rules (8) and (9) of Rule 31 read with Section 23 of the Act and such an order being not appealable could be validly challenged in the present writ petition. He referred to the provisions of Section 40 of the Act to contend that an appeal was provided only against an order passed by a Committee under Section 13 whereas the assessment order had been framed under Section 23 of the Act. It was then contended that sub-rule (13)(i) of Rule 31 is ultra vires as it overrides the provisions of the Act itself. According to him Section 40 of the Act, which provides for the filing of an appeal, contains no condition about the pre-deposit of the fee, and, therefore, while prescribing the procedure for filing the appeal, in the rules, no such condition could be incorporated.

3. Sh. K.K. Gupta, learned counsel for the respondents, refuted the arguments advanced on behalf of the petitioner. According to him the provisions of sub-rule (13)(i) of Rule 31 are unequivocal and do not leave any discretion with the Chief Administrator to entertain an appeal unless the amount of fee assessed had been deposited in full nor do they confer any right on the petitioner to make an application for entertaining the appeal without payment of the fee. It was also contended that the application for stay dated 14-10-1997 (Annexure P-7) did not even contain a prayer for entertainment of the appeal without payment of tax. It was merely a prayer for stay of demand during the pendency of the appeal. Thus, according to him, the Chief Administrator was justified in not entertaining the appeal. The learned counsel also pointed out that after the dismissal of the earlier civil writ petition No. 15384 of 1997 on 13-10-1997 the petitioner could not contend that the assessment order was not appealable. While dismissing the writ petition this Court had clearly observed that admittedly an appeal is competent against the impugned order of assessment and that the petitioner should first avail the remedy in appeal. The learned counsel also pointed out that the provisions of sub-rule (13)(i) of Rule 31 could not be said to be ultra vires as Section 40 of the Act clearly provides that the procedure for appeal was to be prescribed and this sub-rule lays down such procedure. Further, the requirements of payment of the assessed fee cannot be said to be unduly onerous so as to render the right of appeal totally illusory.

4. We have heard the counsel for the parties and have perused the relevant records. Section 40 of the Act provides for filing an appeal against the order passed by a committee and sub-rule (13) of Rule 31

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and Rule 40 of the Rules prescribe the manner in which such an appeal is to be filed and dealt with. For the sake of convenience the relevant provisions are being reproduced as under :-

Section 40

"Any person objecting to an order passed by a Committee under Section 13 or an order passed under sub-section (5) of Section 33 may appeal to the Board in the manner prescribed and the Board's decision on appeal shall be final"

Sub-rule (13) of Rule 31.

" (13)(i) An appeal against an assessment order made under sub-rules (8) and (9) shall lie to the Chief Administrator of the Board. No such appeal shall be entertained unless the applicant has deposited the amount of fee assessed as due from him in full with the Committee concerned.

(ii) The Chief Administrator of the Board after hearing the appellant and also the Committee making the assessment, or, if he deems necessary, after such enquiry as he may think proper may accept, modify or reject the assessment order appealed against.

(iii) The Chief Administrator of the Board may waive the whole or a part of the penalty imposed under sub-rule (9), in a case where such penalty would, in his judgment mean undue hardship to the appellant.

(iv) The order passed by the Chief Administrator shall be final and conclusive."

Rule 40

"40. Procedure for appeals - (1) Every appeal preferred under sub-section (4) of Section 10 , sub-section (3) of Section 29 and Section 40 shall bear a court fee stamp of one rupee and shall be presented to the appellate authority in the form of a memorandum by the appellant or his duly authorised agent. The memorandum shall set forth concisely the grounds of objection to the order appealed against shall also be accompanied by a copy of such order.

(2) The limitation for filing an appeal under Section 40 shall be thirty days from the date of order appealed against.

(3) In computing the period of limitation for filing an appeal under the Act the period spent in obtaining a copy of the order shall be excluded.

(4) The appeal shall be decided after notice to and hearing the parties concerned, if they so desire, and after making such further enquiry as the appellate authority may consider necessary.

(5) A copy of the decision on the appeal shall be supplied to the Board or the Committee concerned free of charge, and on demand to the appellant on payment of fifty paise per page or a part thereof subject to a minimum of one rupee."

5. A plain reading of the aforesaid provisions clearly shows that the prior deposit of the amount of fee assessed is a condition precedent for entertainment of an appeal. It is a well settled position that the right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. Further while granting the right of appeal it is also open to the legislature to impose conditions for exercise of such right. There is no legal or constitutional impediment to the imposition of such conditions. We, therefore, do not find any merit in the contention of the petitioner that the provisions of sub-rule (13)(i) of Rule 31 imposing a condition for payment of assessed fee as a condition precedent to entertainment of an appeal is ultra vires. We are fortified in this behalf by the authority of a Full Bench of the Apex Court in Shyam Kishore v. Municipal Corporation of Delhi, AIR 1992 SC 2279.

6. We are also in agreement with Sh. K.K. Gupta the learned counsel for the respondent that after the dismissal of CWP No. 15384 of 1997 on the ground that an alternate remedy of appeal was available, it was not open to the petitioner to once again contend in the present writ petition that the assessment order was not appealable under the Act. Even on merits we are satisfied that the contention of the learned counsel for the petitioner that an order of assessment made under Rule 31 read with Section 23 was not covered by the orders against which appeal could be filed under Section 40. A plain reading of Section 40 shows that it provides for an appeal against an order passed by a Committee under Section 13. Sub-section (1) of Section 13 reads as under :-

"13 (1). It shall be the duty of a Committee-

(a) to enforce the provisions of this Act and the rules and bye laws made thereunder in the notified market area and, when so required by the Board , to establish a market

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therein providing such facilities for persons visiting it in connection with the purchase, sale, storage, weighment and processing of agricultural produce concerned as the Board may from time to time direct;

(b) to control and regulate the admission to the market, to determine the conditions for the use of the market and to prosecute or confiscate the agricultural produce belonging to person trading without a valid licence;

(c) to bring, prosecute or defend or aid in bringing, prosecuting or defending any suit, action, proceeding, application or arbitration, on behalf of the Committee or otherwise when directed by the Board."

It is clear from clause (a) that a Committee is duty bound to enforce the provisions of the Act and the Rules and bye laws made thereunder. While framing the assessment under Section 23 read with Rule 31 the Committee is performing its duties under the Act and Rules and as such the assessment order passed under these provisions can clearly be held to be an order passed by the Committee under Section 13. in this view of the matter, also, the contention of the learned counsel for the petitioner is devoid of any merit.

7. The question now for our consideration is whether the Chief Administrator was justified in dismissing the appeal on the ground of non deposit of assessed fee without affording an opportunity of being heard to the petitioner. The argument on behalf of the petitioner is that the requirement of sub-rule (13)(i) of Rule 31 about the pre-deposit of the assessed fee is for entertainment of the appeal and not for filing of the appeal. The stage of entertaining the appeal is subsequent to the stage of filing of the appeal. The Supreme Court while interpreting a similar provision of the U.P. State Tax Act, 1948 in Lakshmiratan Engineering Works Ltd. v. The Assistant Commissioner, AIR 1968 SC 488 had explained the meaning of the word 'entertained' in paragraphs 7 and 10 of the judgment as under :-

"(7) To begin with it must be noticed that the proviso merely requires that the appeal shall not be entertained unless it is accompanied by satisfactory proof of the payment of the amount of tax admitted by the appellant to be due. A question thus arises what is the meaning of the word 'entertained' in this context ? Does it mean that no appeal shall be received or filed or does it meant that no appeal shall be admitted or heard and disposed of unless satisfactory proof is available. ? The dictionary meaning of the word 'entertain' was brought to our notice by the parties, and both sides agreed that it means either 'to deal with or admit to consideration'. We are also of the same opinion. The question, therefore, is at what stage can the appeal be said to be entertained for the purpose of the application of the proviso ? Is it 'entertained' when it is filed or is it 'entertained' when it is admitted and the date is fixed for hearing or is it finally 'entertained' when it is heard and disposed of? Numerous cases exist in the law reports in which the word 'entertained' or similar cognate expression have been interpreted by the Courts. Some of them from the Allahabad High Court itself have been brought to our notice and we shall deal with them in due course. For the present, we must say that if the legislature intended that the word' file or receive' was to be used, there was no difficulty in using those words. In some of the statutes which were brought to our notice such expression have in fact been used ..........."

"(10) .......... When the proviso speaks of the entertainment of the appeal, it means that the appeal such as was filed will not be admitted to consideration unless there is satisfactory proof available of the making of the deposit of admitted tax."

8. We are, therefore, in agreement with the contention of the petitioner that an appeal is entertained when it is admitted for consideration and not when it is filed. Further for deciding whether an appeal is to be admitted for hearing or not it would be necessary to fix a date of hearing and give an opportunity of being heard to the appellant. Viewed from this angle normally we would have set aside, the order of the Chief Administrator dismissing the appeal on the ground of non deposit of assessed fee without first fixing a date of hearing. However, in the facts and circumstances of the present case, we feel that no useful purpsoe will be served as admittedly even if the matter was restored to the Chief Administrator the appeal will have to be dismissed as the petitioner has not deposited the assessed fee upto this date. The relevant provisions of the Act and the Rules as already reproduced above, clearly show that the period of

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limitation for filing an appeal provided in Rule 40(2) is 30 days and there is no discretion given to the appellate authority to entertain an appeal beyond the period of limitation. Thus, even if the order of dismissal of appeal was to be set aside on the technical ground of not affording an opportunity of being heard to the petitioner , the same result will follow because even if the petitioner now deposits the assessed fee, the appeal will be deemed to have been filed on the date when the fee is so deposited. This admittedly would be beyond the period of limitation as per Rule 40(2). In the absence of any discretion with the appellate authority to entertain a belated appeal, the appeal would have to be dismissed on the ground of limitation. The view that we are taking is in conformity with the law laid down by the Apex Court in Lakshmiratan Engineering Works Ltd. case (AIR 1968 SC 488) (supra). In that case the Supreme Court was dealing with the provisions of Section 9 of the U.P. Sales Tax Act which provided that an appeal could be filed within 30 days from the date of the service of the copy of order or notice of assessment. The proviso to the said Section requires that no appeal shall be entertained unless it is accompanied by satisfactory proof of payment of the admitted tax. In that case, the tax had been deposited before the appeal had been filed but the necessary proof had not been enclosed with the appeal. In other words the consideration which prevailed with the Apex Court was that the tax had been deposited within the period of limitation prescribed for filing the appeal and as such failure to attach the proof of its payment with the memorandum of appeal was only a technical defect which could at best made the memorandum defective. In fact in paras 9 and 13 of this judgment at pages 492 and 493 this distinction had clearly been brought about as under :-

"(9) ................. In a single bench decision of the same court reported in Bawan Ram v. Kunj Beharilal, AIR 1962 All 42 one of us (Bhargava J. ) had to consider the same rule. There the deposit had not been made within the period of limitation and the question had arisen whether the Court could entertain the application or not. It was decided that the application could not be entertained because proviso (b) debarred the Court from entertaining an objection unless the requirement of depositing the amount or furnishing security was complied with within the time prescribed. In that case the word 'entertain' is not interpreted but it is held that the Court cannot proceed to consider the application in the absence of deposit made within the time allowed by law. This case turned on the fact that the deposit was made out of time ".

"(13) .......... We are of opinion that by the word "entertain" here is meant the first occasion on which the court takes up the matter for consideration. It may be at the admission stage or if by the rules of that Tribunal the appeals are automatically admitted, it will be the time of hearing of the appeal. But on the first occasion when the court takes up the matter for consideration, satisfactory proof must be presented that the tax was paid within the period of limitation available for the appeal."

(Emphasis supplied).

9. It is, therefore, amply clear that even at the time of entertaining an appeal what is to be verified is whether the amount had been paid within the period of limitation prescribed for filing an appeal or not. In the present case it has already been noticed that not only the assessed fee had not been deposited within the period of limitation prescribed under Rule 40(2) but remains unpaid even upto this date.

10. We may also deal with the case law cited on behalf of the petitioner which is clearly distinguishable. In Shyam Kishore's case (AIR 1992 SC 2279) (supra) the Supreme Court was dealing with the provisions of Section 170 of the Delhi Municipal Corporation Act (1957) which reads as under :

"10. Conditions of right to appeal .

No appeal shall be heard or determined under S. 169 unless -

(a) the appeal is, in the case of a property tax, brought within thirty days next after the date of authentication of the assessment list under Section 124 (exclusive of the time requisite for obtaining a copy of the relevant entries therein) or, as the case may be, within thirty days of the date on which an amendment is finally made under S. 126, and, in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given, within thirty days after the date of the presentation of the first bill, or, as the case may be, the first notice of demand in respect thereof:

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Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the Court that he had sufficient cause for not preferring the appeal within that period.

(b) the amount, if any, in dispute in the appeal has been deposited by the appellant in the notice of the Corporation."

In para 41 of this judgment the Supreme Court has observed as under :-

"It seems to us the words of S. 170(b) are capable of a broader interpretation. A perusal of S. 170 shows that the section uses three different expressions "heard or determined, " "brought" and "admitted" in relation to an appeal and some significance is to be attached to the use of the expression "heard and determined ". In like situations, other statutes such as the one considered by this Court in Lakshmi Rattan Engineering Works Ltd. v. Assistant Commr. of Sales Tax, AIR 1968 SC 488 and those contained in certain other enactments like the Bombay and Calcutta Municipal Acts specifically prohibit the very entertainment of the appeal if the tax is not paid. When the DMC has carefully avoided the use of that word, we must give full effect to the differential wording. Also, the absence of a language in Cl. (b) of the proviso similar to that in Cl. (a) which indicates that an appeal filed beyond the period of limitation will no stand admitted unless the delay is condoned also warrants an inference that the payment of disputed tax is not a condition precedent to the entertainment or admission of the appeal. In the present statutory context, it sounds plausible to say that such an appeal can be admitted or entertained but only cannot be heard or disposed of without pre deposit of the disputed tax. Such an interpretation will provide some much needed relief from the harshness of the provision. These are not days in which the calculation of the property tax is simple and uncomplicated, the determination of the annual value of the property, except when based on the actual rent received from the property, involves various subjective factors and not unoften, there is a wide gulf between the tax admitted to be due and the tax demanded. Sometimes, to compel the assessee to pay up the demanded tax for several years in succession might very will cripple him altogether. This apart, an assessee may not be able to deposit the tax while filing the appeal but may be able to pay it up within a short time, or at any rate, before the appeal comes on for hearing in the normal course. There is no reason to construe the provision so rigidly as to disable him from doing this. Again, when an appeal comes on for hearing, the appellate judge, in appropriate cases, where he feels there is some great hardship or injustice involved, may be inclined to adjourn the appeal for some time to enable the assessee to pay the tax. Though it will not be expedient or proper to encourage adjournment of an appeal, where it is ripe for hearing otherwise, only on this ground and as a matter of course, an interpretation which leaves some room for the exercise of a judicial discretion in this regard, where the equities of the case deserve it, may not be inappropriate. The appellate judge's incidental and ancillary powers should not be curtailed except to the extent specifically precluded by the statute. We see nothing wrong in interpreting the provision as permitting the appellate authority to adjourn the hearing of the appeal thus giving time to the assessee to pay the tax or even specifically granting time or instalments to enable the assessee to deposit the disputed tax where the case merits it, so long as it does not unduly interfere with the appellate authority however, should stop short of staying the recovery of the tax till the disposal of the appeal. We say this because it is one thing for the judge to adjourn the hearing leave it to the assessee to pay up the tax before the adjourned date or permitting the assessee to pay up the tax, if he can, in accordance with his directions before the appeal is heard. In doing so, he does not and cannot injunct the department from recovering the tax, if they wish to do so. He is only giving a chance to the assessee to pay up the tax if he wants the appeal to be heard. It is, however, a totally different thing for the judge to stay the recovery till the disposal of the appeal, that would result in modifying the language of the proviso to read: "no appeal shall be disposed of until the tax is paid". Short of this, however, there is no reason to restrict the powers unduly, all he has to do is to ensure that the entire tax in dispute is paid up by the time the appeal is actually heard on its merits. We would, therefore, read Cl. (b) of S. 170 only as a bar to the hearing of the appeal and its disposal on merits and not as a bar to the entertainment of the appeal itself."

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It is, therefore, evident that the Supreme Court was dealing with the expression "heard or determined" and not the expression "entertained" with which we are concerned in this case. The Supreme Court itself has brought about the difference in these expressions. Furthermore clause (a) of Section 170 conferred a discretion on the appellate authority to admit an appeal after the expiry of the prescribed period if the appellant could show a sufficient cause for the delay. However, no such discretion is vested in the appellate authority under the Punjab Agricultural Produce Market Act, 1961.

11. In ANZ Grindlays Bank Ltd's case (1999 (121) Pun LR 254) (supra) this Court was dealing with the provisions of Sections 146 and 147 of the Punjab Municipal Corporation Act, 1976. Here again, a discretion for entertianing the appeal after the period of limitation had been conferred on the appellate authority if the appellant could attribute the delay to a sufficient cause. Further in that case the appeal had been dismissed on the ground of failure of the appellant to make prior deposit of tax before filing the appeal on 5-8-1997 and the petitioner had deposited the disputed amount on the very next day on 6-8-1997 and had thereafter approached the High Court. This was one of the major considerations which weighed with this Court while setting aside the appellate order. In the present case, admittedly the petitioner has not deposited the assessed fee up to this date even though its appeal had been dismissed on 22-10-1998.

12. The decision of this Court in Sh. Markande Metal (India) Pvt. Ltd. case (1995 (2) ALJ 743) (supra) also does not advance the case of the petitioner. No proposition of law has been laid down in that case. The judgment of this Court was based on special circumstances of the case granting relief in exercise of its extraordinary jurisdiction under Art. 226 of the Constitution of India. This case cannot be said to be an authority on any legal proposition.

13. After the conclusion of the arguments the learned counsel for the petitioner has also brought to our notice a decision of Madras High Court in National Insurance Company Limited, Athur v. Sengoda Gounder (1999) 1 ICC 110 : (1999 AIHC 1692). This case relates to the provisions of Section 173 of the Motor Vehicles Act, 1988 laying down the limitation for filing the appeal and also the requirement of deposit of a certain amount before an appeal can be entertained. Here again a discretion is conferred on the High Court to entertain an appeal even after the expiry of limitation if a sufficient cause for the delay can be shown. Further the High Court also noticed that the condition for payment of Rs. 25,000/- or 50% of the awarded amount was to be deposited "in the manner directed by the High Court." These, words were interpreted to mean that the direction about the manner of payment had to come from the High Court which could be done only when the appeal was taken up for consideration. In fact in para 16 of this judgment, the learned single Judge has referred to another case of that Court in State of Tamil Nadu v. E.P. Nawab Marakkadai (1996) 100 STC 1, which supports the view that we have taken. In that case it was held that where the assessed tax under the Tamil Nadu General Sales Tax Act (1 of 1959) had been deposited after the expiry of limitation prescribed for filing the appeal, the appeal could not be entertained. The said case was distinguished in para 16 of the judgment as under :-

"When we come back to the case reported in State of Tamil Nadu v. E.P. Nawab Markkadai, (1996) 100 STC 1, the facts of the case are not applicable to the case on hand as I have already indicated. The said case deals with the proviso to S. 31(1) of the Tamil Nadu General Sales Tax Act, (1 of 1959).There the words used in the proviso are " no appeal shall be entertained under this sub-section, unless it is accompanied by satisfactory proof of payment of tax admitted by the appellant." The appeal (memorandum) has to be accompanied by proof for payment. But in the proviso to Section 173 of the Motor Vehicles Act, 1988, there is no such mandatory provisions for accompanying the satisfactory proof of payment of amount. Further, in the aforesaid Full Bench case, the time limit of preferring the appeal is 30 days and the discretion given to the Court for condonation of the delay is limited to 15 days. That is why the learned Judges have observed as follows :

"....... It follows that if the payment of admitted tax is made beyond the period of 30 days prescribed for the filing of an appeal and beyond the further period of 15 days in respect of which alone the appellate

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authority has power to condone the delay, then the appellate authority has to necessarily reject the appeal as barred by limitation."

But under Section 173 of the Motor Vehicles Act, 1988, the appeal can be filed within 90 days, further, if there is delay to any length of time it can be condoned if sufficient cause is down."

Thus, this authority in fact goes against the petitioner and supports the view taken by us.

14. We, therefore, see no merit in this petition which is hereby dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

Petition dismissed.

AIR 1997 PUNJAB AND HARYANA 268 "Desh Raj Gupta v. Dy. Commr., U.T. Chandigarh"

PUNJAB & HARYANA HIGH COURT

Coram : 2 ASHOK BHAN AND K. S. KUMARAN, JJ. ( Division Bench )

Desh Raj Gupta, Petitioner v. Deputy Commissioner, U.T. Chandigarh and others, Respondents.

Civil Writ Petn. No. 15068 of 1996, D/- 11 -2 -1997.

Punjab Agricultural Produce Markets Act (23 of 1961), S.43 - Punjab Market Committees Chairman and Vice-Chairman (Election) Rules (1961), R.8 and R.9 - ELECTION - AGRICULTURAL PRODUCE - Election of Chairman - Validity - Putting 'X' mark on ballot paper at two places in same column against name of candidate - Creates no ambiguity - Ballot paper not invalidated.

Simply putting of mark 'X' at two places in the same column or just above the first column, as in the present case, does not lead to the conclusion that the voter shown multiple choice. Rule 9 provides that if a ballot paper bears any mark or signature by which the voter can be identified only then the ballot is liable to be rejected. There was no signature or other identifying mark which could lead to the identification of the vote. Simply putting the mark 'X' at two places in the same column cannot lead to identity of the voter. The making of 'X' on the ballot paper by voter in an ambiguous manner actually inherits the meaning that the voter has shown wore than one choice. In the present case, in the ballot paper in dispute, the voter did not show his choice for more than one candidate. He had clearly shown his choice in favour of particular candidate. Second mark of 'X' shown in the ballot paper in dispute was immediately touching the name of that candidate meaning thereby that the space meant for showing the voter's choice bore the mark of only one 'X'. There was no ambiguity in showing the choice by the voter.

1973 Pun LJ 753, Disting. (Para 7 )

Cases Referred : Chronological Paras

1973 Pun LJ 753 (Disting. ) 7

Akash Jain, for Petitioner; Ashok Aggarwal, Sr. Advocate with H. S. Dhindsa and D. V. Sharrna, for Respondents.

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Judgement

ASHOK BHAN, J. :- Challenge laid in this petition is to the election of respondent No. 2 as Chairman, Market Committee, Union Territory, Chandigarh. It has been prayed that election of respondent No. 2 as Chairman be quashed.

2. Petitioner is Vice-Chairman of Market Committee Union Territory, Chandigarh, Election to the post of Chairman of the Market Committee took place on 28-8-1996 in the office of Sub-Divisional Magistrate (E) Estate Office Building Sector-17, Chandigarh. Petitioner and respondent No. 2 contested the said election. A total of nine votes were polled. Returning Officer declared respondent No. 2 as elected having polled five votes as against four votes polled by the petitioner. Allegation of the petitioner is that petitioner and respondent No. 4 polled four valid votes each; and one invalid vote has been wrongly counted in favour of respondent No. 2 which has materially affected the result of the election. The disputed vote should have been declared as invalid as it contained a cross mark 'X' on the top of the ballot paper in an ambiguous manner in addition to a cross mark 'X' in Column No. 3 of the said ballot paper against the name of respondent No. 2.

3. Respondents Nos. 2 and 3 have filed their separate but identical written statements. In the written statement, it is admitted that elections took place on 28-8-1996 in which total nine votes were polled. It was denied that one invalid vote was wrongly counted in favour of respondent No. 2 as a valid vote. It has been asserted that respondent No. 2 polled five votes as against four votes polled by the petitioner and, was, therefore, rightly declared elected as Chairman of the Market Committee.

4. Counsel for the parties have been heard.

5. Original ballot papers were sent for and were produced in sealed envelopes in this Court. In the presence of counsel for the parties, the seals which were intact were opened and the ballot papers were examined. There is no dispute regarding the eight votes out of which petitioner as well as respondent No. 4 polled four votes each. The disputed vote contains a cross mark 'X' on the top of the ballot paper in addition to the 'X' mark in Column No. 3 of the said ballot paper against the name of respondent No. 2. Elections were held under the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as the Act). Section 43(1) of the Act confers the power on the State Government to make rules for carrying out the purpose of the Act. Sub-section (2) of Section 43 provides that in particular and without prejudice to the generality of the power conferred under sub-section (1 ), such rules, may be provided for, inter alia, election of the Chairman and Vice-Chairman of Committees, their powers and term of their office. Under Section 43 (2) of the Act, the Punjab Market Committees Chairman and Vice-Chairman (Election) Rules, 1961 (hereinafter referred to as the Rules) have been framed. The Act and the aforesaid Rules have been adopted and made applicable to the Union Territory of Chandigarh. It would be appropriate to reproduce the relevant portions of Rule 8(1), (3) (4) and Rule 9 as a whole as under :

"8. Voting and result of election- (1) The Presiding Officer shall provide in the place where the meeting is held two voting compartments one for the election of Chairman and the other for that of vice-Chairman in which members can record their votes without being overseen. The Presiding Officer shall also provide two sealed ballot-boxes, one each for the office of the Chairman and Vice-Chairman and shall place them in such a manner that they can be seen by him during polling. The ballot boxes shall be so constructed that ballot papers can be introduced therein but cannot be withdrawn therefrom without the boxes being unlocked or opened.

(3) Every member wishing to vote shall be supplied separately with two ballot-papers in Form C one each for the office of Chairman and Vice-Chairman on which names of the contesting candidates shall be printed, typed or legibly written in English and Regional Languages in an alphabetical order. The ballot paper shall be signed by the Presiding Officer before being handed over to the members. The ballot paper for the election of Vice-Chairman shall be supplied after the member has exercised his right to vote for the Chairman.

(4) The member shall, on receiving the ballot paper, proceed to the place set apart for voting and there place a cross mark 'X' in column (3) of the ballot paper against the name of the candidate for whom he wishes to vote, with a red or blue pencil.

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(6) xx xx xx"

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"9. Validity of ballot-paper.- Any ballotpaper which bears any mark or signature by which the voter can be identified or on which the mark 'X'' is placed against more than one name or in an ambiguous manner or which does not bear the signature of the Presiding Officer prescribed in sub-rule (3) of Rule 8 shall be declared invalid."

6. Counsel appearing for the petitioner contended that as there were more than one 'X' marks on the disputed ballot, the same be rejected under Rule 9 being an ambiguous vote; that under R. 8(4) mark 'X' could only be put on the place set apart for voting and if voter puts the cross mark 'X' at more than one place, the vote was liable to be rejected. It was also contended that putting of mark 'X' at more than one place could lead to identification of the voter and, therefore, the same was liable to be rejected straightway.

7. We do not find any substance in these submissions. The marking of 'X' on the ballot paper by a voter in an ambiguous manner actually inherits the meaning that the voter has shown more than one choice. In the present case, in the ballot paper in dispute, the voter did not show his choice for more than one candidate. He has clearly shown his choice in favour of respondent No. 2. Second mark of 'X' shown in the ballot paper in dispute is immediately touching the name of respondent No. .2.............................meaning thereby that die space meant for showing the voter's choice bears the mark of only one 'X'. There was no ambiguity in showing the choice by the voter. Name of respondent No. 2 is at Serial No. 1 in the ballot paper and the name of the petitioner is at serial No. 2. Voter has clearly indicated his choice by marking 'X' against the name. of respondent No. 2 and just above that mark he has put another mark 'X' which does not show that there was any ambiguity about the choice of the voter. Had the other mark 'X' been in column No. 2 against the name of the petitioner then certainly it could have spelled an ambiguity in the choice. The choice of the voter is clear that he wanted to vote for respondent No.2. Contention that putting the mark 'X' at two places on the ballot paper in the same column could lead to identification of the voter also cannot be accepted. Reliance placed on Shamsher Singh v. The State of Haryana, 1973 Pun LJ 753, by the counsel for the petitioner is misplaced. In that case, the voter had put mark 'O' instead of mark 'X' to show his preference as provided under the rules. It was held that the vote was liable to be rejected as the voter had shown his preference by putting a mark other than the one provided under the rules. Simply putting of mark 'X' at two places in the same column for just above the first column, as in the present case, does not lead to the conclusion that the voter had shown multiple choice. Rule 9 of the Rules provides that if a ballot paper bears any mark or signature by which the voter can be identified only then the ballot is liable to be rejected. There was no signature or other identifying mark which could lead to the identification of the vote. Simply putting the mark 'X' at two places in the same column cannot lead to identity of the voter.

8. For the reasons stated above, we find no Merit in this petition and the same is dismissed. The, envelope containing the ballot papers be resealed and returned to the concerned authority.

Petition dismissed.

AIR 1995 PUNJAB AND HARYANA 195 "Varsha Spinning Mills Ltd., M/s. v. State of Haryana"

PUNJAB & HARYANA HIGH COURT

Coram : 2 G. S. SINGHVI AND N. K. SODHI, JJ. ( Division Bench )

M/s. Varsha Spinning Mills Ltd., Petitioner v. State of Haryana and others, Respondents.

Civil Writ Petn. No. 7899 of 1994, D/- 28 -10 -1994.

(A) Punjab Agricultural Produce Markets Act (23 of 1961), S.43 - Punjab Agricultural Produce Markets (General) Rules (1962), R.30(5) - AGRICULTURAL PRODUCE - Market fee - Exemption - Claim for, in respect of goods brought from area of other market committee and on which market fee was paid - Non-making of within 20 days as per rules - Would not deprive the claimant of his right - Prescribed period of twenty days is only directory and not mandatory.

Mere delay in the submission for Form-LL showing that the market fee has already been paid in some other committee within the State of Haryana from where the raw material was purchased cannot deprive the dealer of his substantive right to claim exemption which is granted by sub-rule(5) of Rule 30 of the Rules. The intention underlying this Rule is that a purchaser is not to be made to pay market fee twice and the period of twenty days prescribed by the proviso for producing Form-LL is not to be treated that sacrosanct so as to deprive the purchaser of his right to claim exemption as given by the main provision of the sub-rule. The period of twenty days as prescribed by the provisos is only directory and not mandatory. (Para 3)

(B) Haryana Rural Development Rules (1987), R.3(12) - AGRICULTURAL PRODUCE - Levy of fee - Exemption in respect of fee already paid in any notified market area within State - Form-E not furnished to assessing authority within prescribed period of one week of bringing of agricultural produce in notified market area of other market committee - That itself not sufficient to deprive claimant of its right to exemption (Para 4)

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O. P. Goyal, (Julanawala, Advocate), for Petitioner; Ms. Ritu Bahri, A.A.G., Haryana (for Nos, 1 and 2)and Ravi Kapur (for No. 3), for Respondents.

Judgement

N. K. SODHI, J. :- M/s. Varsha Spinning Mills Ltd. (for short, the Company) is a public limited company having a unit at Bawal in District Rewari where it is manufacturing yarn out of cotton gin and other raw materials. It is registered as a dealer under the Haryana General Sales Tax Act as also under the Punjab Agricultural Produce Markets Act, 1961 as applicable to the State of Haryana (hereinafter called the Act). For manufacturing yarn, the Company is buying cotton gin from three sources, namely, (i) market committees/yards outside the State of Haryana, (ii) from the market committees/yards within the State of Haryana other than Rewari and (iii) from the market committee, Rewari. The raw material purchased from the first two sources is brought within the area of market committee/yard of Rewari for processing. In this petition, we are concerned with the raw material which the Company is buying from the market committees within the State of Haryana and brings the same to Rewari. It is common case of the parties that the Company has paid market fee to the committees within the State of Haryana from where the raw material was purchased and it appears that it did not submit Form-LL to the market committee, Rewari within the time prescribed by Rule 30(5) of the Punjab Agricultural Produce Markets (General) Rules, 1962 (referred to hereinafter as the Rules). The grievance of the Company is that having paid fee to the market committees from where the raw material was purchased, it is not liable to pay market fee again for the second time when the raw material is brought for processing within the limits of market committee, Rewari. This plea is resisted by the market committee, Rewari on the ground that the company did not give the required certificate in Form-LL only attested by the Secretary of the Committee where fee had already been paid within twenty days of the bringing of the agricultural produce within its notified area. What is contended is that the provisions of the proviso to sub-rule (5) of Rule 30 of the Rules framed under the Act were not complied with and, therefore, the Company is not entitled to the exemption which it claims.

2. Under S. 23 of the Act, a committee may, subject to such rules as may be made by the State Government in this behalf, levy on ad valorem basis fees on agricultural produce bought or sold or brought for processing by dealers in the notified market area at a rate not exceeding three rupees for every one hundred rupees. It is clear that the levy of market fee is subject to the rules. Sub-rule (5) of Rule 30 of the. Rules which is relevant, reads as under :-

"30(5) - The agricultural produce brought for processing from within the State and for which market fee has already been paid in any market in the State, shall be exempted from payment of market fee second time;

Provided that the dealer who claims exemption under sub-rule (5) from the payment of the fee leviable on any agricultural produce brought for processing shall make declaration and give certificate to the committee in Form-LL duly attested by the Secretary of the Committee where fee has already been paid within 20 days of the bringing of agricultural produce within the notified market area and complies with the provisions of sub-rule (2). "

A combined reading of S. 23 of the Act and sub-rule (5) of Rule 30 of the Rules makes it clear that a dealer who brings agricultural produce for processing within the area of a market committee and on which market fee has already been paid in any other market committee in the State, shall be exempted from payment of market fee second time. Of course, the dealer has to make a declaration to this effect and furnish a certificate to the Committee in Form-LL duly attested by the Secretary of the Committee where fee has already been paid. The proviso to sub-rule (5) of Rule 30 further requires that this Form-LL should be submitted within 20 days of the bringing of agricultural produce within the notified market area. In the present case, the Company had paid market fee to the market committees within the jurisdiction of which

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cotton gin was purchased. Thereafter, when the same was brought within the notified market committee/yard of Rewari for processing, it was exempt from payment of market fee but for this it had to produce the certificate in Form-LL within twenty days. It appears that this certificate was not produced within the prescribed period and it is for this reason that the claim of the Company for exemption is being denied.

3. We have heard learned counsel for the parties and in our opinion, the stand of the committee is not tenable. Mere delay in the submission of Form-LL showing that the market fee has already been paid in some other committee within the State of Haryana from where the raw material was purchased cannot deprive the dealer of his substantive right to claim exemption which is granted by sub-rule(5) of Rule 30 of the Rules. The intention under lying this Rule is that a purchaser is not to be made to pay market fee twice and the period of twenty days prescribed by the proviso for producing Form-LL is not to be treated that sacrosanct so as to deprive the purchaser of his right to claim exemption as given by the main provision of the sub-rule. The period of twenty days as prescribed by the proviso is only directory and not mandatory. The Company is, therefore, entitled to the exemption claimed.

4. In Civil Writ Petition 7900 of 1994 the grievances of the Company is that the market committee, Rewari is again charging one per centum fee under the Haryana Rural Development Fund Act, 1986 (for short, the 1986 Act) on the raw material/agricultural produce bought by it within the State and for which the fee had already been paid to the assessing authority of the notified market area from where the raw material was purchased. Under the 1986 Act also, a fee on ad valotem basis at the rate of one per centum on the sale proceeds of agricultural produce bought or sold or brought for processing in the notified market area is levied and under Rule 3(12) of the Haryana Rural Development Rules, 1987, no fee is leviable on the sale or purchase of any agricultural produce manufactured or extracted from the agricultural produce in respect of which such fee has already been paid in any notified market area within the State. Again, the dealer who claims exemption from the payment of fee on the ground that the fee has already been paid in another notified area has to make a declaration and furnish a certificate to the assessing authority in Form-E within a week of the day of bringing of agricultural produce within the notified area. The Company has made a specific averment in the petition that it has already paid the Haryana Rural Development Fee to the assessing authority of the notified market area from where the raw material was purchased. There is no rebuttal to this averment. Here also, the Company cannot be deprived of its right to claim exemption merely because Form-E was not furnished to the assessing authority within the prescribed period of one week of the bringing of the agricultural produce in the notified market area of market committee, Rewari.

5. For the reasons recorded above, both the writ petitions are allowed and the impugned notices requiring the Company to pay second time market fee and Haryana Rural Development fee are quashed. There is no order as to costs.

Petitions allowed. .

AIR 1994 PUNJAB AND HARYANA 42 "Ram Rattan Om Parkash, M/s. v. State of Punjab"

PUNJAB & HARYANA HIGH COURT

Coram : 2 A. L. BAHRI AND N. K. KAPOOR, JJ. ( Division Bench )

M/ s. Ram Rattan Om Parkash and others, Petitioners v. The State of Punjab through Secretary Agriculture, Civil Secretariat and others, Respondents.

Civil Writ Petition No. 7675 of 1993, D/- 30 -9 -1993.

(A) Punjab Rural Development Act (6 of 1987), S.3(2), S.5, S.10 - AGRICULTURAL PRODUCE - Rural development fund - Levy of - Not dependent upon existence or constitution of Board under Act - It is leviable under S. 5.

Punjab Rural Development (General) Rules (1987), R.1. (Para 5)

(B) Punjab Rural Development Act (6 of 1987), S.10 - PARLIAMENT - Punjab Rural Development (General) Rules (1987), R.1 - Approval of Rules by Parliament - Punjab Legislature not in existence - Rules required to be put up before houses of Parliament - No modification, suggested within prescribed time -Rules would be taken as approved. (Para 8)

(C) Punjab Rural Development Act (6 of 1987), S.10 - Punjab Rural Development (General) Rules (1987), R.1 - PRESIDENT OF INDIA - Rules framed under S. 10 and Ordinance issued by President under Art. 123 of Constitution - Are different - Approval of Parliament within period of 6 months, not required for Rules.

Constitution of India, Art.123. (Para 8)

Cases Referred : Chronological Paras

C. W. P. No. 8235 of 1991, D/-10-4-1992 (FB) (P and H) 5A

Mr. G. C. Dhuriwala and Mr. S. P. Garg and Mr. Anand Swaroop, Sr. Advocate with Mr. Alok Jain, for Appellant; Mr. S. S. Shergill, D. A. G., Punjab, Mr. K. S. Gill, for Respondents.

Judgement

A. L. BAHRI, J. :- Replication taken on the record.

2. The petitioners belong to Sahnewal. They claim mandamus in this petition filed under Arts. 226 and 227 of the Constitution commanding the respondents State of Punjab, Punjab Mandi Board, the Market Committee, Sahnewal and the Collector, Ludhiana, not to effect recovery of rural development fund. The petitioners are licensees under the Punjab Agricultural Produce Marketing Act, 1961. They purchase agricultural produce i.e paddy and bring the same into their shetlers converting it into rice and sell the same. They pay 2% of the sale price as

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market fee under the aforesaid Act and 4% purchased sales tax under the Punjab General Sales Tax Act. The respondents illegally wanted to claim rural development fund under the Punjab Rural Development Act, 1987 (hereinafter called "the Development Act") from the petitioners with respect to the agricultural produce purchased or brought by them as above. Notices were issued to them like Annexures P. 5 and P. 6 to pay rural development fund for the period April 1988 to April 1900 to the Market Committee. This led the petitioners to file the present petition.

3. The challenge in the Writ Petition to the levy of rural development fund is threefold. Firstly, it is argued that at the relevant period for which the fund is being collected, there was no Board in existence, as to be constituted under the provisions of the Act; secondly, such a Board as constituted under the Development Act has not appointed any authority to collect the fund and; thirdly, no rules are in existence under which the Market Committee could recover the fund from the petitioners under the Development Act.

4. On notice of motion having been issued written statement has been filed on behalf of the Punjab Mandi Board controverting all the allegations of the petitioner, inter alias asserting that the Punjab Rural Development (General) Rules, 1987 were framed under S. 10 of the Development Act authorising the Market Committee to recover the fund and to implement the provisions of the Development Act, the Market Committee has to follow the rules or the procedure prescribed in the rules framed under the Punjab Agricultural Market Produce Act. The Market Committee-respondent No. 3 filed a separate written statement, inter alia, asserting that the Development Act has been held to be valid by the Full Beach of this Court in C.W.P. No. 5599 of 1988. The petitioners have collected the fund from the purchasers and are thus duty bound to pay the same to the Market Committee under the rules referred to above.

5. Shri G. C. Dhuriwala, Advocate, appearing on behalf of the petitioners has argued that at the relevant time there was no Board in existence as constituted under the provisions of the Development Act. The fund could not be levied. This contention is devoid of merit. The levy of fund is not dependent upon the existence or constitution of the Board. It is leviable under S.5 of the Development Act. Section 5(1) of the Development Act reads as under :-

5. Levy and collection of fee : (1) Subject to the rules made under this Act, there shall be levied for the purposes of this Act, a fee on ad valorem basis, at the rate of rupee one for every one hundred rupees, in respect of the agricultural produce, bought or sold or brought for processing in the notified market area

Provided that except in case of agricultural produce brought for processing "no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made."

5A. Reference was made to S. 3(2) of the Development Act which provides for establishment of the Board consisting of the persons mentioned therein. Further reference has been made to S. 3-A vide which Board was to be constituted by the persons mentioned therein and this amendment was inserted as per Punjab Rural Development Modification Order of 1988 issued in exercise of powers under S.12 of the Development Act by the President it has been argued by Shri Dhuriwala Advocate that provisions of S. 12 of the Development Act under which order was issued by the President as aforesaid were ultra vires as it amounted to delegation of legislative power. This contention cannot be accepted as this question stands concluded by decision of the Full Bench of this Court in C.W.P. No. 8235 of 1991, decided on April 10, 1992, copy of the judgment is attached with the petition as part of Annexure P. 7. Section 12 was held to be valid piece of legislation. Be that as it may, the Board was not required to separately pass an order levying of the Rural Development Fund. As already stated above, the charging section is S. 5 in the Development Act.

6. The next question debated by

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Shri Dhuriwala is that the Board did not authorise anybody to collect the fund. It was the duty of the Board to appoint any person or officer in this behalf as provided under S. 5(2) of the Act. The aforesaid provision provides for payment of the fee levied by the dealer in the manner prescribed to such person or officer as may be so appointed or desginated by the Board. Admittedly, no such order has been passed by the Board for payment of the fee to any person or officer. On that account it cannot be held that the fee or the fund payable under S. 5(1) of the Act is not to be collected from the dealers. Section 10 of the Development Act authorises the State Government to make rules for carrying out the purposes of the Act. It is in the exercise of this power that the rules of 1987 as referred to above were framed by the President. Section 10(3) of the Development Act reads as under :-

"10. Power to make rules

(3) Every rule made under this section shall be laid as soon as may be after it is made, before the House of the State Legislature while it is in Session for a total period of ten days which may be comprised in one session or in two or more successive sessions and if; before the expiry of the session in which it is so laid or the successive session aforesaid, the House agrees in making any modification in the rule or the House agrees that the rule should not be made, the rule shall thereafter "have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity or anything previously done or omitted to be done under that rule."

7. The contention of Shri Dhuriwala Advocate is that the Rules of 1987 on which reliance has been placed by the respondents cannot be held to be in legal existence as such Rules were not placed before the Parliament for approval, as required under S. 10(3) of the Development Act, as reproduced above. This contention cannot be accepted. Firstly, it is a question of fact which was required to be pleaded in the petition to give an opportunity to the respondents to rebut it as to whether the aforesaid rules were placed before the houses of the Parliament. In the writ petition no such averment was made. While making averment in para 10 it was only mentioned that till today no rules under the Act has been framed by the Government so far. In the written statement filed by the Mandi Board it was specifically mentioned that the President of India in the exercise of power under S. 10 of the Development Act made Punjab Rural Development General Rules, 1987, if the plea had been taken in the writ petition specifically that the rules so framed were not put before the houses of the Parliament, the respondents could specifically reply to the same. In the state of facts as above, no presumption can be drawn that the rules framed as above were invalid.

8. The contention of the learned counsel for the petitioners that such rules as framed by the President were required to be approved by the Parliament again cannot be accepted. Section 10(3) of the, Development Act as reproduced above does not provide for approval of the rules by passing any resolution or enactment as such. The rules were required to be laid before the house of the legislature and it is taken that since Punjab Legislature was not in existence, the matter was required to be put up before the houses of the Parliament. If no modification in the rules was suggested within the time prescribed in S. 10(3) of the Act, the Rules were to be taken as approved. There is no allegation that any modification or annulment of any rules was suggested, within a period of 10 days that any such order/ resolution was required to be passed by the houses. Learned counsel for the petitioners referred to the provisions of Art. 123 of the Constitution and argued that all ordinances issued by the President were required to be placed before the houses of the Parliament for approval and if such approval was not accorded within a period of 6 months, such ordinances automatically lapsed. There is a fallacy in the argument of the learned counsel for the petitioners in this respect to equate an ordinance issued under Art. 123 of the Constitution with an order framing rules passed by the President acting as State Government under S. 10(3) of the Development Act referred to above. Such a question

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was also considered by the Full Bench in the case of M/s Chiranji Lal (supra).

9. For the reasons recorded above, finding no merit in the writ petition the same is dismissed with no order as to costs.

Petition dismissed.

AIR 1991 PUNJAB AND HARYANA 143 "Punjab State Agricultural Marketing Board v. State"

PUNJAB & HARYANA HIGH COURT

Coram : 1 J.V. GUPTA, J. ( Single Bench )

Punjab State Agricultural Marketing Board and another, Petitioners v. State of Punjab and another, Respondents.

Amended Civil W. P. No. 3166 of 1987, D/- 28 -9 -1989.

(A) Punjab Agricultural Produce Markets Act (23 of 1961), S.3(8) - Constitution of India, Art.226 - AGRICULTURAL PRODUCE - Agricultural Marketing Board - Suspension of - No mala fides alleged against any of individual officer Order alleged to be motivated by political considerations - Not sufficient, to hold that it was arbitrary - Mere fact that same charges related to illegalities committed by earlier Board - Not sufficient to hold that order was passed on irrelevant consideration - Cannot be interfered with under Art.226. (Para 10)

(B) Constitution of India, Art.226 - Punjab Agricultural Produce Markets Act (23 of 1961), S.3(8) - WRITS - Writ jurisdiction - Administrative order Interference with - Is limited - Suspension of agricultural Marketing Board - Order based on subjective satisfaction - One of the grounds was irrelevant - Whole order not liable to be struck down.

AIR 1979 SC 49 Disting. (Para 11)

Cases Referred : Chronological Paras

AIR 1982 PunjHar 439 (FB) 6

AIR 1982 PunjHar 16 6

AIR 1979 SC 49 : 1978 Lab IC 1641 (Dist) 6, 11

AIR 1977 SC 183 (1977) 1 SCC 133 7

1975 (1) SLR 366 6

(1971) 73 Pun LR 289 8

AIR 1970 Mad 63 : 1970 Cri LJ 241 6

AIR 1967 SC 1353 (1967) 2 SCJ 705 7, 10, 11

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AIR 1967 SC 1081 : 1967 All LJ 144 7

AIR 1967 SC 483 : 1967 Cri LJ 520 7

AIR 1959 SC 107 : 1959 SCJ 6 7

Mr. G.S. Grewal, Sr. Advocate with Mr. S.S. Bajwa and Mr. Sarjit Singh, Sr. Advocate with Mr. Jagdev Singh, for Petitioners; Mr. H.S. Bedi, A.G. Punjab, for Respondents.

Judgement

ORDER :- This petition has been filed on behalf of the Punjab State Agricultural Marketing Board and its Chairman, Jathedar Tota Singh for quashing the order of suspension of the Board dated19-5-1987, Annexure P/9.

2. The said Board was constituted on 15-9-1986 vide notification, Annexure P/1. According to the said notification, the said Board was constituted for a period of three years with effect from 17-9-1986 as provided under S.3(4) of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as the Act). S. 3 of the Act provides that the State Government may establish and constitute a State Agricultural Market Board, consisting of a Chairman to be nominated by the State Government and fourteen other members of whom six shall be officials and eight non-officials, to be nominated by the State Government in the manner provided thereunder. The said Board was constituted when the Akali Government was in power in the State of Punjab. The said Akali Government headed by Shri Surjit Singh Barnala was dismissed by the President on 12-5-1987 and the Presidential Rule was imposed on the State of Punjab. According to the petitioners, the Governor of Punjab, issued Press statement that the Government had decided to remove all the non-official Chairman of all the State Corporations and Boards and this was first major political decision taken by the Government of Punjab after imposition of Presidential Rule. Copy of the press report dated 14-5-1987 appearing in the Indian Express is attached as Annexure P/2. In execution of that policy decision, Governor of Punjab removed various non-official Chairman of various Corporations. According to the news item which appeared in the Tribunal dated 16-5-1987, copy Annexure P/3, Chairman of the Khadi Village Industries Board and various other non-official Chairman were removed but it was mentioned therein that the Government had not taken the decision about the removal of the Chairman of the Marketing Board as his appointment was a and'term appointmentand', and in case the Government decides to remove him, he will have to be paid salaries and other allowances for the remaining period of his term. In order to overcome this difficulty, the State Government decided to implement its political decision and issued a show cause notice to the Chairman as to why Marketing Board should not be suspended. Copy of the show cause notice is Annexure-P/4. According to the petitioner, in the show cause notice, seven items were mentioned on the basis of which the Government had taken a decision to suspend the Board. Out of seven charges, six related to the period prior to the Constitution of the Board. Only Charge No. 1 related to the period of the present Board. However, reply to the said show cause notice was sent vide copy Annexure P/5. It was pleaded that according to the Act, the functions of Board and its office bearers were separately defined and the Marketing Board is entirely different from its office bearers. The relevant sections which define the powers, duties and responsibilities of the Board are tabulated in the form of Annexure-P/8. According to the petitioners, neither the notice issued by the State Government Annexure-P/4 nor the impugned order, copy filed as Annexure P/9 relate to the functions, duties and responsibilities of the Board. Board could only be suspended if it is not functioning properly or if it is abusing its powers or if it is guilty of corruption or mismanagement. The Board could not be suspended for the fault of any of its employees or the office bearers. None of the allegations mentioned in the notice relate to any of the duties which are assigned to the Board under the Act. No order of suspension of the Board could be passed.

3. The said order of suspension, Annexure P/9 has been challenged on the ground that it was mala fide and was passed simply to achieve the object of removing the petitioner No. 2 as Chairman of the Board.

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The power conferred upon the Government under S.3(8) of the Act has been exercised in colourable way to achieve the purpose of wrecking vengeance of the Chairman of the Board appointed by the previous Government. The allegations made in the show cause note are absolutely without any basis. Even if such allegations may be assumed to be of substance, such allegations do not amount to abuse of power.

4. Learned counsel for the petitioner Submitted that the powers to suspend the Board are provided under S.3(8) of the Act which reads as under-

"3(8). The State Government shall exercise Superintendence and control over the Board and its officers and may call for such information as it may deem necessary and, in the event of its being satisfied that the Board is not functioning properly or is abusing its powers or is guilty of corruption or mismanagement, it may suspend the Board and, till such time as a new Board is constituted, make such arrangements for the exercise of the functions of the Board (and of its Chairman) as it may think fit;

xx xx xx xx xx xx xx xx xx xx xx"

5. Learned counsel for the petitioner further submitted that except Charge No. 1, all other charges related to the period when the present Board was constituted on 17-9-1986. Moreover, no specific direction issued by the State Government has been violated by the Board and, therefore, the suspension order is mala fide and politically motivated. Even Charge No. 1, according to the learned counsel, was baseless because even in Charge No.1 the period mentioned is 1-1-1987 to 31-3-1987. According to the said charge, the Marketing Board has released Rs. 343.33 lacs for the construction / repair of link roads whereas the amount of funds released to P.W.D. (BandR) is Rs.135.83 lacs. Thus, according to the State Government, it was obvious that the Board deliberately acted against the decision and instructions of the Government and against the allocation of 33 per cent, the Board has released 72 per cent funds which is gross violation of the decision of the Government. In order to rebut this allegation, learned counsel for the petitioner referred to Annexure P/5/1 which is a copy of the Minutes of the Meeting held on 3-1-1987 regarding construction /repair of the village link roads under the Chairmanship of the then Chief Minister, Punjab, Shri Surjit Singh Barnala. The said meeting was attended by eleven officials and the Chairman of the Board was one of them. None of the members of the Board attended the said meeting. The decision taken in that meeting was that "Marketing Board would construct roads according to P.W.D. specifications to avoid any problem in taking over of the roads by P.W.D, later on." (Action by Secretary, Marketing Board). Second meeting in this behalf was held on 2-2-1987. Copy of the proceedings is Annexure P/5/2. In that meeting, fourteen officials were present including the Chairman of the Board. Therein, the decision taken was that "it was decided that Marketing Board would prepare a note and action plan and make a reference to Finance Department through Administrative Department for obtaining the release of funds deposited with Finance Department. The Board will also explain the position of funds deposited with banks. " (Action by Secretary, Marketing Board, F. D.). The third meeting in this behalf was held on 11-3-1987 vide Annexure P/6. Seven officials were present therein. In that meeting, even the Chairman of the Board was not present. Only the Secretary of the Board Shri Sarbjit Singh was present. One of the decisions taken therein was that "Secretary, Mandi Board will supply detailed statement about the sanction of estimates and release of money for construction/repair of village link roads to Public Works Department (BandR) and Mandi Board, Market Committee from 1-1-1987. This will give a clear picture of the sanction of estimates and release of money to Market Committee falling in the jurisdiction of Public Works Department and Mandi Board." (Action by Secretary, Mandi Board). It was also decided therein that the statement, will indicate the total allocation of funds for the construction of village link roads, administrative sanction accorded by the Mandi Board

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and allocation of funds to Public Works and Mandi Board.

6. Thus, argued the learned cousel that in view of these three meetings held during this period, the charge made in the show cause notice at item No. 1 was unwarranted and baseless. As regards other charges, he submitted that it related to the period prior to the construction of the Board and, therefore, no action could be taken against the Board for the lapses, if any, on the part of the previous Board. On facts as well, he explained itemwise that no case was made out against the Board for taking any action as contemplated under S.3(8) of the Act. According to the learned counsel, by passing the order of suspension, civil rights of the members of the Board as well as of the Chairman have been affected and, therefore, they were entitled to the relief sought for. In support of this contention, reference was made to AIR 1982 Pun and Har 16. It was next submitted that even if one ground is non-existent, the whole administrative order is vitiated and is liable to be struck down. In support of this contention, reference was made to :

i) AIR 1979 SC 49, S.R. Venkataraman v. Union of India

ii) (1975) 1 Serv LR 366, Krishnan Kapani v. State of Punjab

iii) AIR 1970 Mad 63, Mohanbaram v. Jayavelu;

He further submitted that since all the seven charges do not relate to the functioning of the Board and there was no defiance of any order of State Government by the Board as the Board functions through its meetings which are held after more than one or two months and therefore, decision taken by the State Government was politically motivated and was thus liable to be quashed in writ jurisdiction. He also submitted that mal practice has grown that as and when party Government changes, the persons nominated by the earlier Government are removed by the subsequent Government and that way even if the orders are challenged in the Court, the delay caused in deciding the matter renders the writ petition ultimately infructuous and, therefore, in such a situation, direction should be given by this Court that the Board be allowed to complete its three yearsand' term after the passing of the order by this Court. Reference in this behalf was made by this Court. Reference in this behalf was made to 1982 (1) SLR 39 : (AIR 1982 Pun and Har 439 (FB), Hardwari Lal v. G.D. Tapase.

7. On the other hand, learned Advocate-General submitted that no such plea was taken by the petitioner-Board in reply to the show cause notice or in the present petition that the seven charges do not relate to the functioning of the Board. Rather, in their reply to the show cause notice, reply was sent on behalf of the Board through its Chairman who also happened to be the Chairman of the earlier Board as well. According to learned counsel, it appears that since Jathedar Tota Singh was also the Chairman of the earlier Board and, therefore, it was not open to him to plead that the charges other than charge No. 1 related to the period prior to the present Board. Since no such plea was taken in the reply to the show cause notice, the same could not be allowed to be taken for the first time at this stage. Moreover, in the written statement filed on behalf of the State, it was specifically pleaded that action has been taken against the Board under S.3(8) of the Act because it was not functioning properly and was also guilty of mismanagement but no replication has been filed on behalf of the petitioner-Board controverting the same. Thus, argued the learned counsel, this plea of the learned counsel for the petitioner that none of the charges relate to the functioning of the Board, was not available. He further submitted that the impugned order is an administrative order passed on the subjective satisfaction of the State Government which has been formed after the issuing of show cause notice and considering the reply filed thereto. That being so, the scope of interference in writ jurisdiction is very limited because the impugned order could not be said to be without any application of mind. According to the learned counsel, even if this Court might have taken a different view on the allegations made against

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the Board, this by itself will not provide a ground for interference in the impugned order being an administrative one. In support of his contention, he referred to AIR 1959 SC 107 : (1959 SCJ 6); Radeshyam v. State of M.P., AIR 1967 SC 1081 : (1967 All LJ 144); Raja Anand v. State of U.P. and AIR 1967 SC 483 : (1967 Cri LJ 520), Jaichandlal v. State of West Bengal. Reference was also made to AIR 1967 SC 1353 : (1967) 2 SCJ 705, State of Maharashtra v. B.K. Takkamore to contend that where an order is based on several grounds, some of which are irrelevant, then if there is nothing to show that the authority would have passed the order on the basis of relevant and existing grounds, that order cannot be sustained. Where, however, the Court is satisfied that the authority would have passed the order on the basis of other relevant and existing grounds and the execution of irrelevant of non-existing ground could not have affected the ultimate opinion or decision of the authority, order has to be sustained. It was also observed therein that in a writ application, the Court will not review the fact as an appellate body and the order is liable to be set aside only if no reasonable person on a proper consideration of the materials before the State Government could form the opinion that the Corporation is not competent to perform or persistently makes default in the performance of the duties imposed on it by or under the Act. He also referred to AIR 1977 SC 183 : ((1977) 1 SCC 133), Narayan v. State of Maharashtra which was a case under the Land Acquisition Act to maintain that once the Court comes to the conclusion that the authority concerned was acting within the scope of its power and has some material, however meagre, on which it could be reasonably base its opinion, the Court should not and will not interfere.

8. According to the learned Advocate-General, the argument raised on behalf of the petitioners that the present Board was not responsible for the omissions and commissions of its predecessor Board, is not absolutely correct because even if some of the charges related to a period before the present Board came into being and the members of the present Board could not be visited with penalty for the sins of their predecessor but such a course, when adopted, would be shocking to the conscience and against the very scheme and object of the Act as it is the duty of the successor Board to take reasonable, legal and prompt steps to have the illegalities set right. In support of this contention, reference was made to (1971) 73 PLR 289, Lila Krishan v. State of Haryana.

9. He next submitted that in para 5 of the written statement, it has been denied that there was any policy decision taken by the State Government after the President Rule in Punjab that all the members of the different Boards and Corporations are to be removed as alleged by the petitioners. According to reply in the said para, "it was question of the latter category of Board/Corporation/ Undertaking that a policy decision was taken to consider the question of extension of tenure but there was no policy decision regarding other Boards/Corporations to which category the Marketing Board belonged." It was also pointed therein that the Punjab Housing Board is still functioning under the Chairmanship of S. Darshan Singh Issapur and similarly Punab Water Supply and Sewerage Board was working under the Chairmanship of S. Ranjit Singh. Thus, it was incorrect that there was any policy decision to relieve all the Chairman of the Boards / Corporations irrespective of the fact whether their tenure was discretionary or fixed under any statute. He also referred to the impugned order, Annexure P/9 where different findings are given on each charge by the Financial Commissioner while passing the impugned order of suspension.

10. I have heard the learned counsel for the parties at a great length and also through the case laws cited at the bar. It could not be disputed that the scope of interference under Art.226 in such like administrative orders is very limited. Admittedly, no mala fides have been alleged against any individual officer as such. To say that the impugned order was motivated by political considerations is by itself not sufficient to hold that the order was arbitrary or mala fides as such. The impugned order could be set aside if the grounds on

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which the order was passed were altogether irrelevant and extraneous. After reading the impugned order as a whole, it could not be successfully argued on behalf of the petitioners that the order was passed without any application of mind or it was actuated by any extraneous considerations. The mere fact that charges Nos. 2 to 7 related to the period prior to the present Board was itself no ground to hold that the impugned order was passed on irrelevant considerations. Admittedly, Jathedar Tota Singh who was Chairman of the present Board was also the Chairman of the earlier Board. It appears that he took upon himself to explain his earlier conduct by filing reply on behalf of the Board to the present show cause notice. Moreover, even if the illegalities were committed by earlier Board, it was incumbent upon the present Board to rectify the same or to take some proper action as not to perpetuate the same illegality. No such action seems to have been taken by the Board. One of the allegations at item No. 6 was that Shri G.S. Sathi had been appointed as Legal Advisor of the Board though he did not fulfil the requisite qualifications. Even the then Advocate-General pointed out that before he is appointed, relaxation under the Rules be sought for his appointment but without seeking any relaxation, Shri G.S. Sathi was appointed as the Legal Advisor. Similarly, certain Executive Engineers and Sub-Divisional Officers who did not fulfil the requisite qualifications, were appointed by the earlier Board. When requisite information was being sought, no complete answer was given to the said enquiry and the Board took more than five months to supply the information. This Court is not sitting in appeal over the impugned order and, therefore, will not review the facts as an appellate body, as observed in AIR 1967 SC 1353. It could not be successfully argued on behalf of the petitioners that no reasonable person on a proper consideration could form the opinion that the Board was not functioning properly or was not guilty of mismanagement. At the most, two views could be possible and if one view has been taken by the State Government, the same could not be interfered with in writ jurisdiction. The allegation that the order was not passed in good faith and was politically motivated, has been denied in the return filed on behalf of the respondents. The press reports relied upon by the petitioners in this behalf could not be made the basis for the said allegations.

11. As regards the contention that even one of the grounds is found to be irrelevant or extraneous, the whole order should be struck down, is also not available to the petitioner. The case relied upon by the learned counsel for the petitioners, AIR 1979 SC 49 : (1978 Lab IC 1641) in this behalf, had no applicability to the facts of the present case.That was a case where a person was denied and if one of the grounds of detention was found to be extraneous or irrelevant, the whole order was liable to be quashed. That was so because it was a question of oneand's personal liberty as guaranteed by Art.21 of the Constitution of India. As regards the present case, if the order could be sustained on any of the grounds for which the show cause notice was issued, this Court will not interfere in the impugned order as this Court was not siting in appeal. After all, it was a matter of subjective satisfaction of the State Government to form an opinion on the basis of the allegations made against the Board. After considering the reply filed thereto, if an opinion was formed, it could not be successfully argued that the same was liale to be set aside because any one of grounds was irrelevant. Similar view was taken by the Supreme Court in AIR 1967 SC 1353 while dealing with a case under the City of Nagpur Corporation Act whereby the Corporation was superseded by the State Government. In that case, it was held that such order of the State Government superseding the Nagpur Municipal Corporation was based on two grounds, one of which was relevant and the other irrelevant. The fact that the second ground showed that in the opinion of the State Government, the ground was serious enough to warrant action under S.408(1) of the Act was sufficient to establish that the Corporation was not competent to perform its duties under the Act.

12. Thus, in view of the discussion above,

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the writ petition fails and is dismissed with no order as to costs.

Petition dismissed.

AIR 1990 PUNJAB AND HARYANA 259 "Subbhash Chander Kamlesh Kumar M/s. v. State of Punjab (FB)"

PUNJAB & HARYANA HIGH COURT

FULL BENCH

Coram : 3 I. S. TIWANA, A. L. BAHRI AND A. P. CHOWDHRI, JJ. ( Full Bench )

M/s. Subbhash Chander Kamlesh Kumar, Petitioner v. State of Punjab and others, respondents.

Civil Writ Petn. No. 3923 of 1986, D/- 9 -3 -1990.

(A) Punjab Agricultural Produce Markets Act (23 of 1961), S.23 - Punjab Agricultural Produce Markets (General) Rules (1962), R.23 and R.24 - OBJECT OF AN ACT - Scope of Act - Act not confined only to sales in principal market yard and sub-market yard.

It is not correct to say that Act is confined to agricultural produce brought into the principal market yard or sub-market yard and does not apply to buying or selling etc. outside thereof in the remaining notified market area. It is, therefore, not open to the petitioners to contend that the sales within the purview of the Act are only sales taking place within the principal market yard or sub-market yard or that only by open auction. (Para 17)

(B) Constitution of India, Art.141 - PRECEDENT - Supreme Court decisions - Binding nature of - Later decisions of smaller benches -They, however, analysing and explaining observations in earlier decision of Constitution bench - Law as explained, by smaller bench is binding.

Where the later decisions of the Supreme Court even though by smaller Benches, have analysed and explained the observations of the earlier Constitution Bench the law as explained in those later decisions is binding on High Court. (Para 19)

(C) Punjab Agricultural Produce Markets Act (23 of 1961), S.23 - Punjab Agricultural Produce Markets (General) Rules (1962), R.29(2) - AGRICULTURAL PRODUCE - Market fee - Incidence of - It is borne by buyer and not trader.

Market fet - Levy - Incidence falls on buyer.

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Apart from the usual economic tendency to pass on the burden to the next person, there is an express provision in Rule 29(2) of the Rules for the seller to pass on the burden of the market fee to the buyer. Since the burden of the market fee is passed on to the buyer, the incidence of the market fee is borne by the consumer, who ultimately buys the agricultural produce. In other words, the burden is not borne by the trader. There will be thus no warrant for focussing attention on services rendered by the Market Committee to the traders in respect of the transactions effected by them. The services rendered by the Market Committee in the whole of the notified market area have to be viewed from a broader angle of persons who use the market area whether as producer or traders or consumers. (Para 30)

(D) Punjab Agricultural Produce Markets Act (23 of 1961), S.6(3), S.10 - Punjab Agricultural Produce Markets (General) Rules (1962), R.18(1)(c) - AGRICULTURAL PRODUCE - Exemption under from taking licence - It is not in respect of retail sales as such.

The existence of Rule 18(1)(c) defining "retail sale" for the purposes of exemption from taking a licence under Section 6(3) read with Section 10 indicates by necessary implication that retail sales as such are not exempted and what is exempted is only retail sales to the extent mentioned in the said rule. (Para 37)

(E) Punjab Agricultural Produce Markets Act (23 of 1961), S.7 - AGRICULTURAL PRODUCE - Levy of fee - Establishment of separate market for each agricultural produce - Not a condition precedent.

Market fee - Levy - Establishment of separate market for each agricultural produce - Not essential.

There is no provision in the Act for the establishment of a separate market yard for each item of agricultural produce brought within the purview of the Act. The establishment of a separate market yard cannot, therefore, be a condition precedent for the levy of the market fee. (Para 38)

(F) Punjab Agricultural Produce Markets Act (23 of 1961), S.38 - AGRICULTURAL PRODUCE - Section providing for adding items in schedule - Does not suffer from vice of excessive delegation.

Constitution of India, Art.245.

Section 38 providing for adding of items of agricultural produce in schedule does not suffer from vice of excessive delegation. It is settled law that where the legislature has declared the legislative policy, it is permissible for it to empower the administrative authority to add to or modify or cancel any of the items in the schedule to the Act, so as to carry out the policy of the Act and to apply it to different objects having regard to local conditions, or the like. Section 38 is not to be read in isolation. It is to be read along with Sections 5 and 6. Mere addition to the Schedule by a notification under Section 38 does not effectively bring the item of agricultural produce within the purview of the Act. The process is completed by the State Government issuing a notification under Section 5, declaring its intention of exercising control over the purchase, sales, storage and processing of such agricultural produce and in such area as may be specified in the notification. The section further requires the State Government to consider any objection or suggestion received within a period of not less than 30 days, to be specified in such notification, and it is only as a result of such consideration that a final notification is required to be made under Section 6(1) of the Act. It is only thereafter that such item of agricultural produce stands duly added so as to attract the provisions regarding levy of market fee etc. (Para 40)

(G) Punjab Agricultural Produce Markets Act (23 of 1961), S.23 - AGRICULTURAL PRODUCE - Fee under - Quid pro quo - Imposition of market fee on traders operating outside market yard and sub-market yard but within notified market area - There is quid pro quo between fee and services envisaged under Act.

Constitution of India, Art.265.

Market fee - Imposition on traders operating outside market yard and sub-market yard Legality.

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There is necessary quid pro quo between the imposition of market fee on the traders operating outside market yard and sub market yard but within notified market area and the services envisaged under the Act. (Para 46)

The correct statement of law is that the traditional view of quid pro quo has undergone a transformation. The true test for a valid fee is whether the primary and essential purpose is to render specific services to a specified area or class, it being of no consequence that the State may ultimately and indirectly benefit by it. Quid pro quo is not always a sine qua non of a valid fee and what is required to be shown is that by and large there is quid pro quo. The correlationship between services expected is of a general character and a broad, reasonable and casual relationship is enough to satisfy the requirement of law, The payer of the fee represents collectively the class of persons i.e. users of the market, including growers and those engaged in business to whom the benefit is directly intended by the establishment of a regulated market and not the actual individual i.e. the trader. If there is quid pro quo in the sense explained above for such a class of persons, the test of valid fee is satisfied. (Para 43)

(H) Constitution of India, Art.246 - STATE LEGISLATURE - Power to legislate - Scope of - Includes subsidiary power to validate laws found by Courts to be invalid date of its promulgation.

Legislature - Power to validate laws.

The legislative power conferred on the legislature includes the subsidiary or the auxiliary power to validate laws which have been found to be invalid. If a law passed by a Legislature is struck down by the Courts as being invalid for one infirmity or another, it would be competent to the appropriate Legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier law effective from the date when it was passed. (Para 55)

(I) Haryana Rural Development Act (6 of 1986), Pre. and S.1 - REPUGNANCY BETWEEN STATUTES - Overlapping - Effect - Act providing for services already envisaged by Punjab Agricultural Produce Markets Act - Both Acts having Same object - Overlapping unavoidable - Act not rendered ultra vices.

Constitution of India, Art.246 (Para 62)

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H. L. Sibal and R. L. Batta, Sr. Advocates with G. C. Tangri, for Petitioner; H. B. Bedi, Advocate General, J. L. Gupta, Sr. Advocate with K. S. Gill, Jaswant Singh, Vikrant Sharma and Miss Nidhi Goyal (for Nos. 2 and 3), for Respondents.

Judgement

A. P. CHOWDHRI, J. :- The principal question which will largely decide the fate of these writ petitions is - as to the nature and degree of quid pro quo (one thing in return for another) between the fee realised and the cost of services rendered. In other words, whether quite a substantial portion of the amount of fee must be shown to be actually, distinctly and primarily spent for the benefit of the prayer or whether a broad and general correlationship between the fee and the services satisfied the crucial test.

2. The question stated above is common to a number of writ petition. For the sake of convenience, nine writ petitions Nos. 3923, 3924, 3925, 3926, 5542, 5543, 5544, 3760 of 1986 and 6328 of 1987, challenging the vires of market fee levied under the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as 'the Act') are dealt with in Part I. Part II deals with CWP No. 2551 of 1988 relating to timber, Part III deals with CWP No. 121 of 1988 challenging the validity of the Haryana Rural Development Act, 1986 and CWP No. 821 of 1988 regarding the vires of the Punjab Rural Development Act, 1987.

3. CWP No. 3923 of 1986 and some connected writ petitions came up for hearing before a Division Bench of this Court. Relying on K.K. Puri v. State of Punjab, AIR 1980 SC 1008, it was argued on behalf of the petitioners that levy of market fee on dealers working in the notified market area but outside the principle market yard or sub-market yard was ultra vires, as no services were rendered to the payers of the fee. On behalf of the respondents, reliance was placed on two later decisions of the Supreme Court in Sreenivasa General Traders v. State of A. P., AIR 1983 SC 1246 and Amar Nath Om Parkash v. State of Punjab, AIR 1985 SC 218, explaining the observations in K.K. Puri's case (supra) and laying down that a broad and general correlationship is all that is required by way of quid pro quo. The learned Judges of the Division Bench pointed out that while K.K. Puri, decision was rendered by a Constitution Bench of five Judges, the later decisions were by smaller Benches and anything said therein did not override the dictum of the former. In any case, the learned Judges observed, that the matter involved a question of general importance having far-reaching consequences and, therefore, referred these cases to a larger Bench. This is how these writ petitions have been placed before us.

4. The facts in CWP No. 3923 of 1986 are fairly representative of the facts in the first set of writ petitions. The petitioner-firm is dealing in Gur, Shakkar and Khandsari in retail as well as wholesale. The petitioner brings the aforesaid items from the State of Uttar Pradesh and other States and sells them at a shop No. 545 in Old Grain Market at Moga. Moga is a Sub-Divisional Headquarter of district Faridkot in the State of Punjab. An area of about 15 KMS from the outer limits of the town as well as the town itself have been declared as notified market area under the Act. The business premises of the petitioner is situated outside the principal market yard and sub-market yard but within the notified market area. The sales at the shop of the petitioner do not take place by auction. The purchasers are mostly licensed dealers. The case of the petitioner is that no services of any kind are rendered by the respondent-market Committee to the petitioner and other dealers falling in the same category. The petitioner does not use any road constructed by the Market Committee. In fact, the roads which are used have been built and are being maintained by the Municipal Committee, Moga, or the P.W.D. Lighting arrangements on those roads have been provided by the Municipal Committee. The other civic amenities are also provided by the Municipal

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Committee. Whatever services are provided by the Market Committee, Moga, are available in the principal market yard or sub-market yard and not anywhere else in the rest of the notified market area. The Punjab Agricultural Produce Markets (Amendment and Validation) Act, 1976, amending the definition of 'licensee' was challenged by the petitioner as well as some others. The writ petitions were dismissed by this Court. The matter was taken to the Supreme Court in SLP No. 2949 of 1977 (CA No. 2361/1979) M/s. Goverdhan Dass Radhey Sham v. State of Punjab). By a short order dated December 1, 1983, the said SLP was disposed of in view of the judgment in the case of K.K.Puri (AIR 1980 SC 1008). The Market Committee framed best judgment assessment against the petitioner. A Division Bench set aside the assessment with a direction that the petitioner be given three weeks to file their objections and orders be passed afresh according to law. The objections filed by the petitioner were overruled and assessment order Annexure P-7 was passed by the Administrator, Market Committee, Moga. It was held that the petitioner was liable to pay market fee amounting to Rs. 4,04,825/- besides 75 per cent of the said amount as penalty. A demand notice was issued. The petitioner has challenged the aforesaid assessment, imposition of penalty and vires of various provisions of the Punjab Agricultural Produce Markets Act primarily on the ground that the petitioner was not liable either to obtain a licence under the Act or to pay market fee, as the Market Committee did not render any services at all to the petitioner and others of his class.

5. In the return filed by the respondents, it was stated that the petitioner being a licensee in the notified market area was liable to pay market fee. It was denied that no services were being rendered to the petitioner or other dealers of his class. In fact, all services contemplated and envisaged under the Act and the Rules framed thereunder were being rendered to the licensed dealers throughout the notified market area. It was denied that the services were confined to the principal market yard and the sub-market yard. The assessment as also the imposition of penalty were said to have been made/imposed in accordance with law.

6. In order to appreciate the various contentions advanced by learned Counsel for the parties, it is necessary to notice the salient provisions of the Act and the Rules called the Punjab Agricultural Produce Markets (General) Rules, 1962 (hereinafter referred to as the Rules).

7. According to the Preamble, the purposes of the act are : (a) better regulation of the purchase, sale, storage and processing of agricultural produce; and (b) establishment of markets for agricultural produce. Clause (a) of Section 2 defines 'agricultural produce' to mean all produce, whether processed or not, of agriculture, horticulture, animal husbandry or forest as specified in the Schedule to the Act. 'Dealer' is defined in clause (f) to mean any person who within the notified market area sets up, establishes or continue or allows to be continued any place for the purchase, sale, storage or processing of agricultural produce notified under sub-section (1) of Section 6 or purchases, sells, stores or processes such, agricultural produce. 'Licensee' is defined in clause (hh) to mean a person to whom a licence is granted under Section 10 and the rules made under the Act and includes any person who buys or sells agricultural produce and to whom a licence is granted as Kacha Arthia or Commission agent or otherwise but does not include a person licensed under Section 13. The expression 'market' is defined to mean a market established and regulated under the Act for the notified market area, The expression includes a market proper, a principal market yard and sub-market yard. 'Notified market area' is defined in clause (1) to mean any area notified under Section 6, 'State Agricultural Marketing Board is constituted under Section 3 and the Board exercises superintendence and control over the Market Committees. The provision of declaration of notified market area is to be found in Section 6(1), which empowers the State Government to declare the area notified under Section 5 or any portion thereof to be notified market area for the purposes of the Act in respect of the agricultural produce

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notified under Section 5 or any part thereof. As already pointed out, the whole of the State is divided into various market areas and was also declared as such under Section 6. Under sub-section (3) of Section 6, after the declaration of the notified market area, no person can establish or continue any place for the purchase, sale, storage or processing of agricultural produce except under a licence granted in accordance with the provisions of the Act, the Rules and the bye-laws. The sub-rule makes two exceptions, one, in favour of the producer who sells his own agricultural produce and two, those exempted under the Rules. Rule 18 of the Rules enumerates the persons exempted from taking a licence. These include confectioners and purview of parched, fried or cooked food, hawkers and petty retail shop-keepers who do not engage in any dealing in agricultural produce other than such hawking or retail sales. The explanation appended to the clause relating to petty retail shop-keepers lays down that a person whose turnover of sales and purchasers of agricultural produce does not exceed one lakh rupees during a year shall be treated as a petty retail shop-keeper. The proviso, however, further lays down that a dealer importing agricultural produce from outside the State of Punjab shall not be treated as a hawker or a petty retail shopkeeper. With the other categories of those exempted, we are not concerned for the moment. Section 7 deals with market yards and it lays down that for each notified market area there shall be one principal market yard and one or more sub-market yards, as may be necessary. Sub-section (2) makes it clear that principal market yard and sub-market yard can be declared by a notification of the State Government in respect of any enclosure, building or locality. Section 8 prohibits the Local Bodies, such as, Municipal Committee, District Board, Panchayat etc. as also any person from establishing or continuing any place within specified limits of the principal market yard or sub-market yard for being used for purchase, sale or storage or processing of any agricultural produce. The above bar, however, does not apply to a producer selling his own agricultural produce. Section 10 deals with licences. The annual fee for a licence is Rs. 100/-. A licence can be refused to a person who is an undisputed insolvent, is convicted of an offence affecting his integrity as a man of business for a period of two years of such conviction or is a benamidar for or is a partner with any person to whom licence has been refused. Section 11 relates to establishment of Market Committee for each notified market area. In the constitution of the Committee, it may be pointed out, amongst others there are two members from the licencees under Section 10 and one member from amongst licencees under Section 13(a). Section 13 relates to duties and powers of a Committee and one of the primary duties of the Committee is to enforce the provisions of the Act, the Rules and the bye-laws in the notified market area. Section 23 is the charging section, and in so far as relevant, reads as under :

"23. Levy of fees.- A Committee shall, subject to such rules as may be made by the State Government in this behalf, levy on ad valorem basis-

(i) fees on the agricultural produce bought or sold by a licensee in the notified market area at a rate not exceeding two rupees for everyone hundred rupees; and

(ii) also additional fees on the agricultural produce when sold by a producer to a licensee in the notified market area at a rate not exceeding one rupee for every one hundred rupees."

Section 25 provides for Marketing Development Fund and it lays down that all receipts of the Board shall be credited to the said fund. Similarly, there is a Market Committee Fund constituted under Section 27. The purposes for which the Marketing Development Fund can be expended are detailed in Section 26 and purposes for which Market Committee Fund may be expended are given in Section 28 of the Act. Section 30 prohibits any trade allowance except as prescribed by the Act, the Rules and the bye-laws framed thereunder. Section 33-A confers power of entry, inspection and seizure. What deserves to be noticed is that the said power is exercisable throughout the notified market area and is not confined to principal market yard or sub-marketyard.

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Section 33-B confers powers of search of a vehicle going outside the notified market area.

8. Reference may now be made to the material Rules. Rule 2(9) defines 'Kasha Arhtia' to mean a. dealer who, in consideration of commission, offers his services to sell agricultural produce. Rule 13 relates to appointment of a disputes sub-committee to resolve disputes between buyers and sellers regarding quality, weight, rate, allowances in wrappings, dirt or impurities or deductions for any cost. A panel of arbitrators is required to be maintained for each market yard. The parties to the dispute can choose any arbitrator. The decision of the Arbitrator is subject to appeal to the disputes sub-committee. Rule 17 deals with licences to dealers. A person desirous of obtaining a licence under Section 10 is required to specify in the application the area in which he wishes to carry on his business. Sub-rule (5) of the Rule lays down that a separate licence is required by a person for each place of business in the same notified area. Licence is granted in Form 'B'. A perusal of Form 'B', appended with the Rules shows that the licence specifies the place of business in para 6. Condition No. 4-A which has been inserted by notification No. 18(25)/M-I/81 5246 dated March 14, 1988, makes explicit what was earlier implicit in the conditions of licence. The condition, as now inserted, lays down that the licencee shall carry on his business in the principal market yard or sub-market yard or at his place of business specified in the licence. Rule 23 lays down that no person shall be bound to employ a broker or to pay for a broker employed by any other party to the transaction or to pay when no broker has been employed. The Commission agent is also debarred from engaging any broker without written authority from the principal. Rule 24 is material in that it has been heavily relied upon by the learned Counsel for the petitioner. Sub-rule (1) of Rule 24 lays down that all agricultural produce brought into the market for sale shall be sold by open auction in the principal or sub-market yard. Sub-rule (2) lays down that nothing in sub-rule (1) shall apply to a retail sale as may be specified in the Bye-laws of the Committee. Under sub-rule (3) the Board is empowered to fix timings for the starting and closing of the auction. Sub-rule (4) prohibits settlement of price by secret signs or secret bid and also any deduction from the agreed price being made. Sub-rule (5) prohibits auction by a person other than one engaged by the Committee. Sub-rule (6) lays down that the highest bidder acceptable to the seller shall determine the sale price. Sub-rule (7) lays down that the buyer shall be considered to have thoroughly inspected the produce for which he has made a bid and shall have no right to retrace it. Sub-rule (8) lays down the filling in of particulars in Form 'H' which is required to be secured by the buyer as well as the seller. Register 'HM' is required to be maintained for entering the produce which remains unsold during the course of auction. Sub-rule (9) makes the buyer responsible to get the agricultural produce weighed once the auction is concluded. Sub-rule (10) debars a person engaged by a producer to sell agricultural produce on his behalf from acting as a buyer either for himself or on behalf of another person without the prior consent of the producer. Sub-rule (11) lays down that the Kacha Arhtiya shall make payment to the seller immediately after the weighment is over. Sub-rule (12) requires the Kacha Arhtiya to execute a memorandum in Form 'I' and deliver the same to the buyer on the same day. Sub-rule (14) lays down, that the agricultural produce sold shall be delivered after the Kacha Arhtiya or where none has been employed the buyer gives to the seller a sale voucher in Form 'J'. rule 24-B makes agricultural produce trilled without a valid licence liable to confiscation. Rule 25 makes a provision with regard to weighment. It declares that all transactions in the market shall be deemed to have been entered into in accordance with the standards fixed under the various sub-rules. It makes a provision for test weighment as also for having the weights checked for their correctness. Rule 26 deals with weighing instruments, weights and measures, and inspection and seizure in order to enforce the rules made in this behalf. Rules 27 and 28 relate to weigh bridges and measuring yards, certificates of weighment or measurement and places at which agricultural

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produce shall be weighed or measured. Rule 29, which has been impugned, substantially reproduces Section 23 of the Act, and proceeds to note that wheat imported from foreign countries and certain other agricultural produce shall not be liable for payment of fee Sub-rule (2) is important and reads as under

"(2) The responsibility of paying the fees prescribed under sub-ride (1) shall be of the buyer and if he is not a licensee then the seller who may realise the same from the buyer. Such fees shall be leviable as soon as an agricultural produce is bought or sold by a licensee."

Sub-rule (3) lays down that the fee shall be paid to the Committee within four days of the transaction. Sub-rules (7) and (8) are also important and read as under:

"(7) For the purpose of this rule agricultural produce shall be deemed to have been bought or sold in a notified market area-

(a) If the agreement of sale or purchase thereon is entered into in the said area; or

(b) If in pursuance of the agreement of sale or purchase the agricultural produce is weighed in the said area; or

(c) If in pursuance of the agreement of sale or purchase the agricultural produce is delivered in the said area to the purchaser or to some other person on behalf of the purchaser;

(d) If the agricultural produce sold or bought otherwise than in pursuance of an agreement of sale or purchase and is delivered in the said area to the purchaser or to some other person on behalf of the purchaser.

(8) If in the case of any transaction any or more of the acts mentioned in sub-rule (7) have been performed within the boundaries of two or more notified market areas the market fee shall be payable to the Committee within, whose jurisdiction the agricultural produce has been weighed in pursuance of the agreement of sale or, if no such weighment has taken place to the Committee, within whose jurisdiction the agricultural produce is delivered."

Rule 30 relates to exemption from payment of market fee. Sub-rule (1) lays down that no market fee shall be levied where such fee has already been paid in the same notified market area or in another notified market area within the State. Rule 31 deals with account of transactions and fees to be maintained by the licensed dealer. Sub-rule (1) requires a return in Form 'M' showing all sales and purchasers of each transaction within four days to the Committee. Rule 34 makes a provision for the prevention of adulteration of agricultural produce. Rule 37 relates to publication of marketing information.

9. The history of marketing legislation was traced in P.P. Kutti Koya v. State of Madras, AIR 1954 Mad 621, M.C.V.S. Arunachala Nadar v. State of Madras, AIR 1959 SC 300 and M/s. Amar Nath Om Parkash's case (AIR 1985 SC 218) (supra). The salient features of the history are that marketing legislation has been a well recognised features of all commercial countries since the early part of this century. The object of enactment of marketing laws was to protect the producers of commercial crops from being exploited by middlesmen and profiteers and to enable them to secure a fair return for their produce. In India, the beginning was made with cotton which was in great demand in England. Markets were established in Central Provinces and Berar through legislation. In 1919 the Indian Cotton Committee recommended that such markets be established in every cotton growing area. The Royal Commission on Agriculture in India submitted its report in 1928. This was followed by several Expert Committees. The findings of these Committees were that the village producer seldeom obtained a proper price because of various reasons. He was chronically indebted to the middlemen. The bargains were seldom fair to the sellers. The producer had no holding power. In early thirties, marketing legislation covering principal commercial crops, such as cotton, groundnuts and tobacco, was undertaken. In course

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of time, such legislation has been enacted throughout the country and covers a fairly large number of agricultural produce. The present Act replaced an earlier Act with the same title which was enacted in 1939 in so far as Punjab is concerned and in 2,004 B.K. in so far as the erstwhile Pepsu is concerned. The Punjab Act of 1939 like similar enactments in the field of marketing legislation, was the result of a long, exploratory investigation by experts in the field, conceived and enacted to regulate the buying and selling of commercial crops by providing suitable and regulated markets by eliminating middlemen and bringing face to face the producer and the buyer, so that they may meet on equal terms, thereby eradicating or at any rate reducing the. scope for exploitation in dealings.

10. Although there is no generic difference between 'tax' and 'fee', the two have vital distinction in their connotation and legal incidence, The definition of 'tax' and 'fee' given in the Commissioner, Hindu Religious Endowments Madras v. Sri, Lakshmindra Thittha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282, which is considered a, leading authority on the subject, has often been referred to and relied upon in subsequent cases. The admitted case on both sides is that market fee is a fee as distinct from a tax. Fee itself may be of various kinds, K.K.Puri's case (AIR 1980 SC 1008) mentions about three types of fee (vide para 15); (i) fee for licences prescribed as a regulatory measure on payment of a small amount e.g. the licence fee under Sections 10 and 13 of the Act; (ii) fee in the nature of grant of exclusive privilege of the State e.g. the excise licences; and (iii) those in which element of quid pro quo is necessary. Admittedly, the present cases fall in the third category and imposition of market fee can be sustained only if it is shown that there is quid pro-quo by way of services to the payer of the fee. The petitioners have obtained licences as dealers and they do not dispute taking of such licences as a regulatory measure in the public interest. In fact, in K.K. Puri's case such licences were held justified. What the petitioners dispute is that only because they have obtained licelices is no reason why market fee should be levied on there. The real challenge of the petitioners, therefore, is to the levy of market fee as distinguished from licence fee.

11. From the side of the petitioners, the main arguments were addressed by Shri H.L.Sibal, Sr. Advocate, representing the petitioners in one set of writ petitions. These were adopted by the other learned Counsel with very little addition.

12. It will be convenient to summarise the contentions of Shri Sibal as follows :-

(i) Under the Act and the Rules a dealer's licence is required only for carrying on business in the principal market yard or sub-market yard and not outside in the rest of the notified market area for these reasons;

(a) The whole of the notified market area is too big air are for any effective control and supervision by a particular Market Committee;

(b) Section 6(3) read with Section 10 of the Act requires a licence by a dealer for doing business in the principal market yard or sub-market yard;

(c) Only sale or purchase of agricultural produce by way of auction taking place in the principal market yard or sub-market yard are within the purview of the Rules for purposes of market fee. Transactions of sale or purchase effected without resorting to auction i.e. by retail or wholesale is, therefore, not sought to be covered by the Act and the Rules;

(d) The various Forms prescribed indicated that market fee was leviable only in case of sale by open auction.

(ii) Since fee is regarded as a sort of return or consideration for service rendered, it is necessary that the lavy of fee should, on the face of the legislative provision, be correlated to the expenses incurred by the levying agency in rendering the services. (iii) Broadly speaking, it must be shown that quite a substantial portion of the amount of fee realised is spent for the special benefit of the prayer thereof.

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(iv) The payer of the fee is not the person on whom the burden of fee ultimately falls, but the licencee Who is primarily responsible for accounting and payment of market fee.

(v) Almost the entire area of the States of Punjab arid Haryana is covered by different notified market areas and large, as, it is, a notified market area can in no sense, be equated with or considered to be principal market yard or sub-market yard, nor has it been so declared,

(vi) The Act and the Rules framed thereunder envisage services only in the principal market yard or sub-market yard and not, in the entire notified market area. No services contemplated under the Act can be or are being rendered to the licencees working in the notified, market area but outside the principal market yard and sub-market yard. In other words, the Committee is primarily concerned with providing facilities in the regulated market vide Section 13(1)(a) of the Act.

(vii) Expenditure on ordinary municipal services or governmental functions could not be considered as being for the special benefit of the payer of the fee.

(viii) Rule 31(9) of the Rules regarding imposition of penalty is ultra vires the provisions of the Act, in that, the said Rule has not been framed under any power given under the Act. In any case, Rule 31(9) suffers from excessive delegation as no guidelines have been laid down therein for determining the extent of penalty which can be imposed by the Market Committee.

(ix) Sections 6(3) and 23 of the Act and Rules 29(f) and 31(9) of the Rules are ultra vires.

13. The contention mentioned as point No. (i) above is, if we may say so, based on a misreading of the provisions of the Act and the Rules.

14. A bare reading of Section 6(3) of the Act shows that unless a person falls in any of the exempted categories he can carry on the business in question anywhere in the notified market area only under a licence. Under the proviso to Section 6(3) ibid the exemption is in favour of a producer and a person who purchases for his private use. Rule 18 read with Section 6(3) give some more exempted categories. For the present purposes the exempted categories include petty retail shopkeepers. According to the Explanation to clause (c) of sub-rule (1) of Rule 18 read with the definition of 'retail sale' given in Section 2(q), a person whose turnover of sales and purchases of agricultural produce does not exceed one lakh rupees during a year, is treated as a petty retail shop-keeper. A further proviso to the Explanation shows that a dealer importing agricultural produce from outside the State of Punjab shall not be treated as a petty retail shop-keeper. On both the counts, namely, the limit of turnover as well as, the admitted case of Gur, Sakkar and Khandsari being imported by the petitioner from the State of Uttar Pradesh and other States i.e. outside the State of Punjab, the petitioner is not a retail seller. It may be added that under the analogous provision in force in Haryana the limit for purposes of a retail dealer is Rs. 60,000/- per year or Rs. 5,000/- during any month. In fact, the proviso to sub-section (1) of Section 10 relating to dealer's licence reiterates that the licence is required for any person carrying on business specified in sub-section (3) of Section 6 in a notified markets area. Form 'B' of the licence in question mentions the name of the notified market area and column (6) is meant for specifying the place of business. At the foot of the licence, the conditions are mentioned. Condition. No. 4-A is that the licencee shall carry on his business in the principal market yard or, at his place of business specified in the licence. The requirement of the Rules, therefore, is that a licence is required to be issued for a specified place in the notified market area. In fact, sub-rule (5) of Rule 17 expressly requires that a separate licence shall be required by a person for more than one places being used for his business in the same notified market area. Unless a place is specified in the licence, there can be no effective supervision by the Market Committee. It is in the sense explained above that the following observations occurring in paragraph

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graph 25 of K.K.Puri's, case (AIR 1980 SC 1008) (supra) and relied upon by, the learned counsel, were made and are to be, understood :-

".......There will be no sense in specifying the place of business in the licencee if the licensee is to be permitted to establish his place of business anywhere in a notified market area which is too big and extensive for the control and supervision of a particular market committee. ...... ...... ..... ..... After all the whole abject of the Act is the supervision and control of the transactions of purchase by the traders from the agriculturists in order to prevent exploitation of the latter by the former. The supervision and control can be effective only in specified localities and places and not throughout the extensive market area."

These observations thus referred to a, specified place or places in the notified market area and not to a place in the principal market yard or sub-market yard.

15. With regard to point noted at (i)(c) above, a reading of Rule 24 of the Rules is enough to show that auction sale are confined to the agricultural produce brought into the market i.e. principal market yard or sub-market yard, There is no provision. which debars sales either in retail or wholesale i.e. sales other than by open auction outside the principal market yard or sub-market yard. This very question arose in Prem Chand Ram Lal v. The Punjab State 1970 Pun LJ 432 : Dismissing the LPA against the judgment of a learned single Judge, a Division Bench of this Court observed that Rule 24 has no application to the sale transaction within the market area. The Rule deals with agricultural produce that is brought into the principal market yard or sub-market yard where it is sold by open auction. It was further observed that Rule 29 deals with all other buying and sellings than those covered by open auction in Rule 24 (vide paragraph 6 at page 437). We are in respectful agreement with the above observations.

16. Forms H,HH, I and J have expressly been made with regard to sale by auction under Rule, 24. The material form for the present purposes is From 'M' i.e. return of daily purchasers and sales which, inter alia, all licensed, dealers in the notified market area are required to submit to the Market Committee. It is significant that there is nothing in Form 'M' which may restrict the transactions of buying or selling to sale by auction only.

17. Mr. Sibal contended that the charging Section 23 of the Act itself aid down that the levy, of market fee was subject to the rules made by the State Government. According to the learned Counsel, a reading together of Section 23 and Rule 24 indicated that what was intended to be covered was sale/purchase by open auction. We find no merit in this Contention. The mandate of the legislature to a Market Committee for levying the fee on agricultural produce bought or sold by a licensee in the notified market area at a rate not exceeding the maximum, is clearly given in the section, The said mandate is to be carried out subject to any special provision made, in the, Rules. It is well known that such provisions in various statutes are made to bring about a certain flexibility, so that according to exigencies of situation the Government can bring about necessary amendment in the Rules and thereby ensure a smooth working of the enactment. It is well known that the procedure of amending the Rules is far simpler and quicker compare with amendment of a statute. There is no warrant for the proposition that the 'rules' referred in Section 23 was confined to Rule 24 only. It does as well refer to rules for exempting persons from paying market fee and more importantly regarding procedure for the imposition and collection of the fee. Rule 29(7) which was the concerned rule in British India Corporation Limited v. Market Committee Dhariwal, AIR 1983 SC 162, defines what is 'brought or sold' within the meaning of Rule 29 as also Section 23 of the Act. This is apart from saying that Rule 24 itself deals with and is confided to agricultural produce brought into the principal market yard or sub-market yard and does not apply to buying or selling etc. outside thereof in the remaining notified market aea. It is, therefore, not open to the petitioners to contend

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that the sales within the purview of the Act are only sales taking place within the principal market yard or sub-market yard or that only by open auction,

18. Contentions at points (ii) to (vii) and (ix) are based on various observations in K.K. Puri's case (AIR 1980 SC 1008) which is the sheet-anchor of Shri H.L. Sibal's arguments, Learned counsel also submitted that the decision in K.K. Puri was rendered by a Constitution Bench of five Hon'ble Judges and it was reiterated in two later Constitution Benches. These decisions are Ram Chander Kailash Kumar v. State of Uttar Pradesh AIR 1980 SC 1124, in which K.K. Puri's case was described as a 'settler' and Shri Swamiji of Shri Admar Mutt etc. v. The Commissioner Hindu Religious and Charitable Endowments Dept., AIR 1980 SC 1. The law laid down in K.K. Puri's case, according to the learned counsel, held the field. Learned counsel argued that the respondents had not even attempted to establish any correlationship between the market fee realised from the petitioner and other licensed dealers of his class and the services rendered for their special benefit in the market area in respect of the transactions of sale or purchase of agricultural produce. The levy of market fee could not, therefore, be sustained and the provisions for levying of market fee were thus without the authority of law and the demand raised by the Market Committee was illegal.

19. Shri Sibal contended that the decision on in K.K.Puri's case (AIR 1980 SC 1008) (supra.) was binding on this Court in preference to the later smaller Bench decisions. For this contention, he relied on The State of U. P. v. Ram Chandra Trivedi, AIR 1976 SC 2547. In paragraph 22 it was laid down as under :

"......Where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard of or skirt the views expressed by the larger benches. The power course for a High Court in such a case, as observed by this Court in Union of India v. K.S. Subramanian (Civil Appeal No. 212 of 1975 decided, on July 30,1976) (reported in AIR 1976 SC 2433) to which one of us was a party, is to try to find out and follow the opinion expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court which practice hardened as it has into a rule of law is followed by this Court itself."

Reference is also made to Ganpati Sitaram Belvakar v. Waman Shripad Mage, AIR 1981 SC 1956, and State of Orissa v. Titaghur Paper Mills Company Limited, 1985 Supp SCC 280 : (AIR 1985 SC 1293). It will be seen that none of the cases relied upon by the learned counsel for the petitioners dealt with a case where the latter Benches may have analysed and explained the earlier judgment of the larger Bench of the Supreme Court, The abstract proposition that where there is a conflict between the law declared by a larger Bench and a small Bench, the former will prevail, does not help in resolving the present problem. In the present case, the smaller Benches analysed and explained the earlier judgment of the Constitution Bench. This very question was examined by a Full Bench of our Court in M/s. Daulat Ram Trilok Nath v. State of Punjab, AIR 1976 Punj and Har 304. It was held that construction which the Supreme Court itself places on an earlier precedent is obviously binding and authoritative. To the same effect is another decision of a Full Bench of this court in the State of Punjab v. Teja Singh, 1976 Cri LJ 1648. It was observed :

"....... When an earlier judgment of the Supreme Court is analysed and considered by a later Bench of that Court then the view taken by the latter as to the true ratio of the earlier case is authoritative. In any case, that view is binding on the High Courts."

A Full Bench of the Gujarat High Court in Nizamuddin Suleman v. New Shorrock Spg. and Mfg. Mills Co. Ltd., Nadiad (1979) 20 Guj LR 290 : (AIR 1980 NOC 112), after quoting from Union of India v. K.S. Subramaniam, AIR 1976 SC 2433, concluded the legal position in the following words :

"Of course, if the views expressed earlier by a larger Bench of the Supreme Court have

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been explained even by a smaller Bench in a subsequent decision, the explanation by the smaller bench of the Supreme Court would be required to be followed by High Courts before whom the earlier decision of the larger Bench and the subsequent explanation of the same judgment by the smaller bench are cited. Otherwise, as indicated by Beg, J. in Union of India v. K.S.Subramanian (supra) the High Court is bound to follow the decision of the larger Bench of the Supreme Court."

Having considered the matter carefully, we are of the view that the later decisions, even though by smaller Benches, have analysed and explained the observations of the Constitution Bench in K.K. Puri's case (AIR 1980 SC 1008) (supra) and the law as explained in those later decisions is binding on us.

20. This brings us to a consideration of those later decisions:

21. In Sreenivasa General Traders' case (AIR 1983 SC 1246) (supra) inter alia, the challenge was to the levy of market fee on transactions taking place in the notified market area but outside the principal market yard or sub-market yard under a similar enactment known as Andhra Pradesh (Agricultural Product and Livestock) Markets Act, 1966. Reliance was placed on certain observations in K.K.Puri (AIR 1980 SC 1008). The Court said that the observations relied upon were not to be read as Euclid's theorems, nor as provisions of a statute. It was emphasised that the observations must be read in the context in which they appeared. With regard to the binding effect of the observations in K.K. Puri's case it was observed that the said decision did not lay down any legal principle of general applicability. It was further observed that the decision in K.K. Puri was distinguishable on facts. In that ease there was sufficient material showing that the income from the market-fee in the State of Punjab had become a source of revenue and, therefore, the increase in the rate of market fee from Rs. 2/- per 100 rupees to Rs. 3/- was quashed. The other material facts which were undisputed in the case of K.K. Puri were set out in some detail to show that the case was distinguishable on facts (vide para 28 of the report). The Court said that every judgment must be read as applicable to the particular facts proved or assumed to be proved since the generality of the expressions which may be found there were not intended to be expositions of the whole law but governed or clarified by the particular facts of the case in which such expressions were to be found. It was pointed out that there were certain observations to be found in the judgment in K.K. Puri's case, which were really not necessary for purposes of the decision and were beyond the occasion and, therefore, they had no binding authority though they might have merely persuasive value. The Court proceeded to observe that the traditional view that there must be actual quid pro quo for a fee had undergone a sea change in the subsequent decisions. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to, render specific services to a specified area or class; it may be of no consequence that the State may ultimately and indirectly be benefited by it. The power of any Legislature to levy a fee is conditioned by the fact that there must be "by and large" a quid pro quo for the services rendered. The co-relationship between the levy and the services rendered expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a reasonable relationship between the levy of the fee and the services rendered. It was clarified that the expression "payer of the fee" used in various authorities, including K.K.Puri's case, represented collectively the class of persons to whom the benefit was directly intended by the establishment of a regulated market in notified agricultural produce, livestock or products of livestock and not the actual individual who belonged to that class i.e. the trader. It was further observed that though the traders initially paid the market-fee but there was passing on of liability by them to the consumer as part of the price. It was, therefore, held that observation in K.K.Puri's case (supra) as to the service to the payer of fee must be understood as meaning service to the user of the market. The services are rendered

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to the users of the market i.e. the growers of agricultural produce, livestock or products of livestock and persons engaged in the business of purchase and sale of the same. The argument that since the services are rendered by the Market Committee within the market proper, there is no liability to pay market fee on purchase or sale taking place in the notified market area but outside the market, was rejected as fallacious. It was said that the contention did not take note of the fact that establishment of a regulated market for the purchase or sale of notified agricultural produce etc. was itself a service rendered to persons engaged in the business of purchase or sale of such commodities. The levy of market fee on traders operating in the notified market area but outside the principal market yard or sub-market yard, was upheld.

22. Learned counsel for the petitioner tried to distinguish the above authority by pointing out that under section 7(6) of the Andhra Pradesh Act, there was a ban on carrying on of the business of purchase or sale of notified agricultural produce etc. in the notified market area outside the principal market yard or sub-market yard. There is no such ban in the Punjab Act as applicable in the State of Punjab or the State of Haryana, In our view, this is a distinction without a difference because notwithstanding the said ban it was recognised as a fact in paragraph 22-A of the report that several traders who challenged the levy of market-fee were, in fact, carrying on their business in the notified market area outside the regulated markets.

23. In Southern Pharmaceuticals and Chemicals, Trichur v. State of Kerala, AIR 1981 SC 1863, the petitioner placed reliance on certain observations in K.K. Puri's case (AIR 1980 SC 1008) (supra) with regard to the nature and extent of service to be rendered by way of quid pro quo for levying of fee. The Supreme Court observed that what was required was a broad correlationship between the fee collected and the cost of services rendered, In paragraph 25 of the report, it was observed

"........It is also increasingly realised that the element of quid pro quo stricto senso is not always a sine quo non of a fee."

In Municipal Corporation of Delhi v. Mohd Yasin, AIR 1983 SC 617 their Lordships said that words and phrases have not only a meaning but also a content, a living content which breathes, and so, expands and contracts. The philosophy and language of law, it was observed, were no exceptions. The concept under reference was of quid pro quo. Regarding observations in K.K. Puri's case, a number of authorities were reviewed and the conclusion was stated in para 9 in the following words :

"Though a fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere casual relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the fees are also benefited does not detract from the character of the fee. In fact the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. Nor is the Court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc. against the amount of fees collected so as to evenly balance the two. A broad correlationship is all that is necessary. Quid pro quo in the strict sense is not the one and only true index of a fee; nor is it necessary absent in a tax."

(Emphasis added)

24. Again in Amar bath Om Prakash v. State of Punjab, AIR 1985 SC 218, their Lordships said with regard to observations in K.K.Puri's case (AIR 1980 SC 1008) that the Court did not purport to lay down any new principles and could not have intended to depart from the series of earlier cases of the Supreme Court. It was pointed out that the general observations made in K.K.Puri's case had been so misunderstood and misinterpreted as to lead to some confusion and public mischief. Their Lordships explained the observations made in K.K.Puri's case and Heavily relied on the analysis and

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exposition undertaken by the Court in the earlier decision in Sreenivasa General Traders' case (AIR 1983 SC 1246) (supra) dealt with above. It was reiterated that a broad and general correlationship is all that is necessary. Quid pro quo in the strict sense is not the one and only true index of fee whereas it is not necessarily absent in a tax.

25. It is significant to note that CWP No. 1421 of 1980 (M/s. Borakia Dal Mills v. State of Haryana) and a number of connected writ petitions, which were directed against the vires of the Punjab Agricultural Produce Market (Haryana Second Amendment and Validation) Act, 1980, were dismissed by a Constitution Bench of the Supreme Court by order dated December 3, 1985. In doing so, their Lordships observed that the challenge to an analogous Act, namely, the Punjab Agricultural Produce Markets (Punjab Amendment) Act, 1980, had been negatived in M/s. Amar Nath Om Prakash's case (AIR 1985 SC 218) (supra). Their Lordships expressed agreement with what had been decided in M/s. Amar Nath Om Parkash's case. The point of significance is that the law laid down by their Lordships in M/s. Amar Nath Om Parkash's case was expressly approved by the Constitution Bench. What is, therefore, laid down in M/s. Amar Nath Om Parkash's case, dealt with in the preceding paragraph above, stands approved by a Constitution Bench and, therefore, for various reasons which have been discussed above or are to be discussed hereinafter, the Court has to choose between the pronouncement of two Constitution Benches of the Supreme Court. We have undertaken this exercise and we are of the view that the observations in K.K. Puri's case (AIR 1980 SC 1008) must be read in the light of the analysis and exposition made by the later Benches of the Supreme Court itself. The next authority to be referred is The City Corporation of Calicut v. Thachambalath Sadasivan, AIR 1985 SC 756, after reviewing a number of authorities, the conclusion was stated in paragraph 7 in the following words :

"7. It is thus well settled by numerous recent decisions of this Court that the traditional concept in a fee of quid pro quo is undergoing a transformation and that though the fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere casual relation may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee."

26. In a recent decision in P.M. Ashwathanarayana Setty v. State of Karnataka, AIR 1989 SC 100, their Lordships of the Supreme Court considered it unnecessary to review the earlier pronouncements of the Court on the conceptual distinction between fee and tax. However, the legal position was stated in these words (at p. 110 of AIR) :

"........the essential character of the impost is that some special service is intended or envisaged as a quid pro quo to the class of citizens which is intended to be benefited by the service and there is a broad and general correlation between the amount so raised and the expenses involved in providing the services, the impost would partake the character of a 'fee' notwithstanding the circumstance that the identity of the amount so raised is not always kept distinguished but is merged in the general revenues of the State and notwithstanding the fact that such special services, for which the amount is raised, are, as they very often do, incidentally or indirectly benefit the general public also. The test is the primary object of the levy and the essential purpose it is intended to achieve. The correlationship between the amount raised through the 'fee' and the expenses involved in providing the services need not be examined with a view to ascertaining any accurate arithmetical equivalence or precision in the correlation; but it would be sufficient that there is a broad and general correlation . . . . . .... ... ... ... ... ... ... ..."

27. In Ram Chandra Kailash Kumar and Co. v. State of U. P., AIR 1980 SC 1124, the

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contentions raised were listed as points Nos, 1 to 24. Point No. 1 formulated was :

"(1) Big areas consisting of towns and villages have been notified as Market Areas without rendering any service. This is contrary to the whole object of the Act and the concept of fee."

Points Nos. 1 to 4 were dealt with together and the contention relating to point No. 1 was repelled. The judgment of the Constitution Bench was delivered by Untwalia, J. (as his Lordship then was), who spoke for the Constitution Bench in K.K.Purrs case (AIR 1980 SC 1008) (supra).

28. Quite some discussion took place at the Bar as to the precise connotation of the expression "payer of the fee". Shri Sibal referred to para 8 of the decision in K.K. Puri's case (AIR 1980 SC 1008), where the argument raised on behalf of the Haryana Marketing Board was that the services rendered were to be correlated to those on whom the ultimate burden of the fee falls. It was pointed out by Shri Sibal that the above contention was expressly rejected, as 'neither logical nor sound' and it was held that, in fact, the licensed trader was "payer of the fee". This acquires significance in the context of services being provided to the 'payer of the fee' by way of quid pro quo. It was pointed out in Sreenivasa General Traders' case (AIR 1983 SC 1246) (supra) that in the later decision in Ram Chander Kailash Kumar's cage (AIR 1980 SC 1 124) (supra) Untwalia, J (as his Lordship then was) speaking for the Court, had considerably narrowed down his observation in K.K. Puri's case at page 1129 of the report saying :

"The fee realised from the payer of the fee has, by and large to be spent for a special benefit and for the benefit of other persons and with the transactions of purchase and sale in the various Mandis. (vide para 32 of the report).

(Emphasis added)

29. The conclusion reached in Sreenivasa General Traders' case (supra) was that the expression "payer of the fee" used by the Supreme Court in various authorities represented collectively the class of persons to whom the benefit is directly intended by the establishment of a regulated market in the notified agricultural produce, livestock or products of livestock and not the actual individual who belongs to that class i.e. the trader. More importantly, it was further observed that no doubt the petitioners, who were traders in that case, initially paid the market fee, there was passing on of liability by them to the consumer as part of the price. It was, therefore, pointed out that the observation in K.K.Puri's case regarding services to the payer of the fee must, therefore, be understood as meaning services to the users of the market. The services are rendered to the users of the market i.e. the growers of agricultural produce, livestock or products of livestock and persons engaged in the business of purchase or sale of the same. (vide para 37 of the report).

30. Apart from the usual economic tendency to pass on the burden to the next person, there is an express provision in Rule 29(2) of the Rules for the seller to pass on the burden of the market fee to the buyer. Since the burden of the market fee is passed on to the buyer, the incidence of the market fee is borne by the consumer who ultimately buys the agricultural produce. In other words, the burden is not borne by the trader. There will be thus no warrant for focussing attention on services rendered by the Market Committee to the traders in respect of the transactions effected by them. The services rendered by the Market Committee in the whole of the notified market area have to be viewed from a broader angle of persons who use the market area whether as producer or traders or consumers. The observations in K.K. Puri's case (AIR 1980 SC 1008) have to be understood accordingly as explained in Sreenivasa General Traders' case (AIR 1983 SC 1246).

31. Shri Anand Swaroop, Sr. Advocate, arguing for the Marketing Board, Haryana, put forward yet another reason for preferring the view as to the connotation of payer of the fee as laid down in Sreenivasa General Traders' case (supra). He referred to four

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decisions of Constitution Bench of the Supreme Court, in which a distinction had been made between the payer of the fee and the machinery for its collection. It was laid down that the real character of the impost was determined by the actual payer of the tax and not the instrumentality devised by the government for collection of the tax. The authorities cited in this behalf are

1) State of Bombay v. R.M.D. Chamarbaugwala. AIR 1957 SC 699 (Para 23);

2) R.C.Jail Parsi v. The Amalgamated Coalfields Ltd., AIR 1962 SC 1281 (paras 7 and 8);

3) Rai Ramkrishna v. State of Bihar, AIR 1963 SC 1667 (Para 13);

4) Khverbari Tea Co. Ltd. v. State of Assam. AIR 1964 SC 925 (paras 20 to 23)

Shri Sibal did not, as in fact he could not, dispute the principle laid down in the aforesaid cases. We have, therefore, no difficulty in holding that there is no reason to construe the expression "payer of the fee" in narrow terms so as to confine the same to traders alone to the exclusion of other users of the market including those on whom burden of the fee ultimately rests. It follows that there is no substance in the contentions mentioned at points (iii) and (iv) formulated above.

32. Even though this may amount to some sort of repetition, it deserves to be highlighted that eventually the levy of market fee at the rate of Rs. 2/- per 100 rupees under the Act was expressly upheld in K.K. Puri's case (AIR 1980 SC 1008) in the following words :-

"But taking a reasonable and practical view of the matter and on appreciation of the true picture of justifiable and legal expenditure in relation to the market fee income, even though it had to be done on the basis of some reasonable guess work, we are not inclined to disturb the raising of an imposition of the rate of market fee up to Rs. 2/- per hundred rupees by, the various Market Committees and the Boards both in the State of Punjab and Haryana. After all, considerable development work seems to have been done by many Market Committees in their respective markets. The charging of fee @ Rs. 2/-, therefore, is justified and fit to be sustained. We accordingly do it." (vide Para 54 of the report).

In other words, what was upheld teas the charging S.23 of the Act. The said section expressly empowers the Market Committee to levy market fee on the agricultural produce bought or sold by a licencee in the notified market area. To the same effect is the provision in R.29 of the Rules. There is no reason to substitute the words 'principal market yard' or 'sub-market yard' for the words 'notified market area' in the context of licensed dealers in S.23 or R.29. The only conclusion is that market fee is leviable throughout the notified market area.

33. Precisely the same contention i.e. services to the traders in the notified market area outside the principal market yard or sub-market yard was considered and rejected by a Full Bench of this Court in M/s. Harnam Dass Lakhi Ram v. State of Punjab, AIR 1978 Punj and Har 53 (vide Para 31 of the report). Civil Appeal No. 2361 of 1979 (Harnam Dass Lakhi Ram v. State of Punjab) was dismissed by the Supreme Court by a short order dated December 1, 1983, to the effect that the SLP and the writ petitions listed therewith were dismissed in view of the order passed in K.K.Puri' case (AIR 1980 SC 1008) (supra). The petitioners thereafter moved an application for review, which was subsequently dismissed as withdrawn. In other words, the aforesaid Full Bench decision was not set aside by their Lordships of the Supreme Court on the point of' licensed traders in the notified market area outside the principal market yard or sub-market yard being liable to pay the market fee under the Act.

34. Shri Sibal pointed out that no licences under S.10 were insisted upon, nor any market fee levied on dealers working in the notified market area outside the principal market yard or sub-market yard during the period 1978 to 1985. It was only thereafter

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that the Market Committee had spread its net wide enough to include the petitioners and other dealer falling in that class. This was disputed by learned counsel appearing for the opposite side. We were shown a number of cash memos and vouchers relating to the year 1980 showing various dealers outside the principal market yard or the sub-market yard to have charged market fee on transactions relating to agricultural produce. The contention of Shri Sibal cannot be accepted: firstly for the reason that no such clear cut case was pleaded in the petition and the petitioners must be held bound by their pleadings, and, secondly, there can be no estoppel against the statute. If the levy has been imposed and if it is found as a result of the present exercise that the levy is valid, the petitioners cannot succeed even if it is assumed that until 1985 the Committee did not in fact insist upon the petitioners obtaining the licences or paying the market fee. This is, however, subject to law of limitation and in appropriate cases if the petitioners take the plea of limitation in regard to assessment for a particular period, it would be the duty of the assessing authority to consider the question and decide the same according to law.

35. Under S.13(1)(a) of the Act, relating to duties and powers of the Market Committee, the duties include the enforcement of the provisions of the Act and the Rules and Bye-laws made thereunder in the notified market area. In other words, the enforcement of the provisions of is not confined to the principal market yard and sub-market yard. In Immidisetti Ramakrishnaiah and Sons, Anakapalli v. State of Andhra Pradesh, AIR 1976 Andh Pra 193, it was contended that the facilities provided were confined to the market proper and did not extend throughout the notified area. Repelling the contention, a Division Bench of the Andhra Pradesh High Court observed (at p. 195 of AIR):

"The establishment, maintenance and improvement of the market is one of the purposes for which the market committee fund might be expended under S.15 of the Act. The other services such as the provision and maintenance of standard weights and measures, the collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of notified agricultural produce, livestock and products of livestock, schemes for the extension or cultural improvement of notified agricultural produce including the grant of financial aid to schemes for such extension or improvement within such area undertaken by other bodies or individuals, propaganda for the improvement of agricultural produce, livestock and products of livestock and thrift, the promotion of grading services, measures for the preservation of the foodgrains, etc., are not services which are confined to the market area only. They are services which are required to be performed by the market committee and which may be rendered throughout the notified market area without being confined to the market."

The same conclusion was reached by another Division Bench of Andhra Pradesh High Court in Sri Vijaya Cotton Traders v. State of Andhra Pradesh, AIR 1981 Andh Pra 203. The Punjab Act is substantially similar to the Andhra Pradesh Act and a reading of the various provisions of the Act under consideration and the Rules and Bye-laws made thereunder, inter alia, reveals the rendering of the following services :

(1) A common place is provided for seller and buyer to meet and facilities are offered by way of space, buildings and storage accommodation.

(2) Market practices are regularised and market charges clearly defined and unwarranted ones prohibited.

(3) Correct weighment is ensured by licensed weighmen and all weights are checked and stamped.

(4) Payment on hand is ensured.

(5) Provision is made for settlement of disputes.

(6) Daily prevailing prices are made available to the grower and reliable market information provided regarding arrivals, stocks, prices, etc.

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(7) Quality standards are fixed when necessary and contract forms standardized for purchase and sale.

36. The amount realised as market fee under S.23 of the Act is credited to the Market Committee Fund constituted under S.27 of the Act. A percentage of the amount realised is required to be given by the Committee to the Marketing Board to be credited to the Marketing Development Fund established under S.25 of the Act. These amounts can be spent only for purposes detailed in Ss.8 and 26 respectively. These purposes came in for a close scrutiny in K.K. Puri's case (AIR 1980 SC 1008) (supra) some of the purposes were not approved by their Lordships. We were informed at the hearing of the present petitions that no amount was being spent for purposes which were not approved by their Lordships in K.K. Puri's case since the date of that decision. In other words, the amount is spent only for purposes laid down in the Act and approved by the apex Court and for no other purpose. Thus, the amount of market fee is earmarked only for approved purposes which is to render services throughout the notified market area. That amount is not available nor in fact is being spent for any governmental functions.

37. Arguing for some of the petitioners, Mr. B.S. Malik sought to add two points to what Shri Sibal had argued. These are :

(1) Retail sales are outside the purview of the Act; and

(2) Unless a separate market yard is established for timber, no market fee can be charged in regard to sale or purchase of timber.

In support of point No. (1), learned counsel relies on Jan Mohd. v. State of Gujarat, AIR 1966 SC 385. This was a case under the Gujarat Agricultural Produce Markets Act, 1964. On the basis of the provisions of the Gujarat Act and the Rules framed thereunder, it was conceded by the Solicitor General appearing for the State of Gujarat that the Act read with the Rules did not purport to place any restriction upon the retail transactions in agricultural produce (towards the end of paragraph 12 at page 392 of the report). Apart from the concession, we find that the provisions of the Gujarat Act were materially different from the provisions of the Punjab Act, under consideration. "Retail seller" is determined under the Act by reading S.2(q) with R.18(1)(c). Reference to these provisions has already been made and there is no need to repeat them here. There is no other provision which would justify the conclusion that retail sales are outside the purview of the Act for purposes of levy of market fee. In fact, the existence of R.18(1)(c) defining "retail sale" for the purposes of exemption from taking a licence under S.6(3) read with S.10 of the Act indicates by necessary implication that retail sales as such are not exempted and what is exempted is only retail sales to the extent mentioned in the said rule. With regard to the other submission, there are two aspects of the question. The first aspect is whether it is a condition precedent as a matter of law for the levy of market fee that there should be a separate market yard for a particular agricultural produce. The second aspect is whether in fact separate market yard has been established or is being established. S.7 of the Act lays down in no uncertain terms that there shall be one principal market yard and one or more sub-market yards as may be necessary for each notified market area. Undisputedly there is one principal market yard established in the notified area of the Committees concerned and several sub-market yards as have been considered necessary by the authorities administering the Act. There is no provision in the Act for the establishment of a separate market yard for each item of agricultural produce brought within the purview of the Act. The establishment of a separate market yard cannot, therefore, be a condition precedent for the levy of the market fee.

38. However, on a point of fact, detailed plans were produced before us, showing that an area of 2.87 acres had been earmarked in the market for the purposes of timber in the area relating to Market Committee Sangrur. Earmarking had also been done in case of Market Committee Ludhiana.

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CIVIL WRIT PETITION No. 6328 OF 1987

39. With regard to C.W.P. No. 6328 of 1987 relating to some dealers of Kaithal in the State of Haryana. it may first be pointed out that the categorical stand of the Market Committee was that all the petitioners were carrying on their business under a licence obtained under the Act in a sub-market yard declared under the Act. Their case is, therefore, distinguishable from those of the Punjab dealers referred to in the foregoing part of this judgment.

40. The additional ground of challenge raised by the petitioners in the above noted writ petition is that S.38 of the Act was ultra vires as it contained in guidelines for the State Government for amending the Schedule to the Act. By notification Annexure P-1 dated September 1, 1987, the State Government amended the Schedule in respect of items Nos. 8 to 11 relating to various pulses by making it clear that the pulses referred to therein would include the whole as well as their split or what is called Dal. Items 16, 22 and 38 were also amended and items 100 and 105 were added. Mere addition to the Schedule under S.38 does not empower the Market Committee to levy market fee. In order to attract the provisions relating to levy of market fee, it is further necessary for the Government to issue a notification under S.5, consider the objections or suggestions received within the time specified in this behalf and declare under S.6 notified market area for the purposes of the Act in respect of the agricultural produce notified under S.5. At the time of hearing, learned counsel sought to argue that the requisite notification under Ss.5 and 6(1) of the Act had not been issued. We were shown the notifications issued under S.5 as well as S.6(1) of the Act. This is apart from the fact that no such plea of absence of notification under Ss.5 and 6(1) had been taken in the petition. The relevant ground assailing the vires of S.38 is mentioned in paragraph 9 and ground No. (xiv) of the petition. In brief, the plea is that under Section 38 the State Government could add to the Schedule an item which was not even remotely connected with agricultural produce. To say the least, this is a funny plea. It is not the case of the petitioners that any produce added as a result of notification Annexure P-1 is, in fact, not an agricultural produce. It is idle to say that under S.38 it was open to the State Government to add to the Schedule some produce which was not an agricultural produce. The expression 'agricultural produce' has been defined in clause (a) of S.2 of the Act to mean all produce whether processed or not, of agriculture, horticulture, animal husbandry or forest as specified in the Schedule to the Act. Nothing is thus left vague as to what is produce of agriculture. S.38 of the Act has also been assailed on the ground that it suffers from excessive delegation. The contention is that in the absence of any guidelines, it was open to the State Government to add any agricultural produce or to omit any agricultural produce already mentioned in the Schedule at its sweet will and pleasure and the provision thus suffered from excessive delegation. Reliance was placed by the learned counsel on Mohd. Hussain v. State of Bombay, AIR 1962 SC 97. This was a case under the Bombay Agricultural Produce Act, 1939, and the vires of the section challenged was S.29, which was analogous to S.38 of the Act. The Supreme Court, on a consideration of the legislative policy discernible from the various provisions of the Act, held that necessary guidance was writ large in the various provisions of the Act itself and, therefore, the challenge to S.29 was ill-founded. The authority relied on by the learned counsel does not, therefore, support him. S.38 is not to be read in isolation. It is to be read along with Ss.5 and 6 of the Act. Mere addition to the Schedule by a notification under S.38 does not effectively bring the item of agricultural produce within the purview of the Act. The process is completed by the State Government issuing a notification under S.5, declaring-its intention of exercising control over the purchase, sales, storage and processing of such agricultural produce and in such area as may be specified in the notification. The section further requires the State Government to consider any objection or suggestion received within a period of not less than 30 days, to be specified in such notification, and it is only as a result of such consideration that a final notification is

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required to be made under S.6(1) of the Act, It is only thereafter that such item of agricultural produce stands duly added so as to attract the provisions regarding levy of market fee etc. In Jan Mohd's case (AIR 1966 SC 385) (supra), in which a similar provision under the Gujarat Agricultural Produce Markets Act was under challenge, the Supreme Court referred to the provisions for inviting objections or suggestions of persons interested before notifying any agricultural produce for the purposes of the said Act. It was held in paragraph 10 of the report that the provision was valid and did not suffer from the vice of excessive delegation. The reason given was that according to the machinery provided in the Act, the Director had to satisfy himself that inclusion of a particular agricultural produce was in the interest of the producer and the general public. It is settled law that where the Legislature has declared the legislative policy, it, is permissible for it to empower the administrative authority to add to or modify or cancel any of the items in the Schedule to the Act, so as to carry out the policy of the Act and to apply it to different objects having regard to local conditions, or the like. The two Supreme Court decisions, referred to above, on this point support the above proposition. The additional point sought to be raised need not, therefore, detain us any further.

41. Imposition of penalty has been challenged on the ground that there was no provision of the Act under which the rule relating to imposition of penalty, namely, Rule 31(9) of the Rules could have been framed. The said rule, according to the learned counsel for the petitioners, was thus ultra vires the provisions of S.43, which confers rule making power on the State Government. This very question arose in Ram Sarup and Bros. v. Punjab State, ILR (1969) 1 Punj 756. The question was examined in necessary detail and the learned Judges of the Division Bench held that R.31(9) was not ultra vires S.43. The main reasons given by the learned Judges of the Division Bench were that the words used in S.43, namely, rules for carrying out the purposes of the Act could not be construed narrowly and a provision for the imposition of penalty as a mode of recovery was necessary for carrying out the purposes of the Act. Reliance was also placed by the learned Judges on a Division Bench decision of the Calcutta High Court in Abdul Rouff v. State. AIR 1960 Cal 436, where it was observed that it was one of the canons of interpretation of statutes that an Act which authorises the making of bye-laws impliedly authorised the annexation of reasonable pecuniary penalty for their infringement recoverable by action or distress. Nothing was argued before us against the view expressed in the above decision of this Court. With regard to the extent of penalty, all that was said was that in the event of the petitioners being relegated to their remedy by way of statutory appeal, they would try to seek necessary relief.

42. It bears repetition that the charging S.23 of the Act imposes market-fee subject to the rules. Rule 29(7), which was the relevant rule, in British India Corporation Ltd's case (AIR 1983 SC 162) (supra) defines what is bought or sold of agricultural produce within the notified market area for purposes of levy of market fee. It cannot be disputed that Gur, Shakkar, Khandsari etc. brought by the petitioners from Uttar Pradesh and other States falls in one or the other clauses of sub-rule (7) of Rue 29. The contention of the learned counsel has thus no merit.

43. For the foregoing reasons, we may state on the authority of the Supreme Court itself that the observations in K.K. Puri's case (AIR 1980 SC 1008) have to be read in the context in which they were made and not as words of a statute. The said observations are distinguishable on the facts of that case. The, correct statement of law is that the view of quid pro quo has undergone a transformation. The true test for a valid fee is whether the primary and essential purpose is to render specific services to a specified area or class, it being of no consequence that the State may ultimately and indirectly benefit by it. Quid pro quo is not always a sine quo non of a valid fee and what is required to be shown is that by and large there is quid pro quo. The correlationship between services expected is of a

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general character and a broad, reasonable land casual relationship is enough to satisfy the requirement of law. The payer of the fee represents collectively the class of persons i.e. users of the market, including growers and those engaged in business to whom the benefit its directly intended by the establishment of a regulated market and not the actual individual i.e. the trader. If there is quid pro quo in the sense explained above for such a class of persons, the test of valid fee is satisfied.

44. It may be mentioned that during arguments it was urged on behalf of the respondents that the petitioners can transact business of sale and purchase of agricultural produce at their place of business in the market area, principal market yard or sub-market yard established in the market area of the Market Committee. The licensed dealer can utilise all the facilities provided in the principal market yard, Sub-market yard and the market area by the Market Committee. At our instance, the affidavit of Shri Ramesh Inder Singh, IAS, Secretary to the Punjab State Agricultural Marketing Board, Chandigarh, dated January 4, 1989, was produced. To this affidavit, no counter affidavit was filed by the petitioners. Therefore all the services available in the principal market yard or sub-market yard and market area are also available to the petitioners.

45. A half-hearted attempt was made to contend that Gur, Shakkar, Khandsari etc., in which most of the petitioners dealt, was brought by them from outside that State of Punjab and such agricultural produce was outside the purview of the Act. It may be pointed out at once that this very question was raised in M/s. Prem Chand Ram Lal v. State of Punjab, 1970 Pun LJ 432, and it was held by a Division Bench of this Court that agricultural produce bought or sold by licensee in notified market area was liable to the levy of market-fee irrespective of the fact where it was produced and who produced it.

46. Applying the above tests, our conclusion is that there is necessary quid pro quo between the imposition of market-fee on the petitioners and the services envisaged under the Act. The petitions must therefore, fail ands the same are dismissed with costs.

PART II :

47. In Civil Writ Petition No. 2551 of 1988 the petitioner seeks a writ of mandamus against the respondents directing them not to levy market fee on the retail sales of timber and fuel wood sold from his saw mill which, according to the petitioner, is situate outside the principal market yard and the sub-market yard at Sangrur in the State of Punjab. According to the petitioner, he imports wood by purchasing the same from the Punjab Forest Corporation from its various depots situated outside the notified market area of the Market Committee and other places outside the jurisdiction of the notified market area. He makes them into planks and the remaining is disposed of as fire-wood which is sold to the customer on retail basis by private negotiations. According to him, Market Committee, Sangrur, nowhere comes into the picture and renders him no service. The Market Committee, according to the petitioner, does not exercise any supervision control on purchases and sale made by him nor had the Market Committee established any market-yard or sub-market yard for the sale of timber and fire-wood. By notification Annexure P1, dated 8-3-1988, the Marketing Board imposed market fee at the rate of Rupee one for every hundred rupees of sale. The petitioner has challenged the said imposition broadly on the same grounds as taken by the petitioners dealt with in Part I of this judgment.

In the return filed by Shri Ramesh Inder Singh, Secretary, Punjab Mandi Board, Chandigarh, respondent No. 2, it was stated that forestation has been recognised as a national necessity. In the State of Punjab gradual effort has been made to increase the area under the forests during the last few decades. It rose from 1872 Square K.Ms. in 1965-66 to 2823 Square K.Ms. in 1985-86. The increase was several times higher. One of the principal reasons why Punjab could not match the national average was that the farmer was not able to get a remunerative

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price for his effort. Various Kisan Organisations represented to the government as also to the Board from time to time against the prevalent malpractices in the wood trade. To identify the malpractices the Board conducted a survey. This survey revealed that the traders were resorting to malpractices in weighment and payment to farmer/producers. The farmer had absolutely no say in the settlement of rate. In particular the malpractices revealed were the following:-

(1) Cash discount.

The traders were resorting to arbitrary cash discount. After settlement of sale price, traders impose a cut on the payments, ranging from 1 to 2%. In some cities farmer were not paid the amount exceeding a round figure. Thus if the value of the commodity came to Rs. 120; - the farmer was paid only Rs. 100/-.

(ii) Discounted weighment.

The survey revealed a system of discounted weighment, varying from 5%, 7% to 10%. Thus, if a lot of wood weighed 100 Kgs., the producer was paid for only 95 Kgs. or 90 Kgs. In the trade parlance this system is known as 'Batala' (40 Kgs. for 42 Kgs.), 'Tartala' (40 Kgs. for 44 Kgs.).

(iii) Rate of Commission.

The rate of commission charged by the traders varied from 3 to 61/4% on the value of the sale price. At Patiala, Amritsar, Jalandhar and Bhatinda the rate of commission is 5% at Khanna 3%, at Ludhiana 4% and at Gurdaspur 61/4%. In addition, at some places, the traders charged commission up to 3% from buyers. Thus, both the producer and the purchaser were subject to payment of commission.

(iv) Brokerage

In some markets brokerage charges varying from Rs. 10 to Rs. 15 per cart or trolley were deducted from the seller.

(v) Weighment charges

Weighment charges of Rs. 2 to 8 per cent per cart or tractor-trolley were paid by seller.

(vi) Transportation and unloading charges

The traders subject the farmers to varying rates according to their wish. The charges for unloading range from Rs. 20 to Rs. 50 per truck/trolley load. In addition, the farmers are expected to carry wood to the premises of the purchaser, after finalisation of sale transactions in the market.

The survey made out a strong case for regulating the marketing of wood in general and eucaplytus in particular to check the exploitation of growers.

48. The Board also conducted a seminar on marketing of wood in which producers, traders, forest department officers, Forest Development Corporation and experts from the Punjab Agricultural University participated. The participants were unanimous regarding the need for regulating the trade in wood. It will be recalled that the expression 'agricultural produce' defined in clause (a) of section 2 of the Act expressly includes produce of forests as specified in the Schedule to the Act. The State Government issued notification dated September 16, 1987 including timber and firewood in the Schedule to the Act. This was followed by another notification under section 5 of the Act dated September 28, 1987 inviting objections/suggestions. After considering the objections, notification dated February 29, 1988 Annexure R-2/2, under section 6(1) was issued. It was categorically asserted that the sawmill of the petitioner was situated within the market area of Sangrur Market Committee. Various services provided by the Market Committee were spelled out in paragraph 11 of the return. These are services provided in the principal market yard and the sub market yard and other facilities like provision of roads, water, electricity, staff to implement the Act and the rules framed thereunder; separate area for wood marketing had been earmarked in the principal market yard, Sangrur.

49. On the same lines is the return filed by the Market Committee, Sangrur and the State government. During arguments a question was raised whether some facilities are available in the market yards for timber

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trade. Affidavit dated 10-1-1989 of Shri Ramesh Inder Singh, Secretary, Marketing Board has been produced. In this affidavit it is stated that timber and firewood are sold in the vehicles as such. without being unloaded, except at Patiala and partly at Amritsar. After auction was held, the vehicles go to the premises of the purchaser for unloading the weighment is generally done on the weighbridge. It is also specifically mentioned that infrastructure required for sale of timber and firewood has been provided in the market yards or sub-market yards for placing or parking of vehicles, weigh-bridges for weighment, space for staying of sellers or buyers and to keep timber or firewood which remains unsold, etc. This space for wood and timber has been specified and exclusively earmarked in the markets for trading in wood. Three maps, one relating to Ludhiana, the second relating to Sangrur, and the third relating to Ferozepur city have been produced along with the affidavit. We have looked into these maps. We find that the averments made in the affidavit are supported by these three maps, showing a particular space earmarked for wood marketing, apart from other facilities available in the market yard. In the facts and circumstances of this case, the conclusions arrived at in Part I aptly apply and we do not find any merit in this writ petition. It is accordingly dismissed with costs.

PART III

C.W.P. No. 121 of 1988

50. 167 licensed dealers in the State of Haryana have challenged the vires of the Haryana Rural Development Act, 1986 (Haryana Act No. 6 of 1986) (hereinafter referred to as '1986 Act').

51. It will be recalled that earlier the Haryana Legislature enacted the Haryana Rural Development Fund Act, 1983 (Haryana Act No. 12 of 1983). A large number of traders including some of the present petitioners challenged the said Act of 1983. Their writ petitions were allowed by a learned single Judge of this Court on 13-101984. The judgment is reported as Om Parkash v. Giri Raj Kishore, AIR 1985 Punj and Har 52. Letters Patent Appeal against the judgment was allowed by a Division Bench. The decision of the appellate Bench is reported as State of Haryana v. Om Prakash AIR 1985 Punj and Har 317. A further appeal to the Supreme Court by Special Leave was again allowed and the aforesaid Act of 1983 was struck down by the Supreme Court. The decision is reported as Om Parkash Aggarwal v. Giri Raj Kishore, AIR 1986 SC 726.

52. The Haryana Legislature reenacted the Act purporting to remove the infirmities found in the earlier Act by the Supreme Court. 1986 Act and the Haryana Rural Development Rules, 1987 framed thereunder have been challenged through the present writ petition broadly on the ground that the legislature was not competent to reenact the law so as to overrule the decision of the Supreme Court in Om Parkash Aggarwal's case (supra). Further case of the petitioners is that the 1986 Act suffers from the same infirmities as the previous Act in that (a) the so called fee is, in fact, a tax and the State Legislature was incompetent to impose the same; (b) the impost cannot be justified as a fee for want of quid pro quo with respect to the dealers. In particular, section 11 of the Act relating to power of the State Government to retain the cess levied under the previous Act was challenged as unconstitutional being (i) without legislative competence; (ii) violative of Article 14 for treating those who had passed on the burden to others at par with those who had not done so; and (iii) the Act continues to suffer from the same defects. If the impost was not valid under the present Act, it could not be valid retrospectively. The imposition of fee was also assailed on the ground that it had been levied for carrying out purely governmental functions which was against the concept of fee and, therefore, invalid. It was also stated that the objects of the Act were substantially the same as the objects under the Punjab Agricultural Produce Markets Act, 1961, and the Supreme Court had struck down the increase in the market fee from Rs. 2/- per hundred rupees to Rs. 3/- in K.K.Puri's case (AIR 1980 SC 1008) (supra). According to the petitioners, the same result could not be achieved by enacting the present Act under a different

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nomenclature. What cannot be done directly, cannot be done indirectly.

53. It may be mentioned at this stage that an Act similar to the 1986 Act was enacted by the Legislature of the State of Punjab called the Punjab Rural Development Act, 1987. Some dealers in the State of Punjab filed Civil Writ Petitions Nos. 6364 and 7572 of 1987 in this Court, challenging the vires of the said Punjab Act. A Division Bench of this Court dismissed the writ petitions in limine by relying on the decision in Shiv Dayal Singh v. The State of Haryana, AIR 1989 Punj and Har 87 in which challenge to the vires of the Haryana Rural Development Act, 1986, had been repelled by the learned Judges of the Division Bench. The writ petitioners filed SLP (Civil Appeals Nos. 12231-32 of 1987), which were dismissed by their Lordships of the Supreme Court on November 3, 1987, by order Annexure R. 1 filed with the return of respondent No. 1. Their Lordships observed that they were not impressed by the submissions of the learned counsel for the petitioners assailing the view taken by the High Court on the grounds raised before it in the writ petitions out of which the Special Leave Petitions arose. Learned counsel for the petitioners prayed for permission to withdraw the petitions. The Special Leave Petitions were thus dismissed as withdrawn. In other words, the view taken in Shiv Dayal Singh's case (supra) was approved by the Supreme Court. Necessary facts in this petition were pleaded in the preliminary objection in the written statement. With regard to the impugned impost, the stand of the respondents was that in fact it was a fee for services rendered to the persons paying the same, the services being rendered directly as well as indirectly. It was highlighted that the dealers did not bear the burden of paying the fee and they were under a statutory obligation to add the amount of the fee in the purchase price recoverable from the next purchaser of the agricultural produce or the goods processed or manufactured out of it. The various infirmities found by the Supreme Court in the previous Act of 1983 in Om Parkash Aggarwal's case (AIR 1986 SC 726) (supra) had been removed and the Legislature was competent to reenact the same and validate the levy of fee levied and collected under the previous Act. The mere fact that some of the objects of the impugned Act and the Punjab Agricultural Produce Markets Act were overlapping was no reason to render the later Act to be ultra vires. The Haryana Rural Development Fund Administration Board had been created as a body corporate and the amount of the fee vested in the said Board as distinguished from the government. The provisions of section 11 empowering the government to retain the fee collected under the previous Act was sought to be justified on the analogy of section 23-A inserted by amendment of the Punjab Agricultural Produce Markets Act, 1961, to retain market fee already collected prior to the amendment.

54. Learned counsel for the petitioners assailed the view taken in Shiv Dayal Singh's case (AIR 1989 Punj and Har 87) (supra) before a D.B. of this Court. The learned Judges doubted the correctness of that decision and further observed that the services envisaged under the impugned Act were already provided for under the Punjab Agricultural Produce Markets Act, 1961, and expressed its doubt if under a separate Act a fee could again be imposed when funds with the Market Committees were more than enough to render the services specified in the earlier Act of 1961. On these two counts, therefore, the learned Judges referred the case for decision by a larger Bench. This is how the writ petition has been placed before us.

55. Under our Constitution, the Legislature is competent to pass a validating Act with regard to a law which has been held to be ultra vires by the Court. Such a validating Act can be given retrospective effect. This question was examined in Rai Ramkrishna v. State of Bihar, AIR 1963 SC 1667, by a Constitution Bench, and it was held that the legislative power conferred on the Legislature includes the subsidiary or the auxiliary power, to validate laws which have been found to be invalid. If a law passed by a Legislature is struck down by the Courts as being invalid for one infirmity or another, it would be competent to the appropriate Legislature to cure the said infirmity and pass a validating law so as

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to make the provisions of the said earlier law effective from the date when it was passed.

56. The validity of a validating Act is to be judged by examining whether the Legislature enacting the validating Act had competence over the matter and whether by validation the Legislature had removed the defects which the Court had found in the previous law. The stand of the petitioners is that in fact what was described as 'cess' under section 3 of the 1983 Act and was held to be a tax continued to be a tax despite its changed nomenclature of 'fee' in the 1986 Act. The stand of the respondents, on the other hand, is that what has been imposed in the 1986 Act is a fee and the reasons for which the Supreme Court held that impost to be a tax under the 1983 Act did not hold good in the 1986 Act and the said Act was, therefore, intra vires and valid.

57. The Haryana Rural Development Act, 1986, was enacted to provide for the establishment of the Haryana Rural Development Fund Administration Board and for augmenting agricultural production and improving its marketing and sale. The expressions "agricultural produce" and "dealer" as also the other words and expressions used in 1986 Act had the same meaning as under the Agricultural Produce Markets Act, 1961. "Rural area" was defined to mean an area other than the area of a municipality administered under the Haryana Municipal Act, 1973. Under section 3, a Board called the Haryana Rural Development Fund Administration Board was constituted. It was to be a body corporate. Necessary provisions for its membership, functioning and powers and duties were made. Section 4 related to officers and servants of the Board. Under section 5 it was laid down that with effect from a date appointed by the State Government by a notification, a fee shall be levied on the dealers on ad valorem basis at the rate of 1 per centum of the sale proceeds of agricultural produce bought or sold or brought for processing in the notified market area. A fee was leviable in respect of only such transactions in which the actual delivery of agricultural produce had been made. The dealer was under a statutory obligation to add the amount of the fee in the purchase price recoverable by him. Arrears of fee were made recoverable as arrears of land revenue. Section 6 created the Haryana Rural Development Fund, which vested in the Board. To the said Fund was to be credited all collection of fees under section 5 and grants from the State Government and local authorities. Subsection (5) of section 5 laid down the purposes for which the amount could be spent from the said Fund. Section 11 provided for retention of cess/fee levied and collected under the provisions of the previous Act, namely, the Haryana Rural Development Fund Act, 1983, during the period September 30, 1983 to the date of the notification under section 5(1) of the 1986 Act.

58. Even at the risk of repetition, it is necessary to juxtapose the material provisions of the 1983 Act and the 1986 Act to bring out the salient points of difference :-

1983 ACT

Preamble 1986 ACT

Preamble

1. An Act to provide for the establishment of the Haryana Rural Development Fund 1. An Act to provide for the establishment of the Haryana Rural Development Fund. Administration Board for augmenting agricultural production and improving its marketing and sale.

2. 2(h) "rural area" means an area the population of which does not exceed twenty thousand persons. 2. 2(e) "rural area" means area other than the area of a municipality administered under the Haryana Municipal Act, 1973;

3. 3(3) The dealer in turn shall be entitled to pass on the burden of the cess paid by him to the next purchaser of the agricultural produce from him and may, therefore, add the same in the cost of agricultural produce or the goods processed or manufactured out of it. 5. (3) Since the burden of fee imposed by sub-section (1) is not intended to be put on the dealer, the dealer shall be under a statutory obligation to add the amount of fee in the purchase price recoverable by him from the next purchaser of agricultural produce or the goods processed or manufactured out of it.

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4. 4. Constitution of fund 4. 6. Constitution of fund -

(1) There will be constituted a fund called the Haryana Rural Development Fund and it shall vest in the State Government. (1) There shall be constituted a fund called the Haryana Rural Development Fund which shall vest in the Board.

xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx

5. (5) The Fund shall be applied by the State Government to meet the expenditure incurred, in the rural areas, in connection with the development of roads hospitals, means of communication, water supply, sanitation facilities and for the welfare of agricultural labour or for any other scheme approved by the State Government for the development of rural areas. The fund may also be utilised to meet the cost of administering the fund. 6. (5) The fund shall be applied by the Board to meet the expenditure incurred in the rural areas in connection with the development of roads, establishment of dispensaries, making arrangements for water supply, sanitation and other public facilities, welfare of agricultural labour, conversion of the notified areas by utilising technical know-how thereto and bringing about other necessary improvements therein, construction of godowns and other places of storage, for the agricultural produce brought in the market area for sale/purchase and the construction of rest houses equipped with all modern amenities, to make the stay of visitors (both sellers and purchasers) in the market area comfortable and for any other purpose which may be considered by the Board to be in the interest of and for the benefit of the person paying the fee. The Fund may also be utilised by the Board to meet the cost of administering it.

Section 3 relating to establishment of the Board, section 4 regarding officers and servants of the Board, and section 11 regarding retention of cess/fee were new provisions made under this Act.

(emphasis supplied)

59. It will be convenient to analyse Om Prakash Aggarwal's case (AIR 1986 SC 726) (supra) at this stage. To recapitulate, a number of dealers of Haryana challenged the constitutional validity of the Haryana Rural Development Fund Act, 1983, mainly on the ground that in fact the so-called 'cess' was a 'tax'; that the State Legislature was not competent to levy a tax of the present type, and that the impost could not be justified as a fee as there was no quid pro quo. The Supreme Court held

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(1) The cess in question could not be brought under any of the Entries 45 to 63 of List 11, which are the only provisions under which the State Legislature could impose a tax.

(2) The State Legislature was competent to impose a fee on any of the matters specified in the State List read with Entry 66 thereof. The Legislature was competent to impose the impugned fee under Entry 28 (markets and fairs) read with Entry 66, provided the other conditions with regard to valid levy of fee were fulfilled.

(3) The only question which remained was whether the impost was a fee or a tax as those terms are understood as a result of series of decisions of the apex Court.

(4) The three cases, namely, Sreenivasa General Traders (AIR 1983 SC 1246); Mohd. Yasin (AIR 1983 SC 617) and Southern Pharmaceuticals and Chemicals (AIR 1981 SC 1863) (supra) were distinguished as the levy under examination in those cases satisfied the tests of a fee.

(5) No service, directly or indirectly, was required to be rendered to the persons from whom the cess was collected.

(6) The Fund vested in the State Government and could be spent virtually on any object which the State Government considered to be development of rural areas.

(7) The definition of the expression "rural area" was vague.

(8) There was no specification in the Act that the amount or substantial part thereof will be spent on any public purpose within the market area or where the dealer was carrying on business.

(9) The purposes were those on which collection of tax could be spent. There was nothing especially for the benefit of the dealer.

(10) There existed no correlation between the amount paid as cess and the services rendered to the persons from whom it was collected.

(11) The impost was in fait a tax for which legislative competence was lacking.

Accordingly the charging section was found to be ultra wires and as the remaining provisions were only a machinery provided in the Act, the whole of the 1983 Act was struck down.

60. The defects found by the Supreme Court in the 1983 Act have been rectified in the 1986 Act. The points of difference in the two Acts have been brought out in the table in the earlier part of this judgment. We may say a few words about the defects noted above as (1) to (11) above in the context of 1986 Act.

61. Regarding 'points No. 1 and 2' it cannot be disputed that the State Legislature is competent to impose fee of the present type under entry 28 read with entry 66 of List II of Seventh Schedule of the Constitution. With regard to points 3, 4 and 5, we find that the fee levied under the 1986 Act satisfies the tests laid down by the apex Court with regard to a valid fee. This aspect of the case has already been dealt with in necessary detail in Part 1 of this judgment. With regard to point No. 6, the 1986 Act expressly laid down that the amount collected as fee vests in the Board which is a distinct legal entity as compared to the State Government. It has further been provided in the impugned Act that the amount can be spent only for the purposes envisaged under the Act. It is no longer open to the State Government to spend the amount for any object which the State Government considered for the development of rural areas'. Sub-sec. (5) of S.6 of the Act consists of three main parts : One, development works and facilities in rural areas. Two, facilities of stay of visitors and storage of produce etc. in the market area. Three, for services for the benefit of persons paying the fee to Shri Sibal, learned counsel for the petitioners, laid great emphasis on the fact that while a large majority of the dealers paying the fee were located in the areas covered by the municipalities, the amount of fee collected was to be spent in 'rural area' which as defined meant area outside the municipal limits. According to the learned counsel, therefore, there was no question of any correlation between the fee

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collected from and the services rendered to those who paid the fee. We have given our earnest consideration to the above argument and we are clearly of the view that there is no merit in the same. There is no factual foundation for the supposition that the whole or a substantial part of the amount is being spent on items relating to the part one of S.6(5) to the exclusion of parts two and three thereof. We have, therefore, no reason to assume that the expenditure is being incurred in rural area at the expense of rest of the market area and the regulated markets with regard to the expenditure on items under part one. We are informed by the learned counsel for the respondents that depending upon the season and arrivals of various agricultural produce for sale a large number of purchase centres are set up under the Act as sub market yards so that the producers are not compelled to carry their produce over long distances. A large number of dealers who normally work in the principal market yard or sub-market yard or elsewhere in the notified market area shift to such purchase centres for transacting their business of purchase and sale. In other words, the dealers are not fixed to one place and the services rendered in the rural area and market area are thus for their special benefit. It is not disputed that the whole of the State of Haryana is divided into various market areas. The market area would, therefore, necessarily include the rural area except the areas within municipal limits. Any service rendered in the rural area would, therefore, be service provided in the notified market area though outside the municipal limits. This is apart from saying that the expenditure incurred in the market area is for the general benefit of the users of the market, especially the dealers working therein. Services for the benefit of the area as well those to the class, therefore, satisfies the test of quid pro quo.

62. It was next contended that the Act made a provision for services which had already been envisaged under Ss.26 and 28 of the Punjab Agricultural Produce Markets Act, 1961. To that extent there was duplicity and overlapping. It cannot be denied that there is a certain amount of overlapping in the objects sought to be achieved under the two Acts except that under the Punjab Agricultural Produce Markets Act the area of operation of services is the notified market area, under the impugned Act it is additionally and more particularly the rural area. Such an overlapping is unavoidable as both the Acts have for their object better regulations of sale, purchase etc. of agricultural produce. Merely because there is overlapping, in our, view, is no reason to hold the latter Act to be ultra vires.

63. With utmost respect to the learned Judges of the referring Bench, we are unable to share the view that the purposes under the Punjab Agricultural Produce Markets Act, 1961, had been achieved, the market committees were suffering from over affluence and excess of money and there was no need to do anything further in the field of better marketing conditions. The stark reality is that India continues to be amongst the poorest countries in the world. The conditions in our markets, especially those situated in semi urban or rural areas continue to be primitive and woefully inadequate. The level of development in the area of marketing leaves much to be desired. Coupled with this is an ever rising trend in cost of services, may be the salary bill of the employees or the cost of acquiring land or construction of building or roads.

64. Similarly, we find that in the nature of things overlapping to some extent is unavoidable in the objects of the impugned Act and governmental functions. In a welfare State in whose Constitution the founding father took care to provide Directive Principles of State Policy, the line of demarcation where the purposes of the Acts in question end and the governmental functions begin is extremely thin and difficult to discern. What is crucial and determinative of whether the expenditure for a certain purpose is justified or not is to consider the primary, main or dominant purpose. If the dominant purpose is to fulfil the aims and object of the Act, the fee will not be rendered a tax because the resultant expenditure was incidentally what could or should have been spent by the Government for discharging its governmental functions.

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65. The learned Judges of the Division Bench in Shiv Dayal Singh's case (AIR 1989 Punj and Har 87) (supra) reached the same conclusion though it was said in much fewer words. We find ourselves in agreement with the reasoning as well as the conclusion in Shiv Dayal Singh's case (supra).

66. With regard to the vires of S.11 of the impugned Act, we may point out that the question was gone into in detail in Shiv Dayal Singh's case (supra). It cannot be disputed that broadly the circumstances leading to the enactment of S.23A in the Act and the enactment of S.11 of the impugned Act were identical. S.23A of the Act was upheld in M/s. Amar Nath Om Prakash's case (AIR 1985 SC 218) (supra). As pointed out earlier, the fee, in question, has, by and large, been in fact charged. There is no question of unjust enrichment of the dealers being countenanced. The provisions of S.11 of the impugned Act cannot be considered violative of Art.14 for the simple reason that the' presumption referred to therein is a rebuttable presumption and it is open to the dealers concerned to produce appropriate material to show to the assessing authority that in particular transaction he had not, in fact, charged the fee in question.

67. The Punjab Rural Development Act, 1987, is broadly analogous to the aforesaid Haryana Rural Development Act, 1986. The challenge to its vires must be repelled for reasons which have been discussed while dealing with the Haryana Act.

68. For the foregoing reasons, both the above writ petitions are dismissal with costs.

69. Each set of the petitioners i.e. petitioners each writ petition in Parts I to III will pay Rs. 5000/- as costs.

Petition dismissed.

AIR 1989 PUNJAB AND HARYANA 87 "Shiv Dayal Singh v. State of Haryana"

PUNJAB & HARYANA HIGH COURT

Coram : 2 D. S. TEWATIA AND M. R. AGNIHOTRI, JJ. ( Division Bench )

Shiv Dayal Singh Ramesh Chander and others, Petitioners v. State of Haryana and others, Respondents.

Civil Writ Petn. No. 1105 of 1986, D/- 17 -3 -1987.

(A) Haryana Rural Development Act (6 of 1986), Pre. - CONSTITUTIONALITY OF AN ACT - Act is constitutionally valid.

Constitution of India, Art.265.

Applying the various requirements laid down by Supreme Court to the various provisions of the1986 Act, it becomes crystal clear that -

(1) the object of the 1986 Act is only to levy fee for the services to be rendered to the dearlers operating in the market areas;

(2) the fee levied is justified and bears a close relationship with the services rendered; and

(3) the test of element of quid pro quo is adequately satisfied as the 1986 Act provides for rendering of sufficient services to the dealers in particular and other public in general. The requirements which were absent in 1983 Act have been removed in 1986 Act and therefore the Act is constitutionally valid. (Para 15)

(B) Haryana Rural Development Act (6 of 1986), S.11 - AGRICULTURAL PRODUCE - CONSTITUTIONALITY OF AN ACT - Retention of levy collected under Act of 1983 though it was declared unconstitutional - Section 11 prevents unjust enrichment by those dealers who have passed on the burden of fee to next purchaser. They having already reimbursed themselves cannot claim refund - The Provision cannot be attacked on the ground that it seeks to validate retention of fee recovered/ recoverable under 1983 Act. (Unjust enrichment - Duty collected illegally by dealers and paid to Govt. - Its refund cannot be clamied). (Para 18)

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Cases Referred : Chronological Paras

AIR 1986 SC 726 3, 5, 6, 7, 15, 16

AIR 1985 SC 218 14,16, 17

AIR 1985 SC 756 14

AIR 1985 PunjHar 52 3

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AIR 1981 SC 1863 : 1981 TM LR 2838 11

AIR 1980 SC 1008 10, 17

AIR 1961 SC 459 9

AIR 1954 SC 282 7, 9

AIR 1954 SC 388 9

AIR 1954 SC 400 9

60 CLR 263 (Aus) Mathews v. Chicory Marketing Board 7

Kuldip Singh, Sr. Advocate and Gobind Goel, for Petitioners; M.S. Liberhan, Advocate General, Haryana and I.D. Singla, for Respondents.

Judgement

M.R. AGNIHOTRI, J. :- This judgment will dispose of C.W.P. No. 1105 of 1986 and thirty-eight other writ petitions (Nos. 900, 1315, 2146, 2227, 2231, 2247, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2370, 2371, 2372, 2373, 2374, 2375, 2409, 2410, 2411, 2412, 2413, 2414, 2619, 2807, 2836, 2845, 2957, 2976, 2977, 2978, ''sic and 3804 of 1986) as identical questions of fact and law are involved. All these cases have been heard together and are being disposed of by a common judgment. Since no additional point has been urged by the learned counsel in other writ petitions, it is agreed by them that the decision in this writ petition will decide the fate of the other writ petitions as well.

2. Shiv. Dayal Singh Ramesh Chander and 168 other petitioners have filed C.W.P. No. 1105 of 1986 against the State of Haryana and others, wherein they have challenged the constitutionality of the Haryana Rural Development Act, 1986 (Harayana Act No. 6 of 1986), hereinafter referred to as the "1986 Act" and have prayed for the issuance of the writ of mandamus declaring the impugned Act as unconstitutional and for a direction to the respondent State and the Assessing Authorities to refund the amounts deposited by them along with interest. A copy of the 1986 Act has been annexed by the petitioners as Annexure- P-2 with the writ petition.

3. A brief history of the legislation of the 1986 Act would be necessary to be stated in order to appreciate the respective contentions of the parties. In 1983, the State of Haryana enacted the Haryana Rural Development Fund Act, 1983 (Haryana Act No. 12 of 1983), (hereinafter called the 1983 Act'). Under this Act, it was envisaged to levy a cess at the rate of 1 per cent on every sale and purchase of agricultural produce in the market area located in the State of Haryana. A number of writ petitions were filed in the Punjab and Haryana High Court to challenge the constitutional validity of the 1983 Act which were accepted by the learned single Judge of this Court by his judgment dated 13th Oct. 1984, reported as Om Prakash v. Giri Raj Kishore, AIR 1985 Punj and Har 52. The learned single Judge held that the 1983 Act purported to levy fee on the traders and that there was no provision for rendering any service to them. While declaring the 1983 Act unconstitutional, a further direction was also issued that the amounts deposited by the writ petitioners be refunded to them. Against the said judgment, the State of Haryana preferred, a letters patent appeal and by its judgment dated 20th May, 1985, a Division Bench of this Court allowed the appeal, set aside the judgment of the learned single Judge and thereby dismissed the writ petitions. The judgment of the Letters Patent Bench upholding the constitutionality of the 1983 Act is reported as State of Haryana v. Om Prakash, AIR 1985 Punj and Har 317. This judgment of the Letters Patent Bench was challenged in the Supreme Court and while allowing the appeal the Supreme Court by its judgment dated 28-1-1986 reported as Om Prakash Agarwal v. Giri Raj Kishore, AIR 1986 SC 726, set aside the judgment of the High Court, declared the 1983 Act as unconstitutional and void. The Supreme Court further held that the levy imposed by the State was not a fee as claimed by it but was a tax which was not leviable by the State. Consequently, levy of the cess under S.3 of the 1983 Act was quashed and S.3 being the charging section and the rest of the sections of the said Act being just machinery or incidental provisions, the whole of 1983 Act was declared unconstitutional on the ground that the State legislataure was not competent to enact it. A writ was accordingly issued

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directing the State Government not to enforce the Act against the appellants.

4. Immediately after the Supreme Court judgment declaring the 1983 Act as unconstitutional, the petitioners served the State of Haryana and its Assessing Authorities with notices demanding the refund of the amounts deposited by them under the 1983 Act and having failed to receive the refund of the amounts, they filed the present writ petition praying for a writ of mandamus. During the pendency of the writ petition, the State of Haryana has enacted the Haryana Rural Development Act, 1986. Thereupon, the petitioners amended their writ petition in order to challenge the constitutionality of the newly enacted 1986 Act.

5. In order to appreciate the need of the new legislation, the mischief it sought to remedy and the objective to be achieved by the legislature, it is necessary to detail the salient features of the 1986 Act. To start with, the very preamble of the 1986 Act provides for the establishment of the Haryana Rural Development Fund Administration Board for augmenting agricultural production and improving its marketing and sale. Under S.3 of the 1986 Act, the State Government is empowered to establish and constitute the Haryana Rural Development Fund Administration Board, which shall consist of a Chairman and other official and non-official members. The Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property. The term of office of the non-official members of the Board has been fixed as three years and the State Government shall exercise superintendence and control over the Board and its officers. The Board has also been given the powers to frame by-laws for regulating the transaction of its business and other matters to be specified. According to S.5, there shall be levied on the dealers a fee on ad valorem basis at the rate of one percentum of the Sale-proceeds of agricultural produce bought or sold or brought for processing in the notified market area. The expression ''dealer" has been defined to mean any person who within the notified market area sets up, establishes or continues or allows to be continued any place for the purchase, sale, storage or processing of agricultural produce etc. It has also been provided that no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made. Sub-section (3) of S.5 further provides that since the burden of fee imposed is not intended to be put on the dealer, the dealer shall be under a statutory obligation to add the amount of fee in the purchase price recoverable by him from the next purchaser of agricultural produce or the goods processed or manufactured out of it. Section 6 of the said Act provides for the constitution of a fund called the Haryana Rural Development Fund which shall vest in the Board. The amount of fee paid under S.5 and grants from the State Government and local authorities shall be credited to the Haryana Rural Deveplopment Fund. According to sub-sec. (5) of S.6, the fund shall be applied by the Board to meet the expenditure incurred in the rural areas in connection with the development of roads, establishment of dispensaries, making arrangements for water supply, sanitation and other public facilies, welfare of agricultural labour, conversion of the notified market areas falling in rural area as defined under the 1986 Act, into model market areas by utilising technical know-how thereto and bringing about other necessary improvements therein, construction of godowns and other places of storage, for the agricultural produce brought in the market area for sale/purchase and the construction of rest houses, equipped with all modern amenities, to make the stay of visitors (both sellers and purchasers) in the market area, comfortable and for any other purpose which may be considered by the Board to be in the interest of and for the benefit of the person paying the fee. The fund may also be utilised by the Board to meet the cost of administering it. According to S.11 of the 1986 Act, the cess/fee levied and collected under the provisions of the 1983 Act (which Act has been declared as unconstutional by the Supreme Court in its judgments in Om Prakash Agarwal's case AIR 1986 SC 726) (supra) shall be deemed to have been levied and collected under the 1986 Act, and notwithstanding anything contained in any judgment, decree or order of any Court it shall be lawful for the State Government to

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retain the cess so levied and collected from the dealer if the burden of such cess was passed on by the dealer to the next purchaser of the agricultural produce or the goods processed or manufacturued out of it in respect whereof such cess was levied or collected. According to sub-sec. (3) of this section, if any dispute arises as to the refund of any cess retained by the Government by virtue of sub-sec. (1) and the question is whether the burden of such cess was passed on by the dealer to the next purchaer, it shall be presumed that such burden was passed on by the dealer. Sub-sec. (4) of this section empowers the State Government that if the amount of cess retainable by the Government under sub-sec. (1), has not been paid by, or has been refunded to, any dealer, the same shall be recoverable by the Government as arrears of land revenue.

6. Mr. Kuldip Singh, Bar-at-Law, learned Senior Advocate, appearing on behalf of the petitioners, has challenged the constitutionality of the aforesaid provisions of the 1986 Act, and his submissions can be broadly classified in the following contentions :-

(1) That the 1986 Act suffers from the same vice, that is, the lack of element of quid pro quo, as was the position under the 1983 Act, which was declared unconstitutional by the Supreme Court, as the 1986 Act too does not make any provision for the spending of the levy on the dealers of the market area. The 1986 Act does not provide for any specific service to be rendered to a particular dealer of the area upon whom the levy is sought to be imposed. Therefore, the 1986 Act is also unconstitutional as the levy is not a fee but a tax.

(2) That S.11 of the 1986 Act is in any case bad in law inasmuch as it provides for the retention of the cess/fee levied and collected under the 1983 Act even though the same has been declared unconstitutional by the Supreme Court in Om Prakash Agarwal's case (AIR 1986 SC 726) (supra).

In support of his first contention, Mr. Kuldip Singh has made a detailed reference to the judgment of the Supreme Court in Om Prakash Agarwal's case (supra).

7. By a close study of the aforesaid judgment in Om Prakash Agarwal's case, it would be evident that what weighed predominantly with the Hon'ble Judges of the Supreme Court while declaring the levy as unconstitutional was that the 1983 Act did not make a provision for rendering any service to the dealer who was the cess payer and in order to justify the imposition of the levy by way of fee, the amount so levied should truly be a fee and not a tax with the mask of a fee. Reliance was placed on the famous statement of Latham, C.J. of the High Court of Australia in Matthews v. Chicory Marketing Board, 60 CLR 263, 276, as under : -

"A tax is a compulsory exation of money by public authority for public purposes enforceable by law and is not a payment for services rendered."

For distinguishing tax from fee, their Lordships of the Supreme Court relied upon their earlier judgment in Commr., Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282, in which B.K. Mukherjea, J. observed as under : -

"Coming now to fees, a 'fee' is generally, defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed.........

If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should on the face of the legislative provision, be correlated to the expenses incurred by Government in rendering the services."

The second reason which weighed with the Hon'ble Judges of the Supreme Court while striking down the 1983 Act was that there did not exist any correlation between the amount paid by way of cess and the services rendered to the person from whom it was collected.

8. Refuting the aforesaid contention of Mr. Kuldip Singh, the learned Advocate General, Haryana, appearing on behalf of the State, has elaborately referred to the

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various provisions if the 1983 Act as well as of the 1986 Act. By a comparison of the various provisions of the two Acts, he has sought to canvass that the legislative infirmities in the 1983 Act and the deficiencies, which were highlighted by the Supreme Court in its judgment, due to which the cess imposed by the 1983 Act could not satisfy the test of fee have been completely removed by the State legislature while re-enacting the 1986 Act. According to the learned Advocate-General, scrupulous care has been taken to specify the purposes for which the amount of fee, which in the earlier Act was called as cess, has to be spent.

9. Tracing the history of judicial pronouncements on the question involved the learned Advocate-General, Haryana, has started from the seven Judges' judgment of the Supreme Court in the case reported as Commr., Hindu Religious Endowments, Madras, AIR 1954 SC 282 (supra). The distinction was drawn between tax and fee in the following terms :

"A careful examination reveals that the element of compulsion or coerciveness is present in all kinds of imposition, though in different degrees and it is not totally absent in fees. This, therefore, cannot be made the sole or even a material criterion for distinguishing a tax from fee.

The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden while a fee is a payment for a special benefit or privilege............ There is really no generic difference between the tax and fees and the taxing power of a State may manifest itself in three different forms known respectively as special assessments, fees and taxes."

To the same effect are two other judgments of the Supreme Court, of five Judge's Bench in Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388, and in Sri Jagannath Ramanuj Das v. State of Orissa, AIR 1954 SC 400, in which the position of law laid down by earlier judgment in Commr., Hindu Religious Endowments, Madras's case (supra) was reiterated Reliance has further been placed by the learned Advocate-General on another judgment of five Judges of the Supreme Court in the case reported as Hingir Rampur Coal Co. Ltd. v. State of Orissa, AIR 1961 SC 459, wherein the Hon'ble Judges, while reiterating their earlier decisions proceeded to add as under : -

"It is true that when the Legislature levies a fee for rendering specific services to a specified area or to a specified class of persons or trade or business, in the last analysis such servies may indirectly form part of services to the public in general. If the special service rendered is distinctly and primarily meant for the benefit of a specified class or area the fact that in benefiting the specified class or area the State as a whole may ultimately and indirectly be benefited would not detract from the character of the levy as a fee. Where however, the specific service is indistinguishable from public service, and in essence is directly a part of it, different considerations may arise. In such a case, it is necessary to enquire what is the primary object of the levy and the essential purpose which it is intended to achieve. Its primary object and the essential purpose must be distinguished from its ultimate or incidental results or consequences. That is the true test in determining the character of the levy : 1950 AC 87, Ref. to."

10. Next in chronological order is the five Judges' judgment of the Supreme Court in Kewal Krishan Puri v. State of Punjab AIR. 1980 SC 1008, in which the validity of certain provisions of the Punjab Agricultural Produce Markets Act, 1961 (Punjab Act No. 23 of 1961) was challenged. Giving a broad meaning to the term "fee" and widening its scope further, the Supreme Court held as under : -

"Generally speaking a fee is defined to be a charge for a special service rendered to individuals by some governmental agency. A question arises - "special service" rendered to whom which kind of individuals ? The argument that service rendered must be correlated to those on whom the ultimate burden of the fee falls is neither logical nor sound.....

The element of quid pro quo must be established between the payer of the fee and the authority charging it, It may not be the

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exact equivalent of the fee by a mathematical precision, yet, by and large, or predominantly, the authority collecting the fee must show that the service which they are rendering in lieu, of fee is for some special benefit of the payer of the fee. It may be so intimately connected or interwoven with the service rendered to others that it may not be possible to do a complete dichotomy and analysis as to what amount of special services was rendered to the payer of the fee and what proportion went to others. But generally and braodly speaking it must be shown with some amount of certainty, reasonableness or preponderance of probability that quite a substantial portion of the amount of fee realised is spent for the special benefit of its payers."

11. Placing reliance on another judgment of the Supreme Court (three Judges' judgment) in Southern Pharmaceuticals and Chemicals, Trichur v. State of Kerala, AIR 1981 SC 1863, the learned Advocate-General Haryana, has taken the argument-further to contend that the element of quid pro quo stricto sensu is not always sine qua non of fee and the element of quid pro quo is not necessarily absent in every tax. Our particular attention has been drawn by the learned Advocate-General to the following words of the aforesaid judgment :

" The traditional concept of quid pro quo is undergoing a transformation."

12. Advancing his argument further, the learned Advocate-General. Haryana, places reliance on another judgment of the Supreme Court in Municipal Corporation of Delhi v. Mohd. Yasin, AIR 1983 SC 617 in which enhancement of fee for slaughtering animals in slaughter houses was challenged on the ground that it was in fact a tax and not a fee as there was no correlation between the costs of the services rendered and the amount of fee collected Repelling the contention, O. Chinnappa Reddy, J., speaking for the Court, held as under :

"Compulsion is not the hall-mark of the distinction between a tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax. Though a fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere casual relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the fees are also benefited does not detract from the character of the fee. In fact, the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. Nor is the Court to assume the role of a cost accountant. It is neither necessary nor ex- pendient to weigh too meticulously the cost of the services rendered etc. against the amount of fees collected so as to evenly balance the two. A broad correlationship is all that is necessary. Quid pro quo in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax."

13. Taking his argument still further, the learned Advocate-General, Haryana, has taken the stand that a fee will not become a tax even if the element of quid pro quo is absent in the levy. To substantiate his contention, reliance has been placed by him on the judgment of the Supreme Court in Sreenivasa General Traders v. State of Andhra Pradesh, AIR 1983 SC 1246, wherein their Lordships have held as under : -

"The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered . . . . . . . There is no generic difference between a tax and a fee. Both are compulsory exactions of money by public authorities."

14. In order to reiterate his submission further, the learned Advocate-General, has invoked to his aid another judgment of the Supreme Court in the case, City Corporation

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of Calicut v. Thachambalath Sadasivan, AIR 1985 SC 756 which in turn has placed reliance on an earlier judgment in Amar Nath Om Prakash v. State of Punjab, AIR 1985 SC 218. In that case, their Lordships held that, -

"It is thus well-settled by numerous recent decisions of this Court that the traditional concept in a fee of quid pro quo is undergoing a transformation and that though the fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere casual relation may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee.

Applying the ratio of these decisions it is incontrovertible that the appellant Corporation is rendering numerous services to the persons within its areas of operation and that therefore the levy of the licence fee as fee is fully justified. Soaking coconut husk emit foul odour and contaminates environment. The Corporation by rendering scavenging services, carrying on operations for cleanliness of city, to make habitation tolerable is rendering general service of which amongst others appellants are beneficiaries. Levy as a fee is thus justified "

15. Applying the ratio of the aforesaid judgment of the Supreme Court to the facts of the present case and the various provisions of the 1986 Act, it becomes crystal clear that-

(1) the object of the 1986 Act is only to levy fee for the services to be rendered to the dealers operating in the market areas :

(2) the fee levied is justified and bears a close relationship with the services rendered; and

(3) the test of element of quid pro quo is adequately satisfied as the 1986 Act provides for rendering of sufficient services to the dealers in particular and other public in general.

Thus, the requirements laid down in the Supreme Court judgment in Om Prakash Agarwal's case (AIR 1986 SC 726)(supra) are fully satisfied. Therefore, there is no difficulty in holding that the 1986 Act is constitutionally valid and the challenge against the same is wholly devoid of force. Consequently, the first contention of the learned counsel for the petitioners is rejected.

16. Refuting the second contention of the petitioners, that is S.11 of the 1986 Act is in any case bad in law inasmuch as it provides for the retention of the cess/fee levied and collected under the 1983 Act even though the same has been declared unconstitutional by the Supreme Court, the learned Advocate-General, Haryana, has strongly relied on the three Judge's judgment of the Supreme Court reported as Amar Nath Om Parkash AIR 1985 SC 218 (supra). It is noticeable that the judgment in Om Prakash Agarwal's case (supra), which declared the 1983 Act as unconstitutional, was rendered by O. Chinnappa Reddy and E.S. Venkataramiah, JJ. The same two Hon'ble. Judges and A.P. Sen, J. constituted the Bench which rendered the judgment in M/s. Amar Nath Om Parkash's case (supra). However, quite surprisingly, this judgment of three Hon'ble Judges of the Supreme Court in M/s. Amar Nath Om Parkash's case (supra) was not brought to the notice of the Hon'ble Judges while deciding later on Om Parkash Agarwal's case (supra).

17. In Amar Nath Om Parkash case, which is being relied upon by the learned Advocate-General, Haryana, almost indentical situation fell for consideration of the Court, because in a case under the Punjab Agricultural Produce Market Act, 1961, the enhancement of fee from 2 per cent to 3 per cent had been declared illegal by the Supreme Court in Kewal Krishan Puri's case (AIR 1980 SC 1008) (supra). However, the State legislature amended the Punjab Agricultural Produce Markets Act by inserting S.23-A, which is almost indentical to the provisions of S.11 of the 1986 Act, the subject-matter of challenge in the present writ petition. Section 11 of the 1986 Act and S.23-A ibid read as under : -

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"11. Retention of cess- (1) The cess/fee levied and collected under the provision of the Haryana Rural Development Fund Act, 1983, for the period commencing from the 30th Sept., 1983, to the date of notification issued under sub-sec (1) of S.5.of this Act, shall be deemed to have been levied and collected under this Act and notwithstanding anythings contained in any judgment, decree or order of any Court, it shall be lawful for the State Government to retain the cess so levied and collected from the dealer if the burden of such cess was passed on by the dealer to the next purchaser of the agricultural produce or the goods processed or manufactured out of it in respect whereof such cess was levied or collected. 23-A. (1) Notwithstanding anything contained in any judgment, decree or order of any Court, it shall be lawful for a Committee to retain the fee levied and collected by it from a licensee in excess of that leviable under S.23, if the burden of such fee was passed on by the licensee to the next purchaser of the Agricultural Produce in respect whereof such fee was levied and collected.

(2) No suit or other proceedings shall be instituted, maintained or continued in any Court for the refund of whole or any part of the cess retained by the Government under sub-sec.(1) and no Court shall enforce any decree or order directing the refund of whole or any part of such cess. (2) No suit or other proceeding shall be instituted, maintained or continued in any Court for the refund of whole or any part of the fee retained by a Committee under sub-sec. (1) and no Court shall enforce any decree or order directing the refund of whole or any part of such fee.

(3) If any dispute arises as to the refund of any cess retained by the Government by virtue of sub-sec. (1) and the question is whether the burden of such cess was passed on by the dealer to the next purchaser it shall be presumed that such burden was passed on by the dealer. (3) If any dispute arises as to the refund of any fee retained by a Committee by virtue of sub-sec. (1) and the question is whether the burden of such fee was passed on by the licensee to the next purchaser of the concerned agricultural produce, it shall be presumed unless proved otherwise that such burden was so passed on by the licensee.

(4) If the amount of cess retainable by the Government under sub-sec. (1), has not been paid by, or has been refunded to any dealer the same shall be recoverable by the Government as arrears of land revenue. (4) If any amount of fee retainable by a Committee under sub-sec. (1) has been refunded to any licensee, the same shall be recoverable by the Committee in the manner indicated in sub-sec. (2) of S.41.

(No sub-sec. (5) in the 1986 Act.) (5) The provisions of this section shall not affect the operation of S.6 of the Punjab Agricultural Produce Markets (Amendment and Validation) Act, 1976."

While upholding the validity of S.23-A, their Lordships of the Supreme, Court held as under:

"The submission of the learned counsel was that S.23-A was a blatant attempt to validate a levy which had been declared invalid by this Court and this, according to the learned counsel, was not permissible. We entirely disagree with the submission that S.23-A is an attempt at validating an illegal levy. Section 23-A does not permit any recovery of fee @ Rs. 3/- per 100 in respect of any sales of agricultural produce before or after the coming into force of that provision. There is no attempt at retrospective validation of excess collection nor any attempt at providing for future collection at the rate of

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Rs. 3/- per 100. All that S.23-A does is to prevent unjust enrichment by those dealers who have already passed on the burden of the fee to the next purchaser and so reimbursed themselves by also claiming a refund from the Market Committees. We have already explained the true purpose of S.23-A. It gives to the public through the market committee what it has taken from the public and is due to it. It renders unto Caesar what is Caesar's. We do not see any justification for characterising a provision like S.23-A as one aimed at validating an illegal levy."

18. The reasoning adopted by the Supreme Court in upholding the validity of S.23-A of the Punjab Agricultural Produce Markets Act, 1961, squarely applies for upholding S.11 of the 1986 Act in the present case. The ratio of the aforesaid judgment, therefor, fully covers the stand taken by the learned Advocate-General and there is no difficulty in holding that S.11 of the 1986 Act is constitutionally valid and is not open to attack on the ground that it seeks to validate the retention of cess/fee recovered/ recoverable under the 1983 Act.

19. No other point has been urged before us.

20. In the result, all these thirty-nine writ petitions are dismissed and it is held that the Haryana Rural Development Act, 1986 is constitutionally valid. There is no order as to costs.

21. TEWATIA, J. :- I agree.

Petitions dismissed.

AIR 1986 PUNJAB AND HARYANA 127 "Tek Bahadur Singh v. State of Punjab"

PUNJAB & HARYANA HIGH COURT

Coram : 1 M. M. PUNCHHI, J. ( Single Bench )

Tek Bahadur Singh, Petitioner v. State of Punjab and others, Respondents.

Civil Writ Petn. No. 6085 of 1983, D/- 23 -5 -1984.

(A) Punjab Agricultural Produce Markets Act (23 of 1961), S.15, Proviso - AGRICULTURAL PRODUCE - WRITS - Removal of member of Market Committee - Order as to, by Government - Reasons for order available on departmental file - Order cannot be interfered with under Art.226 on ground that order was bereft of reasons.

Constitution of India, Art.226.

Case law discussed. (Para 6)

(B) Constitution of India, Art.226 - AGRICULTURAL PRODUCE - Removal of member of Market Committee -Show cause notice Issued to member - Reply to show cause not filed by member - Conclusion of Government that member was given opportunity of showing cause which he had not chosen to avail in right manner, held, justified. (Para 8)

CasesReferred : Chronological Paras

AIR 1972 SC 1571 4,6

AIR 1970 PunjHar 9 (FB) 4

AIR 1968 PunjHar 127 (FB) 4

AIR 1967 SC 1606 4,7

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G.S. Sandhu, for Petitioner; H.S. Bedi, Dy. Advocate General, (Punjab), A.S. Cheema, Sr. Advocate and Baljinder Singh with Jasbir Singh, for Respondents.

Judgement

ORDER :- The petitioner herein was a member and then the Chairman of the Market Committee, Ferozepore Cantt. For an incident, which took place on 18-2-1983, relating to a meeting scheduled to be held, in which the petitioner was to participate as also the Executive Engineers of the Marketing Board and the Provincial Division, it transpired that Shri G.S. Mann, Executive Engineer, Marketing Board, Ferozepore, made an adverse report against the petitioner. That was to the effect that the petitioner was found drunk in the meeting and was not in his senses. An instance was also quoted that prior to 18-2-1983 the petitioner had come to the office drunk and had even been taking drinks while sitting in the office neglecting the duties as a member and the Chairman of the Market Committee. Thereupon the State Government, through its Deputy Secretary of the concerned Department, issued a show-cause notice on 1-6-1983 (Annexure-P.1) to the petitioner satisfying the requirement of the proviso to S. 15 of the Punjab Agricultural Produce Markets Act, 1961 (hereafter referred to as the Act). The petitioner was required to submit his reply up-till 25-6-1983.

2. As is plain from the show-cause notice, reference was made therein to the report of Shri G. S. Mann, the crux of which detailed therein, was that the petitioner was found drunk and was not in his senses on 18-2-1983. The petitioner, instead of showing cause to the notice, submitted an application, copy whereof is Annexure-P.2, asking for a copy of the report/reports mentioned in the show-cause notice and stated that, on receiving a reply from the Government, he would submit a detailed reply to the show-cause notice. Thereupon, the Government issued notification Annexure P.3 in accordance with S.15 of the Act, whereby the petitioner was removed from the membership as well as the Chairmanship of the Market Committee, Ferozepore Cantt. Challenging the same, the petitioner has approached this Court under Arts.226 and 227 of the Constitution of India.

3. Written statements have been filed by the State of Punjab on the affidavit of the Joint Secretary to Government, Punjab, Development Department, as also by respondent No.2, Gurbax Singh Sindhu, Secretary of the Market Committee, Ferozepore Cantt. Both of them have reiterated, in justification, the allegations against the petitioner about his misconduct and neglect. The defence taken is that the action of the Government was within the four corners of law and had been taken after an opportunity of being heard had been afforded to the petitioner.

4. When this petition came up for hearing before the Motion Bench, to which I was a member, the learned counsel for the petitioner stated that the matter was covered in his favour by a Full Bench decision of this Court in Sahela Ram son of Ch. Dhan Singh v. State of Punjab, AIR 1968 Punj and Har 127. Seemingly, such statement was not disputed by the learned counsel for the respondents and thus the Bench was persuaded to order the listing of the case within a period of three months, out of turn. In consequence thereof, the matter has been placed before me. S.15 of the Act is in the following terms :-

"The State Government may by notification remove any member, if, in its opinion, he has been guilty of misconduct or neglect of duty or has lost the qualification on the strength of which he was appointed;

Provided that before the State Government notifies the removal of a member under this section, the reasons for his proposed removal shall be communicated to the member concerned and he shall be given an opportunity of tendering an explanation in writing."

The Full Bench in Sahela Ram's case (supra) took the view amalgamatedly that the notification envisaged in S.15 of the Act was, by itself, an order and, as such, should have ex facie reasons embodied therein, it being a quasi-judicial order. And, since in that case the notification/order disclosed only the conclusion without disclosing any reasons for coming to the same, it was struck down, being contrary to the law laid down by the Supreme Court in Bhagat Raja v. Union of India, AIR 1967 SC 1606. This has been pressed into service by the learned counsel for the petitioner to contend that notification Annexure-P.3 is also bereft of any reasons. On the other hand,

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Mr.H.S. Bedi, learned Deputy Advocate General, has rightly drawn the distinction on the strength of a Full Bench decision in The State of Punjab v. Bhagat Ram Patanga, AIR 1970 Punj and Har 9, which was affirmed by the Supreme Court in Bhagat Ram Patanga v. State of Punjab, AIR 1972 SC 1571, that the quasi-judicial order giving the process of reasoning could stay on the executive file of the Government and which file could be inspected to discover reasons which weighed with the Government to pass it. And the resultant notification need not contain reasons as those would be found on the quasi-judicial orders already passed on the file. In this way, the validity of notification Annexure P.3 has been sought to be justified as also by producing before me for perusal the supportive file.

5. I have gone through the department file. It appears that the letter of the petitioner asking for a copy of the report/reports was dealt with by the concerned Assistant of the Department on 7-7-1983. He proposed that a copy of the report of Shri G. S. Mann be sent to the petitioner. The Superintendent, however, on the same day, differed from the note and suggested that, since the show-cause notice itself was based on the report of Shri G. S. Mann and its details had already been mentioned in the show-cause notice, there was no need to supply a copy of the report to the petitioner. The matter was put before the Deputy Secretary on 15-7-1983 and he proposed that the petitioner's asking for a copy of the report was only a dilatory tactic. And as he had not submitted the explanation within time as asked for, he proposed that the same be ignored and the petitioner be removed from the membership as also from the chairmanship of the Market Committee. To this, the Minister concerned agreed on 24-7-1983 by putting his signatures thereon, though expressly it was not so mentioned that he had agreed to the proposal. Mr. Bedi tells me that this is the usual practice in the Department, whereby governmental work is done and unless there is a dissent to the note, the assent is normally given by affixing signatures. It is in this manner that the order is sought to be justified being based on reasons.

6. I must, at this stage, express that the learned counsel for the petitioner was remiss in not pointing out to the Motion bench Bhagat Ram Patanga's case, (AIR 1972 SC 1571) (supra), for had he done so, we would have let the petition come for hearing in its due course. All the same, the learned counsel has been successful in having this matter listed and it would not be desirable now to throw it out without deciding it on merits. To his contention that the impugned order was benefit of reasons, the answer is that reasons are available on the departmental file which contains the quasi-judicial order. Those are sufficient for the impugned action. There is thus no ground to interfere therein.

7. A word of advice need however be tendered here. In Bhagat Raja's case, (AIR 1967 SC 1606) (supra) K. Subba Rao, C.J., had drawn a clear distinction between an executive order and a quasi-judicial order of the Government which, in certain circumstances, it has occasion to pass. What is good routine for passing executive orders may not always be good routine for quasi-judicial orders. Mere signatures signifying assent may in certain events be not enough for quasi-judicial purpose. To rule out the possibility of routine or perfunctory assent, it would be desirable that the quasi-judicial authority, while agreeing to the proposal made signifies its assent by express words. This, at least, rules out the possibility that the signature of the quasi-judicial authority was appended with closed eyes and without proper application of mind.

8. The second point urged is that no proper opportunity was given to the petitioner to show cause. It is urged that the petitioner had asked for a copy of the report/reports and, in case the Government was not inclined to give him (it) he should have timely been warned so that he could give a detailed reply to the show-cause notice. This step of the petitioner was termed by the Government on the quasi-judicial file to be a dilatory tactic. When the petitioner had made such a request, he should have calculated that it may or may not be granted, and should have been prepared for the eventuality of submitting a reply to the show-cause notice within the time stipulated, as an alternative. Admittedly, he took no such step. The Government, in its turn, was thus justified in concluding that the petitioner was given the opportunity of showing cause which he had not chosen to avail in the right manner.

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Thus, this point too is not of any substance and sequelly fails.

9. No other point has been urged.

10. For the foregoing reasons, there is no force in this petition which is hereby dismissed with costs.

Petition dismissed.

AIR 1984 PUNJAB AND HARYANA 120 "Walaiti Ram v. State of Punjab"

PUNJAB & HARYANA HIGH COURT

Coram : 2 S. S. SANDHAWALIA, C.J. AND J. V. GUPTA, J. ( Division Bench )

Walaiti Ram Mahabir Parshad, Petitioner v. State of Punjab and others, Respondents.

Civil Writ Petn. No. 5509 of 1981, D/- 25 -11 -1983.

Punjab Agricultural Produce Markets Act (23 of 1961), S.23A (as inserted by Punjab Agricultural Produce Markets (Amendment) Act 1981) - AGRICULTURAL PRODUCE - CIVIL COURT - EVIDENCE - S.23A is not unconstitutional - Burden of proof placed therein on Licensees - Proper, in view of S.106 of Evidence Act - Barring of normal remedies for recovery of excess fee - Does not amount to trenching of legislative power into exclusively judicial field.

(i) Evidence Act (1 of 1872), S.106.

(ii) Civil P.C. (5 of 1908), S.9.

Section 23-A, when viewed in the larger perspective is not a provision validating the collection of market fee at Rs. 3/- per hundred but is merely intended for the retaining of such excess fee by Market Committees and to prevent its refund as unjust enrichment to middle men licensees and as such, it cannot be considered to be unconstitutional. In plain language the provisions only determine as to who is to keep this unauthorised collection of market fee from myriad of purchasers who could no longer come forward to claim them back. Both in equity and in law, the mandate of the statute that the excess market fee should remain with market Committees is unquestionable. In doing so, the section in essence statutorily effects the larger purpose invisaged in AIR 1980 SC 1037 that where the excess market fee had been deposited with the Committees by the licensees who had reimbursed themselves from next purchasers then such Committees should retain the amount against any refund to middle-men. In this view, allowing the same would merely be an unjust enrichment of the licensees and fortuitous windfall for them with regard to monies unauthorisedly collected from the next purchasers. (Paras 9, 13)

In this connection, no grievance can be made with regard to placing of onus of proof on licensees with regard to the recovery of market fee by them from next purchasers. The burden of proof on the licensees in this context is wholly in accordance with principle, equity, and the statute. Clearly enough the licensees alone would have special knowledge about the dealings made by them first with the producers and then in resale with the next purchasers. They alone would have the necessary record and the data on the point whether the market fee had been realised or not from the buyers. In such a situation putting them to strict proof is obviously correct. The Market Committee cannot possibly go on a wild goose chase to first find out as to the transactions of the licensees subsequent to the first purchase from the producers and thereafter to discharge the impossible burden of establishing whether the same had been recovered from the next purchasers or not. Indeed the aforesaid provision codified a well-known principle of the general law of evidence contained in Section 106 of the Evidence Act. (Para 14)

Further, as the very basis of the right of refuted or recovery of excess market fee has now been taken away by the statute, the barring of legal remedies for refund and further rendering any decree or order of a Court unenforceable

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in his regard cannot be considered a trenching of legislative power into an exclusive judicial field. (Para 16)

Cases Referred : Chronological Paras

(1983) 85 Pun LR 528 : 1983 Cur LJ (Civ and Cri) 208 15

AIR 1980 SC 1008 2, 6, 6A, 8, 10

AIR 1980 SC 1037 3, 4, 9

AIR 1977 SC 2279 : 1977 (4) SCC 98 12

AIR 1976 SC 1152 3

AIR 1976 PunjHar 1 2

AIR 1971 SC 946 : 1971 Tax LR 414 12

AIR 1962 SC 945 16

R.L. Batta with M.M. Singh Bedi, or Petitioners; H.S. Bedi, Deputy Advocate General Punjab for the State. Bhagirath Dass, Sr. Advocate with S.C. Pathela, Advocate for Respondents Nos. 2 to 4.

Judgement

S. S. SANDHAWALIA, C.J.:- The the constitutional validity of Section 23-A recently inserted in the principal Act by the Punjab Agricultural Produce Markets (Amendment) Act 1981 (Punjab Act No. 7 of 1981) is the primary and indeed the core question in this set of fifteen cases which stand admitted to a hearing by the Division Bench.

2. The issues arising herein cannot be well appraised without reference to their somewhat tortuous legal background. Way back in 1961 the Punjab Agricultural Produce Markets Act (hereinafter called the Act) was originally promulgated and Section 23 thereof authorised the Market Committees to levy ad valorem fee on agricultural produce bought sold by a licensee in the notified Market area at rate not exceeding Rupee 0.50/- paise for every hundred pees. This scale of fee was retained till 1969 whereafter by Punjab Act No.25 1969 it was raised to Re. 1.00 per hundred and later by Punjab Act No. 17 of 1973 it was further escalated to Rupees.-s 1.50 per hundred and further by Punjab Act No. 13 of 1974 the fee was raised from Rs. 1.50 to Rs. 2.25 per hundred. This enhancement was challenged in this Court in M/s. Hanuman Dall and General Mills, Hissar v. State of Haryana, AIR 1976 Punj and Har 1 and the increase to Rs. 2.25 P. per hundred as struck down and the market fee was allowed to be maintained at the original rate of Rs. 1.50 per hundred. The Punjab State Agricultural Marketing Board went in appeal to the Supreme Court but meanwhile by Act No. 14 of 1975, the market fee was raised afresh from Rs. 1.50 to Rs. 2.20 per hundred but the Market Committees in Punjab were directed to charge the market fee at the rate of Rs. 2.00 per hundred with effect from the 23rd of August, 1975 only. However, in the year 1978 by Punjab Ordinance No. 2 of 1978 followed by Punjab Act No. 22 of 1978 maximum market fee leviable was again raised from Rs. 2.20 to Rs. 3.00 per hundred. This enhancement was inter alia challenged directly by the dealers of Punjab before their Lordships of the Supreme Court. By their exhaustive judgment in Kewal Krishan Puri v. State of Punjab, AIR 1980 SC 1008 the maximum market fee leviable up to Rupees 2.00 was maintained and any enhancement beyond that was struck down.

3. Meanwhile marketing fees at the enhanced rates which had not been sanctified had been collected and many licensees from Punjab filed a number of writ petitions in the Supreme Court for refund of the market fees collected above the authorised amount. These writ petitions were disposed of by their Lordship in M/s. Shiv Shanker Dal Mills v. State of Haryana, AIR 1980 SC 1037, wherein following a similar situation in The Newabganj Sugar Mills Co. Ltd. v. Union of India, AIR 1976 SC 1152, they devised a scheme and issued nine precise guidelines with regard to the amounts claimed. In compliance with these directions the Registrar of the Punjab and Haryana High Court entertained claims for refund and processed and verified them. Apparently during the pendency of the proceedings the impugned provisions of the Act were promulgated on the 2nd of March, 1981.

4. The representative matrix of facts may be briefly taken from CWP 5509/1981 M/s. Walaiti Ram v. State of Punjab, The petitioner-firm is engaged in the business of purchase and sale of agricultural produce at Maur, district Bhatinda and is a licensee under the Act. In accordance with Rule 29 of the Punjab Agricultural Produce Markets (General) Rules (1962). framed under the aforesaid Act the liability to pay the market fee is inter alia on the buyer if he is a licensee, and consequently the writ petitioners were responsible for the payment of market fee. The petitioning firm in the context of the history noted above had continued to pay market fee

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even at the enhanced rates which were not later upheld by the final Court and in accordance with the directions in M/s. Shiv Shanker Dal Mills' case (supra) filed a claim for refund before the Registrar of the Punjab and Haryana High Court. After the promulgation of the impugned Act No. 7 of 1991, the petitioners further received the impugned notice (Annexure P. 2) informing them that they have got adjusted a sum of Rs. 13,178.20 and asking them to show cause as to why the said amount be not recovered from them. Aggrieved thereby the writ petitioners have raised the challenge to the very validity of the amending Act and in particular to the insertion of Section 23-A in the principal Act.

5. In the returns filed on behalf of respondent-State and the Punjab State Agricultural Market Board and Market Committee of Maur, the factual position is not at all controverted. The core of the stand herein is that under the Rules, the writ petitioners were entitled to recover the market fee paid by them froth the next purchser and since they had done so were not in law or equity entitled to the refund of the said amount. In any case the petitioners by the impugned Act are only put to proof that in fact they have not recovered the enhanced market fee front the next purchaser, in order to substantiate their claim. In sum, the stand of the respondents is that the writ petitioners cannot be allowed to unjustly enrich themselves by first having recovered the enhanced market fee from the next purchaser and thereafter, lay claim for a refund of the same from the respective Market Committees. Both the constitutional validity and the equity of Section 23-A s sought to be maintained.

6. Since the whole controversy herein revolves centrifugally round the provisions of the recently inserted S.23-A of the Act, it is apt to quote it at the very outset:-

"In the principal Act, after Section 23, the following section shall be inserted namely:-

'23-A (1). Notwithstanding anything contained in any judgment decree or order of any Court, it shall be lawful for a Committee to retain the fee levied and collected by it from a licensee in excess of that leviable under Section 23, if the burden of such fee was passed on by the licensee to the next purchaser of the Agricultural Produce in respect whereof such fee was levied and collected."

(2) No suit or other proceedings shall be instituted, maintained or continued in any court for the refund of whole or any part of the fee retained by a Committee under sub-section (1) and no court shall enforce any decree or order directing the refund of whole or any part of such fee.

(3) If any dispute arises as to the refund of any fee retained by a Committee by virtue of sub-section (1) and the question is whether the burden of such fee was passed on by the licensee to the next purchaser of the concerned agricultural produce, it shall be presumed unless proved otherwise that such burden was so passed on by the licensee.

(4) If airy amount of fee retainable by a Committee under sub-section (1) has been refunded to any licensee, the same shall be recoverable by the Committee in the manner indicated in sub-section (2) of Section 41.

(5) The provisions of this section shall not affect the operation of Section 6 of the Punjab Agricultural Produce Markets (Amendment and Validation) Act, 1976."

Now even a plain reading of the aforesaid provision manifests that the five salient features thereof are:-

(i) It entitles the Market Committees to retain the excess market fee collected by it from a licensee if the burden of such fee had been passed on by such licensee, to the next purchaser;

(ii) It creates a corresponding bar against the claim of refund of the excess fee by the Committees by a licensee where the burden had been passed on to the next purchaser;

(iii) The onus of proof to establish that the burden of such market fee had not indeed been passed on to the next purchaser would lie on the licensees claiming a refund thereof;

(iv) Where a refund of the excess market fee had in fact been secured by a licensee without discharging the onus of proof aforesaid then such market fee would become recoverable as arrears of land revenue by the Committees; and

(v) No suit, decree or other proceeding would lie for the refund of whole or

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any part of the excess market fee reed by the Committees and no Court shall enforce any decree or order directing such refund.

6A. The whole gravamen of the attack herein primarily levelled by Mr. R.L.Batta on behalf of the writ petitioners is that the impugned provisions of the afore-quoted Section 23-A, in essence seeks to validate the levy of market at Rs. 3/- per hundred despite the judgment in Kewal Krishan Puri's case (AIR 1980 SC 1808) (supra) holding to contrary and sustaining the same to extent of Rs. 2/- per hundred only. It was sought to be submitted that the retention of this excess fee by Market Committees in practical effect is nothing a validation of the same at the rate RS. 3/- per hundred. On this premise, contention is that such validation is sought to be effected without in any removing the basic infirmities in Act enhancing the fee to Rs. 3/- per hundred or affecting the foundation of final Court's judgment in Kewal Krishan Puri's case which must continue to hold the field. In sum, the argument Section 23-A is a blanket overriding the said judgment without in any way taking away the basis thereof by removing the infirmities in the statute and thus amounts to a flagrant trenching into the judicial power by the legislature.

6-B. In view of the aforesaid contention, it becomes necessary to straightway notice the equally firm and categoric stand taken on behalf of the respondents. Mr. Bhagirath Dass, their learned counsel, has with his usual incisive forcefulness contended that the amending Act or Section 23-A is not even remotely a validation of the market fee up to Rs. 3/- and indeed it never could be so in face of the clear-cut ratio and observations of their Lordships in Kewal Krishan Puri's case (AIR 1980 SC 1008) striking down the excess market fee above RE 2/-. According to him, the limited purpose of Act is to merely bar the refund of excess market fee which the licensees, middle men after payment to the Market Committees had recovered from their next purchasers. The provisions of Section 23-A were consequently nothing but an application of the salutary principle that there should be no unjust and illegal enrichment of the licensees and, therefore, a bar against the refund of the excess market fee from the Committees.

7. In order to appreciate the two rival contentions aforesaid and equally to avoid appraising them in a vacuum it becomes necessary to have a bird eye view of the scheme of the statute and the methodology of the collection of market fee. Section 23 of the Act only provides the upper limit for the quantum of market fee which may be leviable. It is a hallowed rule that a fee is related to and, therefore, must have a quid pro quo to the services rendered. It is not in dispute that the services by the Market Committees are rendered primarily for the benefit of the producers by creation of market yards and providing amenities etc. therein. The Act and the statutory rule expressly visualised licensees thereunder but they are primarily middlemen betwixt producers and the further purchasers from them. The scheme of the Act is that in the transactions of purchase the licensees can charge and collect the permissible market fee, and the law entities them to re-imburse the same amount from the next purchasers. The obligation to collect the market fee from the purchasers and tender it to the Committees is placed on the licensees. They are obliged to file the returns of transactions conducted within the market yards and to preserve the records of the market fee collected and subsequently to deposit it with the Committees.

8. In the light of the aforesaid statutory scheme, the actual effect that has arisen is that the licensees by virtue of the invalidated enhancement had collected Rs.3/- per hundred as market fee, as middlemen having recovered the same amount from the next purchasers. The final Court having held in Kewal Krishan Puri's case (AIR, 1980 SC 1008) (supra) that enhancement beyond Rupees 2/- was not valid, the result was that the licensees having charged Rupees 3/- per hundred and deposited the same with the Market Committees and thus having reimbursed the amount from the next purchasers nevertheless claimed the right to refund of the difference of Re. 1/- of unauthorised market fee from the Market Committees. In essence the practical question now is who is to keep the unauthorised collection of excess, market fee above the upheld

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rate of Rs. 2/- per hundred? Whether the same should be retained by public bodies, like the Market Committees or refunded to middlemen traders as unjust enrichment who in fact had actually recovered the same from the next purchasers as well.

9. For a true answer to the issue arising herein a reference to Rule 29 of the Punjab Agricultural Produce Markets (General) Rules, 1962 which provides for the levy and collection of fee for the sale and purchase of the agricultural produce becomes necessary. Indeed it is apt to quote the relevant sub-rule (2) which is as under:-

"29 (2), The responsibility of paying the fees prescribed under sub-rule (1) shall be of the buyer and if he is not a licensee then the seller who may realise e same from the buyer. Such fees shall be leviable as soon as an agricultural produce is bought or sold by a licenses"

Herein we are primarily concerned with the case of licensees alone and under icy statutory rule whilst the obligation of paying the fee is on the licensee he equlally has the right to realise the one from the next purchaser. There is no manner of doubt and indeed it was of common case before us that crores the rupees were collected as excess market fee beyond the permissible limit of Rs. 2/- per hundred from innumerable individual purchasers who are now impossible to be located and who alone in equity would be entitled to a refund. By virtue of the statutory provisions, middlemen licensees were entitled to recover the fee from their next purchasers and there is no reason to presume that they would not have availed themselves of the right. Indeed it was in this situation that even the final Court earlier in Shiv Shanker Dal Mill's case. (AIR 1980 SC 1037) did not allow any refunds to go to back to the licensees. They were to be kept in trust for the agriculturists and next purchasers and the event of their failure were to go the Market Committees or other public purposes. Whilst making the nine precise directions in the said case, it was observed as follows (At p. 1039):-

"The counsel for the market Committees pointed out that although refund of excess collections might be legally due to the traders many of the traders had themselves recovered this excess percentage from the next purchasers. So much so, these tiny tittles if they are to return to the original payers, should revert to the next purchasers themselves. The traders who are the petitioners have no more right to keep such small sums than the market committees themselves. To the extent to which the traders had paid out of their own, of course, they were entitled to keep them, but not where they had, in turn, collected from elsewhere. It would be hard to leave every agriculturist to file a suit or other legal proceeding for recovery of negligible sums which cumulatively amount to colossal amounts. Many a little makes a mickle."

It is plain from the above that even on a prima facie consideration of the matter, their Lordships have set their face against refund to licensees where they had in turn collected the excess fee from else where or from next purchasers. The directions given by them were primarily for the avoidance of what could become a misappropriation of the unauthorised collection of enhanced market fee from millions of unknown purchasers who could hardly be identified or come forward to claim the paltry amounts. It appears to me that the present Act in essence statutorily effects the same larger purpose. It primarily provides that where the excess market fee had been deposited with the Committees by the licensees who had reimbursed themselves from next purchasers then such Committees should retain the amount against any refund to middlemen. Allowing the same would merely be an unjust enrichment of the licensees and fortuitous windfall for them with regard to monies unauthorisedly collected from the next purchasers.

10. Again it seems wholly untenable to hold that Section 23-A in any way validates the recovery of excess market fee up to Rs. 3/- per hundred. It common ground that no future recoveries at this rate can possibly be made or authorised by the said provision. It is only in the interregnum betwixt the promulgation of the earlier Act and its final striking down in Kewal Krishan Puri's case, (AIR 1980 SC 1008) that the excess market fee may have come to be collected. Neither does it retrospectively validate such excess collection. It merely creates a limited bar regarding the claim to refund of money to licensees

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who have already reimbursed themselves from their next purchasers under Rule. 29.

11. The view that the impugned provisions cannot be deemed as validating ones is further buttressed by the fair concession made on behalf of the residents by Mr. Bhagirath Dass that Section 23-A, as enacted, does not entitle the Market Committees to themselves recover any excess collections from licensees barring the specific case of unauthorised refunds. The statutory provisions only sanctify the retention if the excess market fee by the Committees where the same has been receive by way of deposit from the licensees but does not go further to enable them to recover any such excess fee which may have remained in the hands of the licensees. The fair stand on behalf of he respondents themselves is that in cases where the excess amount had not actually come into the coffers of the Market Committees at any stage, the resent provisions do not entitle them recover the same because such excess market fees are not validated or authorised either by this amending Act any other provision.

12. In fairness to Mr. Bhagirath Dass must notice his firm reliance on R.S. Joshi v. Ajit Mills Ltd., 19 77 (4) SCC 98 : (AIR 1977 SC 2279). Therein a larger Bench of the final Court has now put all controversy at rest by holding that within limitations the State legislature has competence to appropriate to Government even taxes collected illegally by a dealer. The somewhat narrower view earlier expressed in Ashoka Marketing Ltd. v. State of Bihar, AIR 1971 SC 946, on which primary reliance was sought to be placed on behalf of writ petitioners has been expressly disagreed from.

13. In view of the aforementioned considerations and precedent we have no nesitation in holding that Section 23-A, when viewed in the larger perspective is not a provision validating the collection of market fee at Rs. 3/- per hundred but is merely intended for the retaining of such excess fee by Market Committees and to prevent its refund as unjust enrichment to middlemen licensees. As was said earlier in plain language the provisions only determine as to who is to keep this unauthorised collection of market fee from myriad of purchasers who could no longer come forward to claim them back. Both in equity and in law, the mandate of the statute that the excess market fee should remain with Market Committees appears to us as unquestionable.

14. The somewhat tall grievance attempted to be made out on behalf of the writ petitioners with regard to placing of onus of proof pertaining to the recovery of market fee from next purchasers appears to be equally untenable. Herein it is again necessary to recall that under Rule 29, the licensees are expressly authorised to realise the same from their next purchasers. Mr. Bhagirath Dass was, therefore, eminently right in pointing out that the burden of proof on the linensees in this context was wholly in accordance with principle, equity, and the statute. Clearly enough the licensees alone would have special knowledge about the dealings made by them first with the producers and then in re-sale with the next purchasers. They alone would have the necessary record and the data on the point whether the market fee had been realised or not from the buyers. In such a situation putting them to strict proof appears to be obviously correct. The Market Committees cannot possibly go on a wild goose chase to first find out as to the transactions of the licensees subsequent to the first purchase from the producers and thereafter to discharge the impossible burden of establishing whether the same had been recovered from the next purchasers or not. Section 106 of the Evidence Act is in the following terms:-

"Section 106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

The aforesaid provision codified a well known principle of the general law of evidence and herein Section 23 does no more than follow these general principles of burden of proof.

15. The last arrow to the bow of the writ petitioners was again that the barring of legal remedies for refund and further rendering any decree or order of a Court unenforceable in this regard was also a trenching of legislative power into an exclusive judicial field. Reliliance was placed on the recent Division Bench judgment of this Court in Bajinder Singh v. Assistant Collector Guhla, (1983) 85 Pun LR 528.

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16. So far as the legal position is concerned, there is no manner of doubt that any blatant intrusion into the pristinely judicial wing of the State is unconstitutional. However, the question is whether rely limiting the remedies for refund 21 rendering the existing decrees, or orders inexecutable, would amount to such an intrusion. We are unable to view from any such angle. The broader perceptive of the Act noticed above is that the very basis of the right of refund or recovery of excess market fee has now been taken away by the statute. It is well-settled that the legislature can by amendment prospectively or retrospectively take away the basis of a judgment or remove the infirmity in a statue. Herein we have already held that the statute creates a bar against a refund of excess market fee where the same has been recovered from next purchasers. Once the substantive right of refund is validly taken away then it would follow, that the procedural rights of preferring a suit or executing decree would fall with the same. This seems to be well settled from the authoritative decision in State of Orissa v. Bhupindra Kumar, AIR 1962 SC 945, which has beer repeatedly affirmed hereafter. Consequently if the substantive right to refund is held to be validly abrogated the bar to procedural remedy cannot be deemed as an intrusion into the judicial field. This contention must, therefore, be also rejected.

17. Before parting with this Judgment we must notice that though the conceded position before us is that the Market Committees also cannot recover he excess market fee remaining in he hands of the licensees yet the cases of adjustment, bank guarantees, stay orders or interim orders during the pendency of the long drawn out proceedings sand on a different footing. These interim orders would inevitably merge into the final orders and are, therefore, primarily governed by the same. Orders of this nature were only transitory and at best can imply that the licensees who before the striking down of the law were obliged to deposit the market fee had been merely granted either time or easier modes of payment therefor. In the eye of law the money must be deemed to have gone to the coffers of the Committee to be adjusted against future liabilities. Substantial rights of the parties cannot be governed by the mere fortuitous circumstance of such interim orders. Therefore, it appears to us that these at best can be viewed as no more than convenient or concessional mode of either the deposit of market fee or its payment by agreed instalments in future.

18. To conclude we would hold that Section 23-A of the Act particularly, and the amending Punjab Act No. 7 of 1981 generally, does not suffer from any constitutional invalidity and is hereby upheld.

19. It is common ground that apart from this significant legal question, the individual cases would need consideration on merits as well. Accordingly we direct that these be laid before a single Bench for decision thereon in accordance with the answer to the legal questions.

J. V. GUPTA, J.:- I agree.

Order accordingly.

**AIR 1982 PUNJAB AND HARYANA 16 "Jathedar Jagdev Singh v. State" PUNJAB & HARYANA HIGH COURT**

Coram : 2 S. S. SANDHAWALIA, C.J. AND SURINDER SINGH, J. ( Division Bench )

Jathedar Jagdev Singh and others, Petitioners v. The State of Punjab, Respondent.

Letters Patent Appeal No.514 of 1980, D/- 15 -7 -1981.\*

Punjab Agricultural Produce Markets Act (23 of 1961), S.3(8) - AGRICULTURAL PRODUCE - WRITS - ADMINISTRATIVE LAW - Suspension of State

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Agricultural Marketing Board entails civil consequences to the Board itself - Rule of audi alteram partem is attracted - Applicability of rule is also not excluded by intendment.

C.W.P. No.1069 of 1980, D/-30-5-1980 (Punj and Har), Reversed.

Constitution of India, Art.226.

Administrative law - Natural justice.

The suspension of State Agricultural Marketing Board by the State Government under Section 3(8) of the Punjab State Agricultural Produce Markets Act (1961), entails civil consequences to the Board itself and at once attract the principles of natural justice to the situation. Neither the factum of the Chairman and other members being nominated members of the Board nor the distinction between a corporate body and its individual members is relevant to the issue of civil consequences ensuing to such a legal body or for the purpose of exclusion of principles of natural justice on these grounds. (Paras 12, 13)

It is not easy to infer a clear implied prohibition of the rules of natural justice from the other provisions of the Act. Merely because an opportunity to show cause is provided under Section 3(7) and not so expressly provided under Section 3(8) would not raise an irrebuttable inference that the principles of natural justice are deliberately excluded from the later provision. It may be a weighty consideration to be taken into account but the weightier consideration is whether the administrative action entails civil consequences. (Paras 19, 20)

Action under Section 3(8) undoubtedly entails civil consequences of the most serious nature and indeed they may be termed as both penal and evil consequences in so far as an inference of either corruption or grave mismanagement would arise and cannot be easily separated from an order of the supersession of the whole Board. Therefore, it is the later and the weightier consideration that has to be given pre-eminence and a right of natural justice has to be read into S.3(8) and is not to be easily displaced by any possible inference of the exclusory rule. C.W.P. No.1069 of 1980, D/-30-5-1980 (Punj and Har), Reversed; AIR 1981 SC 136 and (1971) 2 All ER 552, Followed; AIR 1967 Punj 430, Referred; AIR 1979 Punj 61 and 1979 Pun LJ 129, Distinguished; C.W.P. No.2211 of 1977, D/-2-12-1977 (Pun) and Har), Explained. (Para 20)

Cases Referred : Chronological Paras

AIR 1981 SC 136 6, 7,10, 12, 15-A, 18, 19, 21, 22, 23, 24

AIR 1979 PunjHar 61 : 81 Pun LR 170 (FB) 23

1979 Pun LJ 129 (FB) 24

(1977) C.W.P. No.2211 of 1977, D/-2-12-1977 (Punj and Har), S. Ajaib Singh Machaki v. State of Punjab 24

(1971) 2 All ER 552 : (1971) 1 WLR 728 : 115 SJ 388, Pearlberg v. Varty 16

AIR 1967 PunjHar 430 22

Kuldip Singh with R.S. Mangia and T.S. Ooabia, for Petitioner; J.L. Gupta with Jagdish Singh and G.C. Gupta, for the State.

\* From judgement of I. S. Tiwana, J. in C.W.P. No.1069 of 1980, D/- 30-5-1980.

Judgement

S. S. SANDHAWALIA, C. J. :- Whether the principle of audi alteram partem is attracted in the event of the suspension of the State Agricultural Marketing Board by the State Government under S.3(8) of the Punjab State Agricultural Produce Markets Act, 1961, has come to be the spinal issue in this appeal under Clause 'X' of the Letters Patent.

2. In exercise of the powers under Section 3(1) of the Punjab State Agrl. Produce Markets Act, 1961 (hereinafter referred to as 'the Act') the State Government constituted the Punjab Agricultural Marketing Board (hereinafter referred to as 'the Board'), consisting of the six appellants, that is, appellant No.1, Jathedar Jagdev Singh Khudian as the Chairman and the other five as non-official members thereof, besides six official members, through a notification dated May 12th, 1978. However, on March 18, 1980, this Board was suspended by the State Government in exercise of its powers under Section 3(8) of the Act by a notification in the following terms :-

"Whereas it has come to the notice of the Government of the State of Punjab that the Punjab State Agricultural Marketing Board (hereinafter referred to as 'the Board') has incurred financial expenditure without detailed examination of the implications involved, has neglected the duties imposed upon it under the Punjab Agricultural Produce Markets Act, 1961, and has failed to execute development work to any significant extent and, therefore, it is satisfied that the Board is not functioning properly;

Now, therefore, in exercise of powers conferred upon him under sub-sec.(8) of Sec.3 of the Punjab Agrl. Produce Markets Act, 1961, the President of India is pleased to suspend the Board with immediate effect.

2. The President of India is further pleased to appoint Sardar Paramjit Singh, IAS Financial Commissioner, Development and

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Secretary to Government of Punjab, Department of Agricultural to exercise the functions of the Board and its Chairman till such time as a new Board is constituted."

PARAMJIT SINGH

Financial Commissioner Development and Secretary to Govt. Punjab, Agriculture and Forest Departments."

3. The present appellants preferred a writ petition impugning the aforesaid suspension primarily on the ground that no show cause notice whatsoever was given to the Board itself or to the petitioners individually before passing the order of suspension. This was alleged to be in flagrant violation of the well known principles of natural justice or the rule of audi alteram partem. Further it was the stand of the petitioner-appellants that there was no material with the State Government at the time of the passing of the impugned order for reaching any objective satisfaction about the non-functioning of the Board.

4. The petitioner-appellant's stand was controverted on behalf of the State Government by a firm stand that neither the Act itself nor the principles of natural justice call for any show cause notice to the Board or to the petitioners individually and further there was more than ample material before the respondent State to justify the passing of the order of suspension.

5. In an elaborate judgement the learned single Judge came to the conclusion that neither the provisions of the Act, (so far as these relate to the suspension of the board as such), envisage the issuance of any prior notice to the Board, nor the rules of natural justice or the principle of audi alteram partem is attracted to the facts of this case. He further held that in fact the applicability of such a role is excluded by necessary intendment by provisions of sub-sections (7) and (8) of Section 3 and Sections 15 and 35 of the Act. On the factual aspect he took the view that there was adequate material on the record before the respondent State for recording its satisfaction which ultimately led to the passing of the order of suspension of the Board.

6. Now the very sheet-anchor of the learned counsel for the appellant's case is the recent judgement of their Lordships of the Supreme Court in regard to the supersession of the New Delhi Municipal Committee reported as S.L. Kapoor v. Jagmohan, AIR 1981 SC 136. Mr. Kuldip Singh in substance submitted that this judgement concludes, the matter in his favour and is in terms on all fours with the present case.

7. We are of the view that there is substantial, if not total, merit in the aforesaid submission. Indeed Mr. J.L. Gupta, learned counsel for the respondent was fair enough to concede that on some aspects of the present case S.L. Kapoor's case (supra) is conclusively in favour of the appellants. It is, therefore, apt at the outset to deal with that aspect of the case which is covered by the aforesaid binding precedent.

8. Now a close analysis of the learned single Judge's lucid judgement would indicate that he rightly spelled out that the basic issue was whether any explanation or hearing to the Board or its individual members was a pre-requisite before the impugned action of suspension of the Board could be taken by the State Government. In rendering an answer in the negative to this issue the learned single Judge rested himself on two basic premises, which may best be recalled in his own words :-

"Here the petitioners were nominated as members of the Board by the Government in its absolute discretion. It is not a case of their assuming of their office through election or selection."

and secondly :

"The learned counsel for the petitioners has not been able to point out as to what civil consequences or the civil rights of the Board were infringed when the impugned order suspending the Board as such was passed. The Board as such, to my mind has no rights about the breach of which it can possibly complain. I asked Mr. Kuldip Singh to refer to any judgement wherein it might have been held that by the suspension or supersession of a nominated statutory body in exercise of an administrative power by the State Government, the civil rights of the said body stood infringed or violated."

9. It is manifest from the above that the twin considerations that weighed heavily, if not overwhelmingly with the learned single Judge was the status of the appellants, being merely nominated members of the Board, and the premise that the Board being a legal entity different from the individual members and the Chairman could itself suffer no civil or evil consequences through its suspension or supersession.

10. It would appear that when the matter was debated before the learned single Judge, the aforesaid two issues were obviously not free from difficulty. However the controversy appears to us as now having been set at rest and put beyond the pale of any doubt by the judgement of their Lordships in S.L. Kapoor's case (AIR 1981 SC 136) (supra).

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Therein also the Lt. Governor of the Union Territory of Delhi had appointed nine non-official members and four ex-officio members to the New Delhi Municipal Committee to hold office for a period of one year. However, well before the expiry of the aforesaid term the Lt. Governor exercising powers under Section 238(1) of the Punjab Municipal Act superseded the New Delhi Municipal Committee with immediate effect. Two of the non-official nominated members of the superseded New Delhi Municipal Committee namely Shri S.L. Kapoor and another preferred a civil writ petition in the Delhi High Court for quashing the order of supersession, but the same was dismissed by a Full Bench of five Judges. In the appeal before their Lordships of the Supreme Court it was forcefully contended by the learned Attorney General that neither the Committee nor its members had any beneficial interests in the continuance of the Committee, and, therefore, the supersession of the Committee did not involve any civil consequences, and the rule of audi alteram partem would not be attracted.

11. Categorically repelling the aforesaid contention after a full examination both on principle and a number of precedents including those of the Privy Council and the House of Lords, their Lordships have concluded as follows (at p.142) :-

"We have already referred to some of the relevant provisions of the Punjab Municipal Act, to indicate some of the rights and duties of the Committee under the Act. A Committee as soon as it is constituted at once, assumes a certain office and status, is endowed with certain rights and burdened with certain responsibilities, all of a nature commanding respectful regard from the public. To be stripped of the office and status, to be deprived of the rights, to be removed from the responsibilities, in an unceremonious way as to suffer in public esteem is certainly to visit the Committee with civil consequences. In our opinion the status and office and the rights and responsibilities to which we have referred and the expectation of the Committee to serve its full term of office would certainly create sufficient interest in the Municipal Committee and their loss, if superseded, would entail civil consequences so as to justify an insistence upon the observance of the principles of natural justice before an order of supersession is passed."

12. It would be evident from the above that neither the factum of being a nominated member of the Committee nor the distinction between a corporate body and its individual members was held to be at all relevant to the issue of civil consequences ensuing to such a legal body or for the purposes of exclusion of principles of natural justice on these grounds. With great respect, therefore, it appears to us that the twin premise which underlies the judgement of the learned single Judge is now unsustainable in view of the binding observation in S.L. Kapoor's case (supra). Inevitably, therefore, the finding on both these points has to be and is hereby reversed.

13. Once it is so, it necessarily follows that the impugned action herein would entail civil consequences to the Board itself and at once attract the principles of natural justice to the situation. It is in this context that one has now to examine the additional finding of the learned single Judge that the applicability of the rule of audi alteram partem is excluded by necessary intendment by the provisions of sub-sections (7) and (8) of Section 3 and Ss.15 and 35 of the Act.

14. Inevitably the controversy in the context must revolve around the relevant provisions of the statute. It, therefore, becomes necessary to read the relevant provisions thereof : -

S.3(7) : The State Government may, by notification remove any member of the Board other than an official member,-

(a) if he has become subject of any of the disqualifications specified in sub-sec.(5); or

(b) if he is, in its opinion, remiss in the discharge of his duties; or

(c) if he has without the permission of the Chairman of the Board and in the opinion of the State Government without sufficient cause absented himself for not less than three consecutive meetings of the Board;

and may appoint another member in his place in the manner provided in Cl. (b) of sub-sec.(1) from the category to which the removed member belongs; ,

Provided that before removing a member the reasons for the proposed action shall be conveyed to him and his reply invited within a specified period and duly considered;

Provided further that the term of office of the member so appointed shall expire on the same date as the term of office of the vacating member would have expired had the latter held office for the full period allowed under sub-section (4) unless there be delay in appointing a new member who succeeds the member first mentioned above in which case it shall expire on the date on which his successor is appointed by the State Government.

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(8) The State Government shall exercise superintendence and control over the Board and its officers and may call for such information as it may deem necessary and, in the event of its being satisfied that the Board is not functioning properly or is abusing its powers or is guilty of corruption or mismanagement it may suspend the Board and, till such time as a new Board is constituted make such arrangements for the exercise of the functions of the Board and of its Chairman as it may think fit;

Provided that the Board shall be constituted within six months from the date of its suspension.xx xx xx

Removal of members :

15.The State Government may by notification remove any member if, in its opinion, he has been guilty of misconduct or neglect of duty or has lost the qualification on the strength of which he was appointed :

Provided that before the State Government notify the removal of a member under this section, the reasons for this proposed removal shall be communicated to the member concerned and he shall be given an opportunity of tendering an explanation in writting. xx xx xx xx

35. Supersession of Committees :

(i) If in the opinion of the State Government a Committee is incompetent to perform or persistently make defaults in performing the duties imposed on it by or under this Act or abuses its powers, the State Government may, by notification supersede the Committee;

Provided, that before issuing a notification under this sub-section the State Government shall give a reasonable opportunity to the Committee for showing cause against the proposed supersession and shall consider the explanations and objections, if any, of the Committee."

15-A. Ere I proceed to closely examine to interpret the aforesaid provisions, it deserves highlighting that this has to be done against the background of two salient features; the first is, that words 'suspend the Board' employed in S.3(8) of the Act have a very peculiar connotation in this context and if one may say so can be slightly misleading if superficially viewed. The word 'suspend' used herein has not been employed in its ordinary sense of a temporary of Interlocutory order of suspension which may necessarily be followed by a regular order of suspension or removal. It is virtually the common case that the suspension of the Board under S.3(8) of the Act is in essence, its supersession or removal as such. The relevant provisions of the Act do not at all contemplate the passing of any subsequent order of removal or supersession. Indeed such a suspension is to be followed by the constitution of the Board within six months from the date of its suspension in view of the proviso to S.3(8) of the Act. The end result is that the first Board is virtually obliterated. It, therefore, appears to be plain that the impugned action of suspending the Board is tantamount to and in its real sense is equivalent to its supersession or removal, followed by the constitution of a new Board later. One has, therefore, to disabuse one's mind from any misleading inference that the suspension of the Board herein is either interlocutory or of a temporary nature. Indeed, Mr. J.L. Gupta, learned counsel for the respondent-State did not controvert this proposition. It is therefore in these very terms that the learned single Judge did construe the action as is evident from a close reading of his judgement. I, therefore, proceed on the hypothesis that despite the ambivalent language used in S.3(8) the essence of the action there is the supersession of the Board itself. Secondly a new dimension has now been given to the whole matter by the binding precedent in New Delhi Municipal Committee's case (AIR 1981 SC 136) (supra). As already stands noticed, the learned single Judge viewed this aspect of the exclusion of the principle of natural justice on the broad assumption that no civil consequences ensued to the Board as such or in any case if they did they were too indirect and marginal in nature to be taken notice of. Their Lordships of the Supreme Court in the abovementioned case have now held to the contrary by observing that grave civil consequences positively ensue to a legal corporate body as such in the event of its supersession or removal. In view of this binding precedent, the matter can now be examined only on the firm foundation that the action under S.3(8) of the Act of the supersession of the Board involves direct and grave civil consequences to the Board as such.

16. On the aforesaid twin premises it would indeed be well settled that the rule of audi alteram partem would be at once attracted in the case which entails civil consequences. Now it is the common case that the statute does not expressly or in terms exclude the principle of natural justice in the context of an action under

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Section 3(8) of the Act. The sole question that, therefore, survives to be examined is - whether these principles which are otherwise pristinely and directly applicable are impliedly excluded by necessary intendment from the other provisions of the Act ? To determine this question the true principle applicable has been succinctly formulated by Lord Sachs in Pearlberg v. Varty (Inspector of Taxes), (1971) 2 All ER 552, in the following words :-

As I understand the principles laid down in the Wiseman case and in the others cited to us, the application of an otherwise appropriate rule of natural justice is only to be regarded as excluded if the legislature expressly so states or if there is a clear implication to that effect. In the instant case there is no express exclusion and accordingly the question is whether there has been manifested a clear implication."

17. Now applying this principle of a clear implied exclusion of the rule of natural justice one must inevitably turn a little more closely to the provisions of S.3(8) of the Act. It is a sound canon of construction that such an implied exclusion has to be inforced from the language of the statute itself, its larger purpose and the juxtaposition and interplay of the various provisions of the Act itself. Now it is virtually the undisputed case that S.3(8) of the Act cannot be finically dissected into watertight compartments. Either the principles of natural justice are attracted in the event of the suspension of the Board with regard to all the grounds therein or they are not. A close analysis of the section would show that the suspension of the Board may be based on the following three distinct situations either individually or perhaps collectively as well : -

(i) On the satisfaction of the State Government that the Board is not functioning properly;

(ii) On the satisfaction of the State Government that the Board is guilty of corruption; and

(iii) On the satisfaction of the Government that the Board is guilty of mismanagement.

18. It would be evident from the above that three prescribed situations - the one about being guilty of corruption is gravely stigmatic and is not something which can be totally impersonal. A finding that the Board is guilty of corruption cannot, but bring inevitably a malicious taint of blameworthiness to the individual members who constitute the Board. Equally, it would directly and squarely attract the gravest disrepute to the Board collectively as well. Therefore, the gravest civil and if one may say so evil consequences would ensue from the order of suspension under S.3(8) of the Act both collectively to the Board and individually to the members thereof if the suspension is based on the finding of corruption. It would appear unimaginable that in such a situation a public finding of corruption be given collectively and individually without obtaining a hint of an explanation or affording any hearing to the persons, or the legal body stigmatically affected thereby. Again what is so said in the context of corruption would at a slightly lower level be equally applicable in a finding of grave mismanagement by the Board. It would thus be manifest that in both the situations, the principles of natural justice would normally be so sharply and clearly attracted that it can only be by the most unequivocal exclusion thereof that one could possibly arrive at a conclusion that they should not be applied. The graver the stigmatic nature of the order of suspension or the evil consequences ensuing therefrom, the greater would be the need for the accrual of the right of natural justice to meet a charge so serious and all pervading. In view of the reiteration and extension of the rule by their Lordships in S.L. Kapoor's case (AIR 1981 SC 136) (supra) now only a direct or a near direct implied prohibition by the statute itself can possibly bar the applicability of the rule of natural justice in the present situation.

19. With great respect to the learned single Judge it appears to us that it is not easy to infer a clear implied prohibition of the rules of natural justice from the other provisions of the Act. A similar argument of exclusion by necessary implication was also raised in S.L. Kapoor's case (supra), but categorically repelled with the following observations (at p.142) :-

"One of the submissions of the learned Attorney General was that when the question was one of disqualification of an individual member, Sec.16 of the Punjab Municipal Act expressly provided for an opportunity being given to the member concerned whereas Sec.238(1) did not provide for such an opportunity and, so, by necessary implication, it must be considered that the principle audi alteram partem was excluded. We are unable to agree with the submission of the learned Attorney General.

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It is not always a necessary inference that if opportunity is expressly provided in one provision and not so provided in another opportunity is to be considered as excluded from that other provision. It may be a weighty consideration to be taken into account but the weightier consideration is whether the administrative action entails civil consequences. ..."

20. Now applying the aforesaid authoritative enunciation, it would follow that merely because an opportunity to show cause is provided under S.3(7) of the Act and not so expressly provided under Section 3(8) of the Act would not raise an irrebuttable inference that the principles of natural justice are deliberately excluded from the later provision. Undoubtedly this is a relevant consideration but by itself it is not conclusive on the point. Again the second consideration envisaged by their Lordships is - and what they have called the weightier one -whether the administrative action entails civil consequences. As I have highlighted earlier, action under S.3(8) undoubtedly entails civil consequences of the most serious nature and indeed they may be termed as both penal and evil consequences in so far as in inference of either corruption or grave mismanagement would rise and cannot be easily separated from an order of the supersession of the whole Board. Therefore, it is the later and the weightier consideration that has to be given re-eminence in view of the dictum of their Lordships of the Supreme Court and a right of natural justice has to be read into Section 3(8) and is not to be easily displaced by any possible inference of the exclusory role.

21. It appears to me that when the learned single Judge considered the matter there was undoubtedly much to be said for the view he had taken and we would have been loth to dislodge it, but for the fact that the binding precedent in S.L. Kapoor's case (AIR 1981 SC 136) has materially altered the situation. In our view the aforequoted observations from the said case virtually conclude the matter in favour of the appellants and with the greatest respect we have to hold that the finding of the learned single Judge that the principles of natural justice are inferentially excluded from S.3(8) of the Act is not now sustainable, and has consequently to be reversed.

22. As is manifest from the above, the issue herein is now largely covered by S.L. Kapoor's case (AIR 1981 SC 136) (supra). However, it is of interest to note that this High Court had earlier taken a similar view in the context of the unamended Section 238 of the Punjab Municipal Act in The Municipal Committee, Kharar v. State of Punjab, AIR 1967 Punj 430. Equally it is worthy of notice that the Legislature itself later has amended S.238 vide Punjab Act No.24 of 1913 whereby the principle of natural justice has been incorporated in the statute itself by sub-section (3) of the amended section.

23. In fairness to Mr. J.L. Gupta we must, however, advert to his attempted reliance first on the Full Bench judgement of this Court in Gurcharan Singh v. State of Haryana, 81 Pun LR 170 : (AIR 1979 Punj 61). What fell for consideration there was the provision of S.27 of the Punjab Co-op. Societies Act and the crucial issue raised was whether the principles of natural justice were equally attracted in the interlocutory suspension of an Executive Committee of a Co-operative Society under sub-sec.(1-A) of the aforesaid section. The statute therein had expressly provided for an opportunity to the Committee or any of its members prior to its supersession or the latter's removal under sub-section (1) but had pointedly excluded any such opportunity in the case of mere suspension under sub-sec. (1-A). A plain reading of the Full Bench judgement would show that it was held that suspension herein was obviously interlocutory as a prelude to supersession and by itself led to no permanent civil consequences. It was in that context that it was held that the exclusory rule was clearly attracted in the context of suspension alone under sub-section (1)(A). We are of the view that Gurcharan Singh's case (supra) is wholly distinguishable and further that its ratio is in no way affected by S.L. Kapoor's case (AIR 1981 SC 136) (supra).

24. Similar considerations seem to apply in case of the Full Bench judgement in Mota Singh v. State of Punjab, 1979 Pun LJ 129. What fell for consideration in the said judgements were the recently inserted provisions of sub-sections (8) to (12) of S.13 of the Punjab Co-op. Societies Act, 1961. Construing the same it was held that it was not the requirement of natural justice that a copy of the proposed order of amalgamation should be sent under certificate of posting to every member of the society or societies concerned, when the legislature had not advisedly said so and had confined the provisions only to the society itself and its creditors. It deserves highlighting that the aforesaid provisions had themselves given a

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right to a member of the society to prefer objections and also the option of withdrawing his share, deposits, or loan as the case may be. It was in this context that the Full Bench held that the requirement of the service of a copy of the proposed order of amalgamation under certificate of posting to every member of the society could not be inserted in the statute by a process of interpretation or a tortuous invocation of the rules of natural justice. It is thus plain that Mota Singh's case (supra) is plainly distinguishable. Lastly in this context Mr. Gupta had placed reliance on the single Bench judgement in S. Ajaib Singh Machaki, Administrative Member, Punjab State Electricity Board, Patiala v. State of Punjab (C.W.P. No.2211 of 1977) decided on Dec. 2, 1977. Therein what fell for construction was S.10 of the Electricity Supply Act, 1948 with particular reference to sub- section (5) thereof with regard to the removal of the Chairman and the members of the Board constituted under the said Act. What calls for pointed notice in the context of this case is first the fact that the petitioner therein was only the administrative member of the Punjab State Electricity Board, Patiala and not the Board collectively or its members. A close reading of the said judgement would show that even though all the observations made therein may not now be tenable in view of the authoritative pronouncement in S.L. Kapoor's case (AIR 1981 SC 136) (supra), yet the learned Judge held it as a fact that the consideration of the entire matter in the high level meeting in which all the members of the Board participated was itself sufficient opportunity to explain and show cause even if the same could be deemed to be implicit under S.10(5) of the Act. That judgement would, therefore, be sustainable at least on that limited ground and its ratio on this point does not in any way conflict with the view we are inclined to take. Consequently, we do not propose to examine the correctness or otherwise of the ancillary observations made in Ajaib Singh Machaki's case (supra).

25. It would be thus plain that the aforesaid three authorities strenuously relied on behalf of the respondent-State, do not in any way aid its stand. In the light of the aforesaid discussion we are constrained to allow this appeal and set aside the judgement of the learned single Judge. Annexure-P/2 is consequently quashed. It was the common case of the parties that the three years' tenure of the appellants would expire on May 12, 1981 and inevitably, therefore, they would not now be entitled to the reinstatement as members of the Board. However, the appellants would be plainly entitled to all the consequential reliefs flowing inevitably from the quashing of the impugned order. In the peculiar circumstances of the case, we leave the parties to bear their own costs.

SURINDER SINGH, J. :- I agree.

Appeal allowed.

AIR 1978 PUNJAB AND HARYANA 53 "Harnam Dass Lakhi Ram v. State"

PUNJAB & HARYANA HIGH COURT

FULL BENCH

Coram : 5 O. CHINNAPPA REDDY, BHOPINDER SINGH DHILLON, A. S. BAINS, HARBANS LAL AND SURINDER SINGH, JJ. ( Full Bench )

M/s. Harnam Dass Lakhi Ram, Bhatinda, Petitioner v. The State of Punjab and others, Respondents.

Civil Writ Petns. Nos. 8605, 8604, 8757 to 8763 etc. of 1976; 3 to 19, 86, 108 to 114 etc. of 1977 and 7508 of 1975, D/- 27 -5 -1977.

(A) Punjab Agricultural Produce Markets Act (23 of 1961), S.5 and S.6 - AGRICULTURAL PRODUCE - Notifications dated 20-9-1961 and dated 16-3-1962 issued u/Ss.5 and 6 - Not ultra vires.

The notifications dated 20-9-1961 and dated 16-3-1962 issued under Ss. 5 and 6 respectively are not ultra vires the provisions of Ss. 5 and 6. (Paras 25 and 26)

As is clear from the provisions of Ss. 5 and 6 of the Act, the State Government by issuing notification under S. 5 of the Act declared its intention to exercise control over the purchase, sale, storage and processing of agricultural produce specified in the notification in the area specified therein with a view to invite objections. Any person could raise objections as to the inclusion of the items of agricultural produce or the area and after the said objections were considered and disposed of by the State Government, the notification under S. 6 was then issued. The State Government under S. 6 of the Act has got powers to include as much area as it deems proper to be notified market area and so also such items of agricultural produce as may be necessary. (Para 25)

The contention that the area covered under the notification issued under S. 6, is very wide and, therefore, the notifications should be struck down, is really without any merit. If there is a power to include larger area as notified market area or all items of agricultural produce mentioned in the Schedule transactions of which are to be controlled within the said market area, merely because the same power has been exercised, cannot be made to be a ground for quashing the notifications. The vires of the provisions of Ss. 5 and 6 not being challenged it has to be held that the notifications, issued under Ss. 5 and 6 of the Act are valid and are not liable to be set aside on any ground. (Para 26)

(B) Punjab Agricultural Produce Markets Act (23 of 1961), S.23 - AGRICULTURAL PRODUCE - LEGISLATURE - STATE - Levy of market fee on goods imported from outside Punjab - Not hit by Art. 304 of Constitution.

Constitution of India, Art.304.

It is not correct to say that the market fee is paid in the States from where agricultural produce is imported and, therefore, the levy of market fee under the Act amounts to double levy of fee which results into discrimination. (Paras 28, 29)

Clause (a) of Art. 304 can only be attracted if any discrimination is made in the imposition of any tax on the goods imported from the other States to which similar goods as may be manufactured in that State are subjected. The levy of market fee at the maximum rate of 2 per cent has been imposed on the agricultural

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produce produced in the State and so also on the agricultural produce imported from outside the State. (Para 28)

With a view to attract the provisions of Art. 304 (a) discrimination has to be made out because of the imposition of tax by the Legislature of the same State. Any imposition of market fee by the other State cannot be made the basis of discrimination for challenging the fee imposed by the Legislature of the Punjab State. (Para 29)

(C) Punjab Agricultural Produce Markets Act (23 of 1961), S.23, S.26, S.28 - AGRICULTURAL PRODUCE - LAW - SERVICE TAX - Levy of fee - Levy is not a tax in garb of fee.

Constitution of India, Art.265.

The provisions of Ss. 26 and 28 of the Act would show that the levy of fee under S. 23 of the Act is correlated to the expenses incurred in rendering the services. It is not correct to say that there is complete absence of quid pro quo and the levy is in fact a tax in the garb of fee.

(Paras 34, 35)

The services to be rendered in lieu of the fee are manifold as postulated under the provisions of Ss. 26 and 28 of the Act. It cannot be successfully contended that the services should be rendered to each and every licensee or purchaser or a class of licensees and purchasers. The services to be rendered cover a very vast area and, therefore, the question of rendering services cannot be looked into from personal or from the view point of any class. The Market Committees disseminate information regarding the market rates of the agricultural produce bought and sold in the market and perform many other functions as are postulated under the provisions of the Act and the Rules made thereunder, which, if looked from proper perspective, are the services being rendered to all - to the producers of the agricultural produce, to the licensees under S. 10, to the licensees under S. 13 and various other functionaries connected with the purchase, sale, storage and processing of the agricultural produce. (Para 31)

It is no doubt true that a levy by way of fee is a sort of return or consideration for the services rendered which makes it necessary that there should be an element of qiuid pro quo in the imposition of a fee. But the question has to be viewed from a broader perspective. Case law discussed. (Para 32)

(D) Panjab Agricultural Produce Markets Act (23 of 1961), S.6 - AGRICULTURAL PRODUCE - Sales or purchases taking place outside principal or sub-market yard - If regulated.

As is clear from the provisions of the Act, all sales and purchases of agricultural produce made within each market area are being regulated under the Act. It is immaterial whether the said sales or purchases take place in the principle market yard or sub-market yard or even outside. (Para 36)

(E) Punjab Agricultural Produce Markets Act (23 of 1961), S.23 - AGRICULTURAL PRODUCE - EQUALITY - Levy of uniform market fee - Validity.

Constitution of India, Art.14.

There is no basis for holding that the levy of uniform market fee is treating unequals as equals. The rendering of services to a person or a particular class of persons in their personal capacity cannot be made the basis of distinction for holding such person or class of persons as unequals with the rest. The provisions of the Act, under which the levy of fee has been imposed being valid, it is not open to the petitioners to raise any such argument on the basis of the assumed classification of equals and unequals. (Para 37)

(F) Punjab Agricultural Produce Markets Act (23 of 1961), S.10A - AGRICULTURAL PRODUCE - FREEDOM OF TRADE - RIGHT TO PROPERTY - (as introduced by Punjab Agricultural Produce Markets (Amendment and Validation) Act, 1976) - Constitutionality - Not ultra vires Art.19(1)(f) and (g) of Constitution.

Constitution of India, Art.19(1)(f), Art.19(1)(g). (Para 38)

(G) Punjab Agricultural Produce Markets (General) Rules (1962), R.31(9) - AGRICULTURAL PRODUCE - Power to levy penalty - Scope.

The provisions of the Rules clearly suggest that the default mentioned in sub-rule (9) of Rule 31, which attracts the penalty, can be a default on account of non-submission of returns in form M or for submission of incorrect returns or for default in making payment of the market fee as required under the Rules. This is so clear from the language of sub-rule (10) of Rule 31, read with the other sub-rules of Rule 31. Therefore, keeping in view the provisions of R. 31, the petitioners, who were admittedly licensees during the relevant period were required to submit the returns in form M but admittedly the same were not submitted, therefore, it cannot be argued that the Committee has on jurisdiction to levy penalty. (Para 39)

(H) Punjab Agricultural Produce Markets (General) Rules (1962), R.31(9) - Punjab Agricultural Produce Markets (Amendments and Validation) Act (34 of 1976), S.3 - AGRICULTURAL PRODUCE - SENTENCE IMPOSITION -

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Power to levy penalty - Not violative of Art.20 of Constitution.

Constitution of India, Art.20.

The contention that if it is held that the Committee has got jurisdiction to levy penalty, the provisions of the Amendment and Validation Act will be hit by Art. 20 of the Constitution, is without any merit. (Paras 42, 43)

The word 'penalty' used in sub-cl. (1) of Art. 20 of the Constitution cannot be independently interpreted without making reference to the provisions of the earlier clause. The penalty imposed should be in connection with the commission of the offence. The penalty which can be levied, is not in connection with the commission of an offence. The penalty is for non-compliance of the provisions of sub-rules of Rule 31, and the same is not being imposed for an offence or on ground of conviction. (Paras 43, 44)

Cases Referred : Chronological Paras

AIR 1977 PunjHar 347 : 1977 Tax LR 2209 (FB) 35

1976 Pun LJ 428 21

AIR 1975 SC 1587 : 1975 Tax LR 1823 18, 19, 21, 39, 40, 45

AIR 1975 SC 2037 : 1975 Tax LR 2013 32

AIR 1975 SC 2193 : 1975 Tax LR 2116 34

AIR 1973 SC 106 37

(1966) 1 ITJ 171 (Ker) 43

AIR 1965 SC 1107 32

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AIR 1962 SC 1246 : 1962 (2) Cri LJ 303 44

AIR 1961 SC 552 37

AIR 1958 SC 875 40

AIR 1954 SC 282 33, 34

G.L. Sanghi, Sr. Advocate, (R.L. Batta, H.K. Puri with him), for Petitioner; I.S. Tiwana, Dy. Advocate General, Punjab (for No. 1), R.K. Garg, Balbir S. Bindra, Surjit Bindra, C.P. Sapra, S.S. Sodhi (for Nos. 2 and 3) and Harbhagwan Singh, Sr. Advocate with Amarjit Chaudhary (for No. 2), for Respondents.

Judgement

B.S. DHILLON, J. :- This judgment will dispose of Civil Writ Petitions Nos. 8605, 8604, 8757 to 8763, 8779 to 8788, 133 of 1976; 3 to 19, 86, 108 to 114, 161, 269, 333 to 340, 347, 578 of 1977; and 7508 of 1975. Since the question of law involved in all these cases is common, therefore, the same are being disposed of by a common judgment.

2. Before Punjab Agricultural Produce Markets Act, 1961 (Punjab Act No. 23 of 1961), (hereinafter referred to as the Act) was enacted by the Punjab Legislature, the Punjab Agricultural Produce Markets Act of 1939, was operating in the area of the erstwhile Punjab State; whereas the Patiala Agricultural Produce Markets Act, 2004 B. K. was operating in the erstwhile area of the Patiala and East Punjab States Union. Both these enactments were repealed by S. 47 of the Act which Act was passed to consolidate and amend the law relating to better regulation of the purchase, sale, storage and processing of agricultural produce in the State of Punjab. This was so mentioned as the object of the enactment. It is pertinent to mention that with a view to check the mal-practices in the sphere of purchase, sale, storage and processing of agricultural produce, the question of having regulated markets and regulating the sale and purchase in the market areas, attracted the attention of Government of the day as far back as 1928. Royal Commission on Agriculture in India, 1928, highlighted this aspect in the following words:-

"If as we have held in the preceding para, it is established that the cultivator obtains a much better price for his produce when he disposes of it in a market than whan he sells it in his village, the importance to him of properly organised markets needs no emphasis. The importance of such markets lies not only in the functions they fulfil but in their reactions upon production. Well regulated markets create to the mind of the cultivator a feeling of confidence and of receiving fair play and this is the mood in which he is most ready to accept new ideas and to strive to improve his agricultural practice. Unless the cultivator can be certain of securing adequate value for the quality and purity of his produce, the effort required for an improvement in these will not be forthcoming. The value of the educative effect of well regulated markets on the producer can hardly be exaggerated but it has yet to be recognised in India. From all provinces we recevied complaints of the disabilities under which the cultivator labours in selling his produce in markets as at present organised. It was stated that scales and weights and measures were manipulated against him, a practice which is often rendered easier by the absence of standardised weights and measures and of any system of regular inspection. Deductions which fall entirely on him but against which he

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has no effective means of protest are made in most markets for religious and charitable purposes and for other objects. Large 'samples' of his produce are taken for which he is not paid even when no sale is effected. Bargains between the agent who acts for him and the one who negotiates for the purchaser are made secretly under a cloth and he remains in ignorance of what is happening. The broker whom he is compelled to employ in the larger markets is more inclined to favour the purchaser with whom he is brought into daily contact than the seller whom he only sees very occasionally. This inclination to favour the buyer becomes more pronounced when, as not infrequently happens, he acts for both parties."

3. In a Seminar on Regulated Markets organised by the Ministry of Food and Agriculture (Department of Agriculture) at Mysore in 1959, the question of regulating the sale and purchase outside the market proper, was considered. Subject No. 3 of the Seminar pertained to this aspect of the problem. An extract from the report of the Seminar regarding the said subject is as follows:-

"Subject 3.- Regulating the sale and purchase outside the market proper.- Many of the speakers enumerated the mal-practices indulged in by the traders while making village-site purchases and wanted that there should be some sort of an over-all regulation of all transactions made beyond the market-yard. To make the Regulation effective over the operations of the traders the following measures were recommended for adoption by the market committees:-

(1) Licensing of traders should be introduced throughout the market area.

(2) Supervisory staff must be strengthened by the market committees.

(3) Periodical returns should be submitted to the market committee for the purchases made by the licensees outside the market yard.

(4) As in certain Acts there is no provision for the employees of the market committees to check weights and measures, such market committees should be delegated powers of checking the weights and measures within their jurisdictions."

4. As is obvious, the Act was enacted after the Mysore Seminar and the Punjab Legislature took due care in incorporating in the Act the decisions taken in the Seminar with a view not to allow any lacuna in the Act to remain which can frustrate the whole purpose for which the enactment was made.

5. Section 2 of the Act enacts definitions for the purpose of the Act. Some of the relevant provisions are reproduced as follows:-

"2. In this Act, unless the context otherwise requires,-

(a) 'agricultural produce' means all produce, whether processed or not, of agriculture, horticulture, animal husbandry or forest as specified in the Schedule to this Act;

x x x x x

(f) 'dealer' means any person who within the notified market area sets up, establishes or continues or allows to be continued any place for the purchase, sale, storage or processing of agricultural produce notified under sub-sec. (1) of S. 6 or purchases, sells, stores or processes such agricultural produce;

x x x x x

i) 'market' means a market established and regulated under this Act for the notified market area, and includes a market proper, a principal market yard and sub-market yard;

x x x x x

(k) 'market proper' means any area including all lands with the buildings thereon, within such distance of the principal market or sub-market yard, as may be notified in the official gazette by the State Government, to be a market proper;

x x x x x

(1) 'notified market area' means any area notified under S. 6;

x x x x x

(n) 'principal market yard' and 'sub-market yard' mean an enclosure, building or locality declared to be a principal market yard and sub-market yard under S. 7;

x x x x x

(q) 'retail sale' means sale of agricultural produce not exceeding such quantity as may be prescribed."

6. Section 3 provides for the constitution of the State Agricultural Marketing Board. The said Board being a body corporate, legal authority has been as-signed definite functions in the Act.

7. Sections 5 and 6, which are important for the disposal of the present petitions, are as follows:-

"5. The State Government may, by notification, declare its intention of exercising control over the purchase, sale,

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storage and processing of such agricultural produce, and in such area as may be specified in the notification. Such notification shall state that any objections or suggestions which may be received by the State Government within a period of not less than thirty days to be specified in the notification, will be considered.

6 (1) After the expiry of the period specified in the notification under S. 5 and after considering such objections and suggestions as may be received before the expiry of such period, the State Government may, by notification and in any other manner that may be prescribed, declare the area notified under S. 5 or any portion thereof to be a notified market area for the purposes of this Act in respect of the agricultural produce notified under S. 5 or any part thereof.

(2) The State Government if satisfied that in any notified market area a Committee is not functioning or two such areas or parts thereof are to be amalgamated or a part of any such area is to be amalgamated with another such area or is to be constituted into a separate notified market area, may by notification denotify any market area notified under sub-sec. (1) or any part thereof and, when the whole of such area is denotified, cancel a Committee and transfer all the assets of that Committee which remain after satisfaction of all its liabilities to the Board. Such assets shall be utilised by the Board for such objects in the area as it may consider to be for the benefit of the producers of that area.

(3) After the date of issue of such notification or from such later date as may be specified therein, no person unless exempted by rules made under this Act, shall, either for himself or on behalf of another person, or of the State Government within the notified market area, set up, establish or continue or allow to be continued any place for the purchase, sale, storage and processing of the agricultural produce so notified, or purchase, sell, store or process such agricultural produce except under a licence granted in accordance with the provisions of this Act, the rules and bye-laws made thereunder and the conditions specified in the licence:

Provided that a licence shall not be required by a producer who sells himself or through a bona fide agent, not being a commission agent, his own agricultural produce or the agricultural produce of his tenants on their behalf or by a person who purchases any agricultural produce for his private use.

(4) For the removal of doubts, it is hereby declared that a notification published in the official gazette under this section or S. 5 shall have full force and effect notwithstanding any omission to publish, or any irregularity or defect in the publication of, a notification under this section of under S. 5 as the case may be."

8. Section 7 provides for the principal market yard and one or more sub-market yards to be notified in each notified market area. Section 8 prohibits private markets to be opened in or near the places declared to be markets. Section 10 makes a provision for the grant of licences for the sale, purchase, storage and processing of agricultural produce which have to be issued by the Secretary of the Board. Sections 11 to 20 provide for the constitution of the Market Committees and regarding other matters concerning thereto. Section 23, which is again important for the disposal of the present writ petitions, is as follows:-

"23. A Committee shall, subject to such rules as may be made by the State Government in this behalf, levy on ad valorem basis fees on the agricultural produce bought or sold by licensees in the notified market area at a rate not exceeding two rupees and twenty paise for every one hundred rupees:

Provided that-

(a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made; and

(b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made."

9. Section 25 provides that all receipts of the Board shall be credited into a fund to be called the Marketing Development Fund, whereas S. 26 makes a provision regarding the purposes for which the Marketing Development Fund may be expended. The said provision is as follows:-

"26. The Marketing Development Fund shall be utilised for the following purposes:-

(i) better marketing of agricultural produce;

(ii) marketing of agricultural produce on co-operative lines;

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(iii) collection and dissemination of market rates and news;

(iv) grading and standardisation of agricultural produce;

(v) general improvements in the markets or their respective notified market areas;

(vi) maintenance of the office of the Board and construction and repair of its office buildings, rest-house and staff quarters;

(vii) giving aid to financially weak Committees in the shape of loans and grants;

(viii)payment of salary, leave allowance, gratuity, compassionate allowance, compensation for injuries or death resulting from accidents while on duty, medical aid, pension or provident fund to the persons employed by the Board and leave and pension contribution to Government servants on deputation;

(ix) travelling and other allowances to the employees of the Board, its members and members of Advisory Committees;

(x) propaganda, demonstration and publicity in favour of agricultural improvements;

(xi) production and betterment of agricultural produce;

(xii) meeting any legal expenses incurred by the Board;

(xiii) imparting education in marketing or agriculture;

(xiv) construction of godowns;

(xv) loans and advances to the employees;

(xvi) expenses incurred in auditing the accounts of the Board;

(xvii) with the previous sanction of the State Government, any other purpose which is calculated to promote the general interests of the Board and the Committees or the national or public interest:

Provided that if the Board decides to give aid of more than five thousand rupees to a financially weak Committee under Cl. (vii) the prior approval of the State Government to such payment shall be obtained."

10. Section 27 provides for the Market Committee Fund; whereas S. 28 makes a provision as regards the purposes for which the Market Committee Funds may be expended and the said provision is as follows:-

"28. Subject to the provisions of S. 27, the Market Committee Funds shall be expended for the following purposes:-

(i) acquisition of sites for the market;

(ii) maintenance and improvement of the market;

(iii) construction and repair of buildings which are necessary for the purposes of the market and for the health, convenience and safety of the persons using it;

(iv) provision and maintainance of standard weights and measures;

(v) pay, leave allowances, gratuities, compassionate allowances and contributions towards leave allowances, compensation for injuries and death resulting from accidents while on duty, medical aid, pension or provident fund of the persons employed by the Committee;

(iv) payment of interest an loans that may be raised for purposes of the market and the provisions of a sinking fund in respect of such loans;

(vii) collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of the agricultural produce concerned;

(viii) providing comforts and facilities, such as shelter, shade, parking accomodation and water for the persons, draught, cattle vehicles and pack animals coming or being brought to the market or on construction and repair of approach roads, culverts, bridges and other such purposes;

(ix) expenses incurred in the mainteinance of the offices and in auditing the accounts of the Committees;

(x) propaganda in favour of agricultural improvements and thrift;

(xi) production and betterment of agricultural produce;

(xii) meeting any legal expenses incurred by the Committee;

(xiii) imparting education in marketing or agriculture;

(xiv) payments of traveling and other allowances to the members and employees of the Committee, as prescribed;

(xv) loans and advances to the employees;

(xvi) expenses of and incidental to elections; and

(xvii) with the previous sanction of the Board, any other purpose which is calculated to promote the general interests of the Committee or the notified market area or with the previous sanction of the State Government, any purpose calculated to promote the national or public interest."

11. Section 37 provides that whose-ever contravenes the provisions of S. 6

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or S. 8, shall, on conviction, be punishable with simple imprisonment which may extend to six months or with fine which shall not be less than five hundred rupees, but may extend to five thousand rupees or with both.

12. Section 38 gives power to the State Government to add to the Schedule of the Act any other item of agricultural produce or amend or omit any item of such produce specified therein. Section 43 gives power to the State Government to make the Rules.

13. The Punjab Agricultural Produce Markets ((General) Rules, 1962, have been framed under the Act. Rule 2 (10) defines licensee in the following words:-

"2 (10) 'licensee' means a person holding a licence issued under these rules or the rules hereby repealed."

14. Rule 17 provides that a person desirous of obtaining a licence under S. 10 of the Act shall apply in Form A to the Chairman of the Board through the Committee of the area in which he wishes to carry on his business and shall also deposit with the Committee the requisite licence fee. Sub-rule (7) of this Rule provides that on receipt of the application, the Chairman may grant a licence to the applicant in Form B. The licence shall be subject to the conditions mentioned therein.

15. Rule 18 (1) provides that under sub-sec. (3) of S. 6, the persons mentioned in the Rule, shall be exempt from taking licences for the purchase of agricultural produce. Clause (c) of this sub-rule exempts hawkers and petty retail shop- keepers who do not engage in any dealing in agricultural produce other than such hawking or retail purchases. Explanation to this clause is as follows:

"Explanation.- For the purposes of this clause and cl. (b) of sub-rule (2), a person whose turnover of sales and purchases of agricultural produce does not exceed sixty thousand rupees during a year, shall be treated as a petty retail shop-keeper."

16. Clause (f) of this sub-rule, which was deleted on 3rd Sept., 1964, provided that the person making purchase of any agricultural produce otherwise than from a producer directly, is exempt from taking a licence. Sub-rule (2) of Rule 18 similarly deals with the exemption from taking a licence for the sale of agricultural produce and the provisions are pari materia the same as in Rule 18 (1). Rule 31 is as follows:-

''31. Account of transaction and of fees to be maintained.-

(1) Every licensed dealer and every dealer exempted under Rule 18 from obtaining a licence shall submit to the Committee a return in Form M showing his purchases and sales of each transaction of agricultural produce within 4 days of the day of transaction:

Provided that a person exempt from taking a licence under Rule 18 (2) (b) and 18 (2) (c) shall be exempt from the provisions of this sub-rule in respect of sale of agricultural produce by him and person exempt from taking a licence under Rules 18 (1) (e) and 18 (2) (e) shall be exempt from the provisions of this sub-rule in respect of sale and purchase of agricultural produce by him;

Provided further that in case of a dealer, who exclusively deals in fruits and vegetables, it shall not be necessary to fill in Form M the particulars of the person to whom any quantity of fruits and vegetables less than one quintal is sold.

Provided further that in case the kacha arhtiya sends one copy of Form J to the Market Committee, the kacha arhtiya will be exempted from sending Form M to the Market Committee and the buyer shall indicate in Form M only the total quantity and the gross value in respect of each commodity purchased from each seller.

(2) The Committee shall maintain a register in Form N showing the total purchases and sales made by dealers and the fees recoverable and recovered from them.

(3) The Committee shall levy the fee payable under S. 23 on the basis of the return furnished under sub-rule (1).

(4) If any dealer fails to submit a return as prescribed in sub-rule (1) or the Committee has reason to believe that any such return is incorrect, it shall, after giving a notice in Form O to the dealer concerned and after such enquiry as it may consider necessary, proceed to assess the amount of the dealer's business during the period in question.

(5) If a dealer habitually makes default in the submission of returns or if in the opinion of the Committee the dealer habitually submits false returns, the Committee may order for the inspection of the dealer's accounts.

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(6) After an order under sub-rule (4) is made, the Committee shall inform the dealer of the date and place fixed for the inspection:

Provided that if the dealer so desires, and pays such fee as the Committee may fix in this behalf, the inspection shall be made at the dealer's premises.

(7) The Committee may authorise one or more of its members to carry out the inspection ordered by it under sub-rule (5). Such member or members shall be assisted by such employees of the Committee as may be deputed by it for that purpose.

(8) Such member or members may after inspection prepare a return or may amend the return already furnished, on the basis of transactions, appearing in the dealers' account books, and the Committee may levy a fee, or, as the case may be an additional fee, under S. 23 on the basis of such return or amended return, but if the account books are reported to be unreliable, or as not providing sufficient material for proper preparation or amendment of the return or if no such books are maintained or produced the Committee may assess the amount of the dealer's business on such information as may be available or on the basis of best judgment, and levy fee on the basis of such assessment.

(9) In addition to the fee or additional fee levied under sub-rule (8) the Committee may recover from the defaulter penalty equal to the fee or additional fee so levied.

(10) Habitual default in the submission of returns and habitual submission of false return shall be a sufficient ground for suspension or cancellation of, or refusal to renew, a licence, and the provisions of this rule shall apply in addition to and not in derogation of any other Law, penal or otherwise, applicable to non-compliance, or defective compliance with any duty imposed upon a dealer by the Act or by these rules, or by any bye-law or order of a Committee.

(11) An assessment order made under sub-rules (8) and (9) shall be communicated to him by means of a demand notice in Form P and a copy thereof shall be granted to the dealer on his making a written application, and paying a sum of two rupees as copying fee to the Committee. Every Committee shall maintain a register of copying fees.

(12) The copy shall be prepared in the office of the Committee and certified to be correct by the Secretary or in his absence by another person appointed in this behalf by the Chairman. Such certificate shall give the dates on which the application was received and the copy prepared and delivered to the applicant, and shall be conclusive evidence of the correctness of these dates.

(13) (i) An appeal against an assessment order made under sub-rules (8) and (9) shall lie to the Chairman of the Board. No such appeal shall be entertained unless the applicant has deposited the amount of fee assessed as due from him in full with the Committee concerned.

(ii) The Chairman of the Board after hearing the appellant and also the Committee making the assessment, or, if he deems necessary, after such enquiry as he may think proper, may accept, modify or reject the asseessment order appealed against.

(iii) The Chairman of the Board may waive the whole or a part of the penalty imposed under sub-rule (9), in a case where such penalty would, in his judgment mean undue hardship to the appellant.

(iv) The order passed by the Chairman shall be final and conclusive."

17. Keeping in view the provisions of Ss. 6, 10, 23 and the rules made thereunder, it is obvious that no person, unless exempted by rules made under this Act, shall, either for himself or on behalf of another person, or of the State Government within the notified market area, set up, establish or continue or allow to be continued any place for the purchase, sale, storage and processing of the agricultural produce so notified, or purchase, sell, store or process such agricultural produce except under a licence granted in accordance with the provisions of this Act, the Rules and Bye-laws made thereunder and the conditions specified in the licence. All such persons are liable to pay market fee by the provisions of S. 23 of the Act. Section 8 bars the setting up, establishment or continuance or allowing to be continued any place within the limits of such market or within a distance thereof to be notified in the official gazette in this behalf in each case by the State Government for the purchase, sale, storage and processing of any agricultural produce.

18. However, the Form A prescribed under Rule 17 for making application

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and Form B prescribed under the same rule in which Form the licence was to be granted, omitted to provide that the licence is also granted for sale and purchase of the agricultural produce. The levy of the market fee on the licensees, who were granted licences under the Act in Form B was challenged on the ground that since the licence was not issued for sale and purchase of the agricultural produce as there was no mention of the same in the licence in Form B, therefore, the levy of market fee under S. 23 of the Act, could not be made. This contention was upheld by their Lordships of the Supreme Court in M/s. Raunaq Ram Tara Chand v. State of Punjab, AIR 1975 SC 1587, wherein it was held that since the licensee before their Lordships held the licence only in respect of business of Kacha Arhtiya and/or Commission Agents and not for the sale and purchase of agricultural produce, therefore, he was not liable to pay the market fee. As regards the power of the Committee to issue licence for the sale and purchase their Lordships observed as follows (at p. 1590):-

"While we express no opinion on the point whether the absence of reference to buying and selling of agricultural produce in Form A and Form B disables the Committee to issue licences for that purpose, we are of opinion that the present appeals can be disposed of on the sole ground that the appllants have not as a matter of fact been issued such licences and no fees can, therefore, be levied on them in respect of purchases and sales of agricultural produce by them. The appellants are, therefore, not liable to payment of fee under the Act as demanded."

Their Lordships repelled the contention that since Gur and Shakkar are manufactured products, therefore, they cannot come under the definition of the agricultural produce within the meaning of S. 2 (f) of the Act.

19. The petitioners in Civil Writ Petition No. 8605 of 1976, filed a Writ Petition No. 1166 of 1973, challenging the jurisdiction of the Market Committee to levy market fee on the strength of the judgment in Raunaq Ram's case (AIR 1975 SC 1587) (supra) which petition was allowed by A. S. Bains, J. on 21st October, 1975.

20. The State Government introduced Rule 17-A by notifying Punjab Agricultural Produce Markets (General) (First Amendment) Rules, 1975, with effect from 26th Aug., 1975, in the following words:-

"17-A. Special provision with regard to licences valid up to 31st March, 1976.-

(1) Every person holding a licence valid upto 31st March, 1976, in Form 'B' on the date of commencement of the Punjab Agricultural Produce Markets (General) (First Amendment) Rules, 1975, and carrying on the business of purchase or sale of any agricultural produce notified under S. 6 shall, within a period of fifteen days of such commencement, apply to the authority specified in S. .9 for an amendment in his licence for the purpose of specifying such business therein and such amendment shall be made by the aforesaid authority without payment of any fee:

Provided that amendment in the licence may be allowed after the expiry of the aforesaid period if the application is made within a period of thirty days of such commencement and the applicant pays such penalty, not exceeding sixty rupees, as the aforesaid authority may specify in that behalf.

(2) Every amendment made in the licence under sub-rule (1) shall have effect from the date of commencement of the Punjab Agricultural Produce Markets (General) (First Amendment) Rules, 1975."

21. The petitioners accordingly got their licences amended. With a view to overcome the effect of the judgment of the Supreme Court in Raunaq Ram's case (AIR 1975 SC 1587) (supra), the Punjab Agricultural Produce Markets (Validation) Ordinance, 1975, (Punjab Ordinance No. 16 of 1975) was promulgated on 29th Dec. 1975 and subsequently on 27th Feb., 1976, the Punjab Agricultural Markets (Validation) Act, 1976, was enacted in the identical terms to substitute the prior ordinance which was thereby repealed. The said Validation Act was challenged in this Court and the same was struck down by a Division Bench of this Court in case M/s. Rulia Ram Bhavishan Kumar v. State of Punjab, 1976 Pun LJ 428. It was held that the Validation Act does not cure and rectify the basic legal infirmity pointed out in the judgment of Raunaq Ram's case (supra), therefore, S. 2 of the Act was held to be patent intrusion into the field of the exercise of judicial power and thus the Validation Act was struck down as unconstitutional. In the wake of this decision, the State Legislature

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enacted the Punjab Agricultural Produce Markets (Amendment and Validation) Act, 1976, (Punjab Act No. 34 of 1976) (hereinafter referred to as the Amendment and Validation Act) with retrospective operation from the date of the Principal Act, i.e., from 26th May, 1961. Section 2 of the Amendment and Validation Act provided that after Cl. (h) of S. 2 of the Principal Act, the following clause shall be and shall be deemed always to have been inserted, namely,-

"(hh) 'licensee' means a person to whom a licence is granted under S. 10 and the rules made under this Act and includes any person who buys or sells agricultural produce and to whom a licence is granted as Kacha Arhtia or Commission Agent or otherwise but does not include a person licensed under Sec. 13."

22. Section 3 provides that after Section 10 of the Principal Act, the following section shall be and shall be deemed always to have been inserted, namely,-

"10-A. Any person to whom a licence is granted under S. 10 shall be deemed to be a licensee under that section for the purposes of this Act and the rules made thereunder including that of levy of fees under S. 23 on the agricultural produce bought or sold by him in the notified market area, irrespective of the fact whether the business of buying or selling of agricultural produce is specified in his licence or not."

23. Section 7 of the Amendment and Validation Act provided that notwithstanding the retrospective operation of Ss. 2 and 3 of this Act, no contravention of, or no failure to comply with, any of the provisions of the Prinicipal Act, as amended by this Act, and the rules made thereunder, shall render any person guilty of an offence, if such contravention or failure-

(i) relates to any provision inserted in the Principal Act by this Act; and

(ii) occurred at any time before the date of commencement of this Act.

24. The provisions of this Amendment and Validation Act have been assailed in this bunch of writ petitions.

25. The first contention of Shri Sanghi, the learned counsel for the petitioners in Civil Writ No. 8605 of 1976, that the notifications, Annexures 4 and 5 attached with the writ petition issued under Ss. 5 and 6 of the Principal Act respectively are liable to be quashed on the ground that these notifications are ultra vires the provisions of Ss. 5 and 6 of the Act, is without any merit. The said notifications were issued as far back as on 20-9-1961 and 16-3-1962, respectively. As is clear from the provisions of Ss. 5 and 6 of the Act, the State Government by issuing notification under S. 5 of the Act declared its intention to exercise control over the purchase, sale, storage and processing of agricultural produce specified in the notification in the area specified therein with a view to invite objections. Any person could raise objections as to the inclusion of the items of agricultural produce or the area and after the said objections were considered and disposed of by the State Government, the notification under S. 6 was then issued. It is not disputed that the State Government under S. 6 of the Act has got powers to include as much area as it deems proper to be notified market area and so also such items of agricultural produce as may be necessary.

26. The contention that the area covered under the notification issued under S. 6, is very wide and, therefore, the notifications should be struck down, is really without any merit. If there is a power to include larger area as notified market area or all items of agricultural produce mentioned in the Schedule transactions of which are to be controlled within the said market area, merely because the same power has been exercised, cannot be made to be a ground for quashing the notifications. Admittedly, no objections were raised by the petitioners in response to the notification issued under S. 5 of the Act but on the other hand, the petitioners continued to be licensees from the very beginning under the Act and submitted to the jurisdiction of the Market Committee after the issuance of notification under S. 6. No argument has been raised to challenge the vires of the provisions of Ss. 5 and 6 of the Act and that being so, it has to be held that the notifications, Annexures P-4 and P-5, issued under Ss. 5 and 6 of the Act are valid and are not liable to be set aside on any ground.

27. Similarly, there is no merit in the contention of the learned counsel for the petitioners that the levy of market fee on Gur, Shakkar and Khandsari, which are imported by the petitioners from outside Punjab, is hit by Art. 304 of the Constitution of India. The provisi-ons

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of Art. 304 of the Constitution are as follows:-

"304. Restrictions on trade, commerce and intercourse among States.-

Notwithstanding anything in Art. 301 or Art. 303, the Legislature of a State may by law-

(a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced, and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purposes of Cl. (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

A bare reading of the provisions would show that the said provisions are not attracted.

28. Clause (a) of the said Article, which is said to have been attracted, can only be attracted if any discrimination is made in the imposition of any tax on the goods imported from the other States to which similar goods as may be manufactured in that State are subjected. In the present case, no discrimination is made out. The levy of market fee at the maximum rate of 2 per cent has been imposed on the agricultural produce produced in the State and so also on the agricultural produce imported from outside the State.

29. The contention that the market fee is paid in the States from where agricultural produce is imported and, therefore the levy of market fee under the Act amounts to double levy of fee which results into discrimination, is really without any basis. With a view to attract the provisions of sub-art. (a) of Art. 304 of the Constitution of India, discrimination has to be made out because of the imposition of tax by the Legislature of the same State. Any imposition of market fee by the other State cannot be made the basis of discrimination for challenging the fee imposed by the Legislature of the Punjab State. This contention, therefore, is without any merit.

30. It was then contended by the learned counsel for the petitioners that since the Market Committee, Bhatinda, was not rendering any services to the petitioners, therefore, the said Committee cannot levy market fee on the petitioners. For laying basis for this argument, the learned counsel for the petitioners relies on the averments made in paras 17, 19, sub-paras (x), (xi) and (xxvi) of para 24 of this writ petition. It may be pointed out that in para 17 of the petition, it has been averred that the petitioners' shop is situated in the Bazar about two Kilometers away from the Principal Market or sub-market yard. This fact has been denied in the return filed on behalf of respondent Nos. 2 and 3. It has been averred in reply to para 17 that during the period for which the demand has been made, the petitioners, shop was in the market yard which was shifted subsequently on construction of New Mandi. Regarding the averments made in paras 17 and 19, that no services were rendered by the Market Committee to the petitioners, it has been averred in the return that the services had been rendered throughout the period within the jurisdiction of the Market Committee in accordance with the provisions of the Act. It has been averred that if there is more recovery of the market fee, greater services can be rendered by the Market Committee. It has been further averred on behalf of the Market Committee that a number of schemes framed by the Market Committee could not be implemented for want of funds.

31. The contention of the learned counsel for the petitioners that since no services are being rendered by the Market Committee to the category of unregulated sales to which category the petitioners belong, therefore, the Committee is not entitled to charge any fee from the petitioners, is really not well founded. Firstly, there is no clear-cut averment as to which type of services as are postulated in the provisions of the Act, were not being rendered to the petitioners. Secondly, as would be apparent from the provisions of the Act and the Rules made thereunder, the market fee is levied for the purposes of rendering services to the licensees under Sections 10 and 13 and to the producers residing in the market area. The purposes for which the fund realised from market fee is to be spent are enumerated under the provisions of Ss. 26 and 28 of the Act. It may be observed that a portion of market fee recovered by the Market Committees is given to the Marketting

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Board for constituting the Market Development Fund. The funds of the Market Committee and that of the Board are to be spent for the purposes enumerated under the provisions of Sections 26 and 28 of the Act. The main purpose of the Act is to make provision for regulated markets for the agricultural produce and in that respect render services to all concerned. It cannot be denied that the existence of a regulated market system in a State is itself a service to the sellers and to the intending purchasers of the agricultural produce. The provisions of the Act have to be administered by the Market Committees/ Marketing Board and the State Government. The establishment and the administrative network involving the administration of the Act by the Market Committees and the Board, does require the finances to run such an administration. If the fee is being levied under the provisions of a statute, the services to be rendered in lieu of the fee as provided under the statute, have to be kept in view with a view to uphold the provisions of the statute. The learned counsel for the petitioners wants us to quash the notice, copy of which is Annexure- 'P-3', on the ground that Market Committee, Bhatinda, did not render the services to the petitioners. The learned counsel has not challenged the provisions of the Act which authorise the Market Committee to levy such fee. It may be pointed out at this stage that by the impugned notice, the Market Committee has given an opportunity to the petitioners to raise objections to the proposed levy of market fee and penalty. It is open to the petitioners to show cause to the Committee and to take a plea that the Committee has failed to spend the Market Committee Funds in accordance with the provisions of the Act or has failed to render any service to the market area in accordance with the provisions of the Act, but we cannot be asked to quash the notice on this ground especially when the provisions of the Act under which the levy is being made, are not being assailed as unconstitutional. It may be observed that the question of rendering services has not to be looked from a narrow view-point. Under the provisions of the Act, the whole State has been divided into a number of Market areas and in each Market area are established Market proper, principal Market yard and sub-market yard. The services to be rendered in lieu of the fee are manifold as postulated under the provisions of Ss. 26 and 28 of the Act. It cannot be successfully contended that the services should be rendered to each and every licensee or purchaser or a class of licensees and purchasers. The services to be rendered cover a very vast area and, therefore, the question of rendering services cannot be looked into from personal or from the view-point of any class. The Market Committees disseminate information regarding the market rates of the agricultural produce bought and sold in the market and perform many other functions as are postulated under the provisions of the Act and the Rules made thereunder, which, if looked from proper perspective, are the services being rendered to all - to the producers of the agricultural produce, to the licensees under S. 10, to the licensees under S. 13 and various other functionaries connected with the purchase, sale, storage and processing of the agricultural produce.

32. It is no doubt true that a levy by way of fee is a sort of return or consideration for the services rendered which makes it necessary that there should be an element of quid pro quo in the imposition of a fee, as has been held by their Lordships of the Supreme Court in Government of Andhra Pradesh v. Hindustan Machine Tools Ltd., AIR 1975 SC 2037. But the question has to be viewed from a broader perspective. Reference in this connection may usefully be made to the decision of their Lordships of the Supreme Court in Corporation of Calcutta v. Liberty Cinema, AIR 1965 SC 1107, wherein it has been observed as follows:-

"It, therefore, appears to us that the word quid pro quo should be read not in the narrow and restricted sense submitted by the learned counsel for the appellant but in a somewhat wider sense as including cases where the function of the licence is to impose control upon an activity the cost incurred for effectuating that control, and this on the basis that the industry or activity is placed under regulation and control not merely in public interest but in the interest and for the benefit of the licensees as a whole as well."

33. Their Lordships in Commr., Hindu Religious Endowments, Madras v. Shri Lakshmindra Thirtha Swamiar o

@page-PunjHar65 Shri Shirur Mutt, AIR 1954 SC 282, observed as follows :-

"It is absolutely necessary that the levy of fees should on the face of the legislative provision, be correlated to the expenses incurred by Government in rendering the services."

34. The observations of their Lordships in Commr., Hindu Religious Endowments' case (AIR 1954 SC 282) (supra), aptly apply to the present case. The provisions of Ss. 26 and 28 of the Act would show that the levy of fee under S. 23 of the Act is correlated to the expenses incurred in rendering the services. Similarly, the decision of their Lordships in Municipal Council, Madurai v. R. Narayanan, AIR 1975 SC 2193, is of no help to the learned counsel for the petitioners as the said case was decided on its own facts. As has been observed earlier, the petitioners have not laid any foundation for the arguments even on facts that no services are being rendered to them.

35. The contention that the area of utilisation of the funds raised from the fee should be confined to the principal market yard, is really without any merit. The bare perusal of the provisions of the Act would show that the Committee is established for the notified market area. The principal market yard or the sub-market yard or the market is only a small place where the producers come and dispose of their agricultural produce. With the development made in the notified market area, the development of the principal market yard, or sub-market yard or the market, is closely linked. The producers, who live in villages, are to be provided facilities such as link roads, construction of culverts on the link roads for facilitating the transportation of the agricultural produce to the markets etc. If such facilities, as are specified in the Act are not offered to the villagers who grow agricultural produce, they are not likely to get the fair return for the agricultural produce they grow with hard labour and if that is not done, the real purpose for which the Act has been enacted, will be frustrated. It may be observed that the constitutionality of the provisions of Ss. 26 and 28 of the Act, has already been upheld by a Full Bench of this Court in Civil Writ Petition No. 5697 of 1975, (Kewal Krishan Puri v. State of Punjab), decided on 28th January, 1977 : (Reported in AIR 1977 Punj 347). In Kewal Krishan Puri's case (supra) the contention that there was complete absence of quid pro quo and the levy is in fact a tax in the garb of fee, has been repelled by the learned Judges and we are in complete agreement with the observations made therein.

36. The contention of the learned counsel for the petitioners that the sales and purchases made by the petitioners, who alleged that their shops are outside the principal market yard or sub-market yards, are not regulated sales and are sales by retail sellers, is really unfounded. As is clear from the provisions of the Act, all sales and purchases of agricultural produce made within each market area are being regulated under the Act. It is immaterial whether the said sales or purchases take place in the principal market yard or sub-market yard or even outside. The retail sale has been defined in Cl. (q) of S. 2 of the Act to mean the sale of agricultural produce not exceeding such quantity as may be prescribed. As has been pointed out in R. 18, the person whose turnover does not exceed Rs. 60,000 is exempt from taking a licence of retail seller. It is, therefore, idle to contend that the sales and purchases made by the petitioners are not regulated or that the petitioners are retail sellers. It would thus be seen that according to the averments made by the respondents as a matter of fact, the shop of the petitioners was situated within the market yard during the relevant period for which the impugned notice has been issued. Even if that may not be so, keeping in view the provisions of the Act and the Rules made thereunder, the transactions of the petitioners are regulated by the Act.

37. The next contention of Shri Sanghi, the learned counsel for the petitioners, that the impugned notice proposing the levy of market fee is discriminatory and ultra vires of Art. 14 of the Constitution, is also without any merit. As has been observed earlier, the notice for show cause cannot be quashed by us. While raising this contention, Shri Sanghi has not challenged the constitutional validity of any provision of the Act and has based his argument on pre-supposed facts. The contention that the shop of the petitioners is situatd in the Bazar away from the principal market yard or sub-market yard and that since they are not being rendered any services being outside the market yard, whereas the services rendered to the

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persons carrying on their activities within the principal and sub-market yards, are substantially more and, therefore, the petitioners are being discriminated in violations of Art. 14 of the Constitution of India, is without any basis. As has been observed above, the question of rendering services from the funds raised by way of payment of market fee, has to be looked into from a broader view point. Each licensee or a class of licensees cannot ask the Court to weigh the rendering of services to the said person or class of persons, in golden scales. Reliance placed by him on the decision of the Supreme Court in Kunnathat Thathunni Moopil Nair v. State of Kerala, AIR 1961 SC 552, and Bennett Coleman and Co. Ltd. v. Union of India, AIR 1973 SC 106, is really of no assistance to him. On the facts of the said cases, their Lordships found that the provisions of Art. 14 of the Constitution of India were infracted and, therefore, the impugned actions were struck down. in the present case, there is no basis for holding that the levy of uniform market fee is treating unequals as equals. The rendering of services to a person or a particular class of persons in their personal capacity cannot be made the basis of distinction for holding such person or class of persons as unequals with the rest. The provisions of the Act, under which the levy of fee has been imposed being valid, it is not open to the petitioners to raise any such argument on the basis of the assumed classification of equals and unequals as has been contended.

38. Similarly, the contention that the provisions of S. 10 of the Amendment and Validation Act (sic) are ultra vires of Art. 19 (1) (f) and (g) of the Constitution of India, is without any merit. The said provisions have been enacted with a view to remove the vice in the principal Act and the Rules made thereunder in view of the decision of the Supreme Court in Raunaq Ram's case (supra). It is not disputed that if there was no defect in Form B in which the licence was being issued under the Rules, the levy of market fee cannot be held to have been against the provisions of Article 19 (1) (f) and (g) of the Constitution. The said provisions cannot be held to have affected the property of the petitioners or their profession. The levy, which was due from the petitioners under the provisions of the principal Act, could not be collected in view of the defect in the form in which the licence was issued and with a view to cure that vice, the provisions of S. 10-A of the Act have been enacted by the Legislature.

39. The only other contention which remains to be considered is that even though the Market Committee is entitled to recover the market fee in view of the Amendment and Validation Act, it has no jurisdiction to impose the penalty under Rule 31, sub-rule (9) of the General Rules. Rule 31 has already been reproduced in the earlier part of the judgment. It may be observed that in view of the provisions of sub-rule (1) of R. 31, every licensed dealer and every dealer exempted under Rule 18 from obtaining the licence, is liable to submit return in Form M showing his purchases and sales within 4 days of the day of transaction. Under sub-rule (2) of this Rule, the Committee has to maintain the register in Form N showing the total purchases and sales made by the dealers and the fee recoverable. The fee has to be levied on the basis of this data under sub-rule (3). Under sub-rule (4) the Committee has been given power to proceed to assess the amount of the dealer's business during the period in question if the Committee has reason to believe that any such return is incorrect. Under sub-rule (5), the Committee can order for inspection of dealer's accounts if in the opinion of the Committee the dealer habitually makes default in the submission of returns or he habitually submits false returns. Under sub-rule (8) the Committee can proceed to assess the amount of the dealer's business on the basis of best judgment assessment. Under sub-rule (9), the Committee may recover from the defaulter penalty equal to the fee or additional fee so levied in addition to fee or additional fee levied under sub-rule (8). Under sub-rule (10) in the case of habitual default in the submission of returns and habitual submission of false return, the Committee can suspend or cancel the licence. Under sub-rule (13), an appeal against the order of assessment and penalty, lies to the Chairman of the Board. The licensee has been defined in the Rules as a person holding a licence issued under these rules or the rules repealed. It is not disputed that the petitioners were licensees under the Rules during the period in question even though there was no mention of sale or purchase in the licence. It

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is no doubt true that their Lordships of the Supreme Court in Raunaq Ram's case (AIR 1975 SC 1587) (supra) held that in view of the fact that the licensees before their Lordships were not given licences for sale and purchase, therefore, they were not liable to pay the market fee but that interpretation related to the interpretation of the provisions of S. 23 of the Act and not of Rule 31 read with R. 2 (10) of the Rules. The provision of Rule 31 enjoins upon every licensed dealer and every dealer exempted under Rule 18 from obtaining a licence to submit to the Committee a return in Form M showing his purchases and sales of each transaction of agricultural produce within four days irrespective of the fact whether market fee is leviable on the same or not. The purpose of making this provision is to check the evasion of the market fee. Whether a particular transaction is liable to the assessment of the market fee or not, is hardly material. All transactions have to be intimated to the Committee who is then to proceed to assess the fee on the transactions on which fee is leviable. Furthermore, the penalty has to be inflicted on the defaulter. The default can be for not filing the return in Form M or for filing the incorrect return or for not paying the market fee assessed. It is idle to contend that the penalty can only be imposed if there is a default in payment of the market fee alone. The provisions of the Rules clearly suggest that the default mentioned in sub-rule (9) of Rule 31, which attracts the penalty, can be a default on account of non-submission of returns in Form M or for submission of incorrect returns, or for default in making payment of the market fee as required under the Rules. This is so clear from the language of sub-rule (10) of Rule 31, read with the other sub-rules of Rule 31. Therefore, keeping in view the provisions of Rule 31, the petitioners, who were admittedly licensees during the relevant period, were required to submit the returns in Form M but admittedly the same were not submitted, therefore, it cannot be argued that the Committee has no jurisdiction to levy penalty.

40. Even if it be said for argument's sake, that in view of the judgment of their Lordships of the Supreme Court in Raunaq Ram's case (AIR 1975 SC 1587) (supra), the petitioners who at the relevant time were not licensees for the sale and purchase of agricultural produce, therefore, they were not required to submit the return in Form 'M', still the petitioners cannot successfully contend that the Committee has no jurisdiction to impose penalty as in view of the provisions of the Amendment and Validation Act deeming the petitioners to be licensees for the sale and purchase of the agricultural produce with retrospective effect, the petitioners in law were licensees for the sale or purchase of agricultural produce during the relevant time. Considering the question of the effect of the retrospective enforcement of the amended provisions, their Lordships of the Supreme Court in M. K. Venkatachalam, I.T.O. v. Bombay Dyeing and Mfg. Co. Ltd., AIR 1958 SC 875 observed as follows (at p. 878) :-

"Thus there can be no doubt that the effect of the retrospective operation of the Amendment Act is that the proviso inserted by the said section in S. 18-A (5) of the Act would, for all legal purposes, have to be deemed to have been included in the Act as from April 1, 1952."

41. The legal consequences of this legal fiction cannot be avoided. It was conceded by Shri Sanghi that if the provisions of the Amendment and Validation Act are upheld, the petitioners are liable for the payment of market fee. If this is so, it is not understood as to how it can be successfully argued that the provisions of sub-rule (9) of Rule 31, will not be applicable.

42. The contention that if it is held that the Committee has got jurisdiction to levy penalty, the provisions of the Amendment and Validation Act will be hit by Art. 20 of the Constitution, is again without any merit. The provisions of Art. 20 of the Constitution are as follows :-

"20. Protection in respect of conviction for offences :-

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself."

@page-PunjHar68 43. From the bare reading of the provisions, it is obvious that the word 'penalty' used in sub-cl. (1) of Art. 20 of the Constitution, cannot be independently interpreted without making reference to the provisions of the earlier clause. The penalty imposed should be in connection with the commission of the offence. In the present case, the penalty which can be levied, is not in connection with the commission of an offence. The penalty is for non-compliance of the provisions of sub-rules of Rule 31, and the same is not being imposed for an offence or on ground of conviction. Similar view has been taken by a learned Judge of the Kerala High Court in Kochuvareed v. Addl. Income-tax Officer, Earnakulam, 1965 Ker LJ 1177 and P. Ummali Umma v. Inspecting Asst. Commr. of Income-tax, Ernakulam, (1966) 1 ITJ 171 (Ker).

44. In case Jawala Ram v. State of Pepsu (now Punjab), AIR 1962 SC 1246, their Lordships considered the provisions of Ss. 3 and 4 of the Pepsu Sirhind Canal and Western Jumna Canal Rules (Enforcement and Validation) Act, 1954, vis-a-vis the provisions of Art. 20 of the Constitution of India and came to the conclusion that unauthorised use of canal water from canal is not an 'offence' and imposition of enhanced water charge under Rules 32 and 33 of the Pepsu Sirhind Canal Rules is not 'a penalty' within the meaning of sub-art. (1) of Art. 20 of the Constitution. The observations made by their Lordships go to show that the use of the word 'penalty' cannot be independently interpreted and the same is connected with the earlier clause in sub-art. (1) of Art. 20 of the Constitution. In this view of the matter, there is no merit in this contention.

45. Before parting with the judgment, we may observe that no doubt we have held that the Committee has jurisdiction to levy penalty under sub-rule (9) of Rule 31, in law, but at the same time, we are of the opinion that if the default in making the returns in Form M was made by the licensees, in view of the fact that they were not liable to pay the market fee for the sale and purchase of agricultural produce as was held by their Lordships in Raunaq Ram's case (AIR 1975 SC 1587) (supra), in that case it will be quite relevant for the Committee to take into consideration the fact that the licensees were made liable to pay the market fee in view of the provisions of the Amendment and Validation Act, and, therefore, the Committee in its exercise of discretion under sub-rule (9) of Rule 31, may not impose a severe penalty up to the amount of the market fee claimed. We have no doubt in our mind that the Committee concerned, while considering the question of imposing the penalty under sub-rule (9) of Rule 31 will use this discretion in a quasi-judicial manner and while taking into consideration the fact that the licensees were not earlier liable to pay the market fee on the transactions of sale and purchase, as they were not licensees for purchase and sale of agricultural produce, were made liable to pay, after many years in view of the Amendment and Validation Act, will decide the question of levy of penalty.

46. For the reasons recorded above, there is no merit in these petitions and the same are hereby dismissed with costs.

O. CHINNAPPA REDDY, J. :- I agree.

A. S. BAINS, J. :- I also agree.

HARBANS LAL, J. :- I agree.

SURINDER SINGH, J. :- I agree.

Petitions dismissed.

**AIR 1977 PUNJAB AND HARYANA 347 "Kewal Krishan v. State"**

**PUNJAB & HARYANA HIGH COURT = 1977 TAX. L. R. 2209**

FULL BENCH

Coram : 3 PREM CHAND JAIN, S. S. SINDHU AND AJIT SINGH BAINS, JJ. ( Full Bench )

Kewal Krishan Puri and another, Petitioners v. The State of Punjab and others, Respondents.

Civil Writ No. 5697 of 1975, D/- 28 -1 -1977.

(A) Punjab Agricultural Produce Markets Act (23 of 1961), S.23 - Punjab Agricultural Produce Markets (General) Rules, R.29 - AGRICULTURAL PRODUCE - Levy of market fees for development of notified market area - Power of committee.

It is not correct to say that the area for the development of which the funds realised by the Committee by imposing fee in exercise of its powers u/S.23 read with R.29 has to be limited to principal market yard or sub-market yard; rather the Committee has jurisdiction over the entire notified market area and it is for the development of that area that the Committee is entitled to incur expenditure. (Para 10)

(B) Punjab Agricultural Produce Markets Act (23 of 1961), S.26, Cl.(v), Cl.(x), Cl.(xi), Cl.(xiv), Cl.(xvii) and S.28, Cl.(viii), Cl.(xi), Cl.(xiii), Cl.(xvii) - AGRICULTURAL PRODUCE - LEGISLATION - Constitutionality - Subject-matter of legislation falls within Entry 28 and not Entries 14 and 18 of List II, Sch.7 to the Constitution.

Constitution of India, Sch.7, List 2, Entry 14, Entry 18 and Entry 28.

As the amounts realised by the Committee can be spent for the development of the notified market area also, the validity of S.26, Cl. (v) cannot be challenged on that ground. (Para 11)

The broad object of the Act is only to protect the producers of agricultural produce from being exploited by middleman and profiteers and to enable them to secure a fair return of their produce. Clauses (x), (xiii) and (xiv) would help the growers to make improvements in the production of agricultural produce with the result that their agricultural produce would find a better market resulting in getting them high price for their agricultural produce. The impugned provisions fall within the purview of Entry 28 and cannot be struck down on the ground that it was not within the legislative competency to have enacted these provisions under Entry 28. (Para 13)

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For the same reasons Cls. (xi) and (xiii) of S.28 cannot be struck down as being beyond the legislative competence under Sch. 7, List II, Entry 28. (Para 14)

The construction and repair of approach roads, culverts, bridges and other such purposes is an expenditure that has to be incurred by the Committee in order to find a better market and to ensure the sale of the produce by the growers. If the approach roads, culverts or bridges are in such a bad shape that they would become hindrance in the mobility of the produce from one part of the notified market area to the principal market yard, then the worst sufferer would be the grower for whose benefit the Act has been enacted. For better marketing of the produce, the purpose enumerated in the later part of Cl.(viii) on which expenditure can be incurred is most essential and such a provision has validly been made u/S.28 of the Act. (Para 15)

The contention that the Committee or the Board had no authority to incur expenditure on any purpose calculated to promote the national or public interest and that such a provision in S.26 or S.28 could not be incorporated by the State Legislature as it was not within its competency to do so under Entry 28 is only of academic importance as it has neither been alleged in the petition nor proved that after the enhancement of the fee, any amount has been spent by the Committee or the Board on some purpose calculated to promote the national or public interest. (Para 24)

(C) Punjab Agricultural Produce Markets Act (23 of 1961), S.23 - AGRICULTURAL PRODUCE - LAW - Fee levied u/S.23 is not a tax in the garb of a fee but a fee in its true sense because the amounts collected go to the market Committee fund constituted u/S.27 and that fund has to be utilised for purposes mentioned in S.28.

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Constitution of India, Art.265. (Para 18)

The contention that the increase in the fee effected by the impugned notification cannot be justified and the fee has become so excessive or exorbitant so as to change its character from fee to tax is not correct. (Para 19)

The specific averments made by the respondents in the reply affidavit make it clear that to carry out the purposes of the Act it had become necessary to enhance the rate of the market fee and such an enhancement stands fully justified. The petitioners have failed to point out any specific item/items which could be termed as unauthorised. It is not correct to say that as copies of the balance sheets had not been given by the respondents, an adverse inference should be drawn against them and that this fact alone would be sufficient to quash the enhancement in the fee. The items on which the expenditure has been incurred or the improvement schemes which are likely to be undertaken and of which there is a likelihood of incurring expenditure, clearly have a correlation with the object to be achieved under the Act. (Para 20)

Cases Referred : Chronological Paras

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1975 Tax LR 1455 : AIR 1975 SC 846 18

1975 Tax LR 1569 : AIR 1975 SC 1121 18

1975 Tax LR 2116 : AIR 1975 SC 2193 18

1973 Tax LR 581 : AIR 1973 SC 724 17

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Bhal Singh Malik with Vinod Kataria, for Petitioners; H.L. Sibal, Sr. Advocate with S.C. Sibal, S.K. Sharma, G.C. Garg and N.K. Sodhi, (for No. 2), J.L. Gupta (for No. 3), V.P. Prasher, Addl. Advocate-General (Punj) (for No. 1) for Respondents, R.L. Batta as Intervener.

Judgement

PREM CHAND JAIN, J.- M/s. Devi Dass Gopal Krishan (Pr) Ltd., petitioner No. 2, is a private limited company registered under the Companies Act and petitioner No. 1 is its Director. The petitioners through this petition filed under Arts. 226 and 227 of the Constitution of India have called in question the constitutional legality and validity of the Punjab Agricultural Produce Markets (Amendment) Act, 1975 (Punjab Act No. 14 of 1975), copy Annexure-P-4 to the petition, (hereinafter referred to as the Amendment Act), the telegraphic instructions issued by the Chairman, Punjab State Agricultural Marketing Board (copy Annexure-P-5 to the petition), Ss.23, 26, 27 and 28 of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as the 'Act') and rule 29 of the Punjab Agricultural Produce Markets (General) Rules, 1962 (hereinafter referred to as the 'Rules').

2. The State of Punjab enacted the Act in the year 1961. Section 23 of the Act authorizes levy of market fee. Under this provision a Committee was empowered to levy fee but a higher statutory limit

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was prescribed as 50 np. for every one hundred rupees. Later on, S. 23 had been the subject-matter of several amendments. By the Punjab Agricultural Produce Markets (Amendment) Act, 1969 (Punjab Act No. 25 of 1969), copy Annexure-P.1, the market fee was fixed at Re. 1.00 per one hundred rupees. By the Punjab Agricultural Produce Markets (Amendment) Act, 1973 (Punjab Act No. 28 of 1973), copy Annexure-P.2, the rate of market fee was enhanced to Rs. 1.50P. Again, by the Punjab Agricultural Produce Markets (Amendment) Ordinance, 1974 (Punjab Ordinance No. 4 of 1974), which was later on converted into Act 13 of 1974, the rate of market fee was enhanced to Rs. 2.25 P. for every hundred rupees. This action for enhancement was challenged in this Court successfully and by a Division Bench of this Court in M/s. Hanuman Dall and General Mills, Hissar v. State of Haryana, AIR 1976 Punj. and Har. 1, the Ordinance and the Amendment Act 13 of 1974 were struck down. Thereafter by the impugned Amendment Act, the Market Committees were authorized to levy on ad valorem basis fees on the agricultural produce at the rate not exceeding Rs. 2-25 P. per one hundred rupees. Further, telegraphic instructions were issued to all the Market Committees in the State of Punjab to start charging fee at 2 per cent ad valorem on all items of agricultural produce bought or sold by licensees with effect from 23rd of August 1975 (copy of the telegraphic instructions is attached with the petition as Annexure-P.5).

3. The petitioners, after tracing the aforesaid history, have alleged in the petition that the income from the market fee has been converted into a source of revenue, that the Market Committee, Moga has collected from the petitioners alone over Rs. 7 lakhs of rupees in the past, that the Market Committee, Moga has rendered no service to the petitioners in the past ten years, that the Market Committee, Moga did not fix any fee nor did it convene any meeting and on the basis of unauthorized directions from the Board has started charging market fee at the rate Rs. 2/- per one hundred rupees, that there must be correlationship in the amount collected as fee and the amount spent in rendering services, i. e., there must be an element of quid pro quo between the licensees and the Market Committee, that the Market Committee have surplus funds with the result that the Board donated Rs. 1/- crore to medical College, Faridkot, that all the Committees have been directed to deposit all their amounts in the Government Treasury in the year 1974, that the Agricultural Board and the Committee had given rupees five crores to the Punjab State Co-operative Supply and Marketing Federation (known as 'Markfed') without charging any interest and the loan is interest-free, because this money was lying surplus with the Committees, and that the primary object of the Act is to protect the producers from being exploited by middlemen, profiteers and to enable them to secure a fair return for their produce. The petitioners, on the basis of the aforesaid facts, have enumerated various legal grounds on the basis of which the legality and the constitutionality of the Amendment Act as well as certain other provisions of the Act have been challenged.

4. Separate written statements have been filed on behalf of respondent No. 2 and respondent No. 3. In both these affidavits, besides denying the allegations made in the petition, one common preliminary objection has been taken that no joint writ petition is maintainable. In the affidavit filed by Shri Jagrai Singh Gill, Chairman Punjab State Agricultural Marketing Board, on behalf of respondent No. 2, as earlier observed, the material allegations made in the petition have been controverted and it has been specifically averred that even with the increase in the income of the Market Committees resulting from increase in the rate of market fee, funds even at the moment are not sufficient to finance properly the development works in hand for those to be taken in hand in the very near future and that there is deficit of about Rs. 6 lakhs. In the affidavit filed by Shri Kulbir Singh, Secretary, Market Committee, again the allegations made in the petition have been controverted and a specific allegation has been made that in spite of the increase in the rate of market fee, the answering-respondent does not have sufficient funds to properly finance the development work already undertaken or those proposed to be undertaken.

5. The petitioners have filed replication, in which the stand taken in the writ petition has been reiterated.

6. Before I deal with the respective contentions of the learned counsel for the parties, the provisions of the Act and the Rules may be noticed briefly. As stated in the preamble, the object of the Act is to provide for the better regulation of the

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purchase, sale, storage and process of agricultural produce and the establishment of markets for agricultural produce in the State of Punjab. "Market" in Section 2 has been defined to mean a market established and regulated under this Act for the notified market area, and includes a market proper, a principal market yard and sub-market yard. "Notified Market Area" means an area notified under S. 6. "Principal Market Yard" and "Sub-Market Yard" mean an enclosure, building or locality declared to be a Principal Market Yard and sub-market yard under S. 7. Section 6 prescribes the procedure for the declaration of a Notified Market Area. Section 7 gives the procedure for the development of market yards. Under Section 11, the State Government through a Notification establishes a Market Committee for every notified market area and specifies its headquarters. Section 12 prescribes the constitution of Committees. Under S. 13, the duties and powers of the Committee are prescribed. Under S. 23, procedure is prescribed for levying fees by the Committee. Section 26 gives purposes for which the marketing development funds may be expended. Section 27 talks of market committee funds, while S. 28 gives the purposes for which the market committee funds may be expended. Under S. 29, power is given to the State to make rules for carrying out the purposes of this Act. Under S. 44, power is given to a Committee to make bye-laws in respect of notified market area subject to any rules that may be made by the State Government under Section 43, Mr. Malik, learned counsel for the petitioners, raised the following two contentions :-

(1) That Ss. 26 and 28, in general and S. 26 (v), (vii), (x), (xi), (xiii), (xiv), (xv) and (xvii) and S. 28 (viii), (x), (xi), (xiii), (xv) and (xvii), in particular, are void and unconstitutional and have been enacted in a colourable exercise of power. The authorisation of levy and collection of fee under S. 23 of the Act for securing these unauthorized purposes mentioned above is beyond the legislative competency and the legislature has transgressed its power in enacting the impugned provisions and is outside the field of marketing and fairs as enumerated in Entry 28, List II of the Seventh Schedule.

(2) That by securing these purposes no service is being done to the buyer including the petitioners. There is a complete absence of quid pro quo and the levy is in fact a tax in the garb of fee.

7. During the course of arguments, learned counsel only challenged the following clauses:-

(a) Section 26, cls. (v), (x), (xi), (xiv) and (xvii).

(b) Section 28, cls. (viii), (xi), (xiii) and (xvii).

8. While developing his arguments it was submitted by the learned counsel that the money realised through the levy of fees could be spent for the development of the principal market yard and that the Committee had no power under the Act to incur any expenditure on the development of notified market area. In other words, what was sought to be argued by Mr. Malik was that the area of operation or the activities had to be confined to the principal market yard and that the notified market area could not be the subject-matter of development.

8A. On the other hand, Mr. Sibal, Senior Advocate, learned counsel for the respondents, submitted that the provisions referred to in the first contention of Mr. Malik, did not suffer from any vice of unconstitutionality and were valid piece of legislation. In respect of second contention, the learned counsel submitted that there are two types of fees which are chargeable, viz., license fee as envisaged under S. 10 read with S. 13 of the Act and the fee which is levied on agricultural produce bought or sold by the licensee. According to the learned counsel, the principle of quid pro quo is applicable only in respect of the fees which are leviable under S. 10 read with S. 13 of the Act, while in the case of fee which is levied under S. 23 read with R. 29, the only ingredient necessary to be looked at is, whether levying of the fee has any correlation with the object for which the Act has been made. According to the learned counsel, under S. 13 read with R. 29, whatever fee is being collected is to promote the object of the Act.

9. It was also submitted by Shri Sibal that the contention of Shri Malik suffers from inherent fallacy when it is being argued that the area of operation or the activities is to be confined to the principal market-yard and that the notified market area cannot be the subject-matter of development. Mr. Sibal submitted that if this contention is accepted, then the whole purpose of the Act would be frustrated.

10. So far as the last contention of Malik is concerned, that the area of operation or the activities is to be confined to the principal market yard, I have no hesitation in holding that this argument

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of his is untenable and does not get support from any of the provisions of the statute. The bare perusal of the relevant provisions referred to above, would show that a Committee is established for a notified market area. The principal market yard and one or more sub-market yards are established for that notified market area. The principal market yard is only a small place where the producers come and dispose of their produce. If there is no development of the notified market area, then the development of the principal market yard or sub-market yards is of no use. The producers who live in villages which form part of the notified market area are to be provided with facilities which are essential in order to achieve the object of the Act. If the poor agriculturists are not provided proper facilities and a fair return for their produce is not secured, then the whole purpose of legislation would be frustrated and this object certainly cannot be achieved by developing only a principal market yard or sub-market yards. For example, if there are no proper roads for the purpose of carrying the produce from a village forming part of the notified market area to the principal market yard, then how a producer is to be benefited by the expenditure that is incurred on the development of the principal market yard or sub-market yards. The principal market yard or sub-market yard as has been defined, means an enclosure, building or locality declared as such under S. 7 and is only a place of activity for sale of the produce brought by the producer. In this view of the matter, Shri Malik was not justified in contending that the area for the development of which the funds realised by the Committee by imposing fee in exercise of its powers under S. 23 read with R. 29 has to be limited to principal market yard or sub-market yard, father the Committee has jurisdiction over the entire notified market area and it is for the development of that area that the Committee is entitled to incur expenditure.

10-A. Now I shall deal with the first contention of Shri Malik by which he has challenged the constitutionality of certain provisions of Ss. 26 and 28 of the Act. The following clauses of Ss. 26 and 28 have been the subject-matter of controversy :-

"26. The Marketing Development Fund shall be utilised out of the following purposes :-

\* \* \* \*

(v) general improvements in the markets or their respective notified market areas;

(x) propaganda, demonstration and publicity in favour of agricultural improvements;

(xi) production and betterment of agricultural produce;

(xiv) construction of godowns;

(xvii) with the previous sanction of the State Government, any other purpose which is calculated to promote the general interests of the Board and the Committees or the national or public interest:"

28. Subject to the provisions of S. 27, the Market Committee Funds shall be expended for the following purposes :

(viii) providing comforts and facilities such as shelter, shade, parking accommodation and water for the persons, draught cattle, vehicles and pack animals coming or being brought to the market or on construction and repair of approach roads, culverts, bridges and other such purposes;

(xi) production and betterment of agricultural produce;

(xiii) imparting education in marketing or agriculture;

(xvii) with the previous sanction of the Board, any other purpose which is calculated to promote the general interests of the Committee or the notified market area or with the previous sanction of the State Government, any purpose calculated to promote the national or public interest."

11. In respect of Cl. (v) of S. 26 the attack levelled by Shri Malik was that no expenditure could be incurred in respect of the notified market areas as has been indicated in the later part of the clause. This challenge cannot be sustained in view of my finding in the earlier part of the judgment that the amounts realised by the committee can be spent for the development of the notified market area also.

12. So far as Cls. (x), (xi) and (xiv) are concerned, the submission of the learned counsel was that the purposes enumerated in the aforesaid clauses fall within the scope of Entries 14 and 18 of List II of the Seventh Schedule, which read as under :

"(14) Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

(18) Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant and the

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collection of rents, transfer and alienation of agricultural land, land improvement and agricultural loans, colonization."

13. According to the learned counsel, the act falls within Entry 28 of List II of Seventh Schedule and that the aforesaid provisions of S. 26 could not be the subject-matter of legislation under Entry 28 as the same specifically fell within the purview of Entries 14 and 18. I am afraid I am unable to agree with this contention of the learned counsel. The broad object of the legislation like the present one is only to protect the producers of agricultural produce from being exploited by middlemen and profiteers and to enable them to secure a fair return of their produce. The Legislation like the present one has its root in the attempt on the part of the nation to provide a fair deal to the growers of crops and also to find a market for its sale at proper rates without reasonable chances of exploitation. If this object is kept in view, then the clauses of which the constitutionality has been challenged, would certainly fall within the ambit of Entry 28. Clauses (x), (xiii) and (xiv) would help the growers to make improvements in the production of agricultural produce with the result that their agricultural produce would find a better market resulting in getting them high price for their agricultural produce. It may be observed that Shri Malik, learned counsel, in support of his contention about the unconstitutionality of the aforesaid provisions could not cite any authority and just relied on the entries. As earlier observed, the impugned provisions fall within the purview of Entry 28 and cannot be struck down on the ground that it was not within the legislative competency to have enacted these provisions under Entry 28.

14. So far as Cls. (xi) and (xiii) of Section 28 are concerned, the contention of the learned counsel is liable to be rejected for the reasons given while repelling his contention in respect of clauses existing in S. 26.

15. So far as Cl. (viii) is concerned, the attack levelled by Mr. Malik was that no expenditure could be incurred on the construction and repair of approach roads culverts, bridges and other such purposes. I am afraid I am unable to agree with the learned counsel. The construction and repair of approach roads, culverts bridges and other such purposes is an essential expenditure that has to be incurred by the Committee in order to find a better market and to ensure the sale of the produce by the growers. If the approach roads, culverts or bridges are in such a bad shape that they would become hindrance in the mobility of the produce from one part of the notified market area to the principal market yard, then the worst sufferer would be the grower for whose benefit the Act has been enacted. For better marketing of the produce, the purpose enumerated in the later part of cl. (viii) on which expenditure can be incurred is most essential and such a provision has validly been made under S. 28 of the Act.

16. The only clause to which reference has to be made is Cl. (xvii) and the same would be dealt with by me in the later part of my judgment.

17. This brings me to the next contention of Mr. Malik that by securing the aforesaid purposes no service is being done to the buyer including the petitioners and that there is a complete absence of quid pro quo and the levy is in fact a tax in the garb of fee. What was sought to be argued by Mr. Malik was that in order to justify the imposition of fee, the element of quid pro quo, i. e., the services rendered to payers of the fee by the market committees, has to be correlated to the amount of fee collected from them. According to Mr. Malik, if the costs of the services rendered to the payers of the fee are insignificant or the services rendered are worth much less than the amount charged from them, the fee will amount to 'tax' and colourable exercise of power to impose tax in the garb of fee by the Legislature, the Marketing Board and the Market Committees. In support of his contention, various judicial pronouncements were placed before us, but I do not propose to deal with those decisions individually as a similar question arose before a Division Bench of this Court in M/s. Hanuman Dall and General Mills, Hissar v. State of Haryana, AIR 1976 Punj and Har 1, wherein Tuli, J. (as his Lordship then was), speaking for the Court, after considering the entire case law and the relevant provisions, held as under:-

"In view of these authoritative judgments, it is futile for the petitioners to urge that the fee levied under S. 23 of the Act is not a 'fee' but a 'tax'. Shri Hira Lal Sibal, the learned Senior Advocate for the Agricultural Marketing Board, Punjab, has also argued that if the levy cannot be justified as a fee on the basis of correlationship with the services

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rendered the levy may be considered partly as a fee and partly as a tax and should be upheld as such, in view of the judgment of the Supreme Court in Corporation of Calcutta v. Liberty Cinema, AIR 1965 SC 1107. In that case, the so-called fee was held to be a tax and the Calcutta Municipal Corporation was held to have the power to impose the tax in order to meet its expenses for carrying out the various obligations imposed on it by the Calcutta Municipal Act. No such power has been given to the market committees by the Legislature to impose a tax to raise revenue for carrying out the objects of the Act and the ratio of the decision in Liberty Cinema's case does not apply. In my view, the levy permitted under S. 23 of the Act is primarily a fee and can also be called compensatory fee on the parity of reasoning with regard to compensatory tax stated in the Supreme Court judgment in Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan, AIR 1962 SC 1406. The amount of the fee collected by the market committees goes to the market committee fund constituted under S. 27 of the Act and that fund has to be utilised for the purposes mentioned in that section and S. 28."

After making the aforesaid observations, the learned Judge further formulated certain propositions which emerged on the basis of the various judicial decisions, which read as under:-

"1. That the fees are of various kinds and it is not possible to formulate a definition that would be applicable to all cases. The matter shall have to be decided in each case taking into consideration the objects of the Act and the kind of service to be rendered;

2. that the collections from the fees must not be merged in the general revenue but should be kept apart and appropriated for rendering the services;

3. that the amount of the fees charged must have a reasonable correlationship with the cost of services rendered or to be rendered to the payers of the fees. However, it is impossible to have an exact correlationship and so the correlationship expected is one of general character and not of arithmetical exactitude; and

4. that the amount of fees so collected are not to be spent exclusively for rendering services to the payers of the fees but can also be utilised for carrying out the purposes or objects of the Act under which they are levied. They cannot, however be utilised for purposes which have no connection with the main purposes of the Act for which fee is levied, as explained by the Supreme Court in Secy. Govt. of Madras, Home Department v. Zenith Lamps and Electricals Ltd., AIR 1973 SC 724 : (1973 Tax LR 581) with respect to court-fees. It was said therein that the court-fees collected can be spent for the administration of justice and the maintenance of the Courts for that purpose but not for road building or building schools etc. On the parity of reasoning it can be said that the fees collected under the Act cannot be spent for carrying out the governmental functions of the State but for rendering services to the payers of the fees in accordance with the provisions of the Act."

18. Mr. Malik, learned counsel for the petitioners, could not, on the basis of the decisions of their Lordships of the Supreme Court in State of Maharashtra v. Salvation Army, Western India Territory, AIR 1975 SC 846 : (1975 Tax LR 1455), the Municipal Council, Madurai v. R. Narayanan etc., AIR 1975 SC 2193 : (1975 Tax LR 2116) and Har Shankar v. Deputy Excise and Taxation Commr., AIR 1975 SC 1121 : (1975 Tax LR 1569), persuade us to take a view contrary to the one arrived at by the Division Bench in the abovementioned case and hence the contention that the levy of the fee is in fact a tax in the garb of fee, cannot be legally sustained.

19. It was next contended that the increase in the fee effected by the impugned notification cannot be justified and the fee has become so excessive or exorbitant so as to change its character from fee to tax. In this respect what was sought to be argued by Mr. Malik was that it was for the respondents to prove that the enhancement in the rate of fee was justified and was not so excessive or exorbitant so as to change its character from fee to tax. The learned counsel further contended that in spite of the repeated requests made by the petitioners, copies of the budget and the balance-sheets were not supplied. During the course of arguments it was suggested that the respondents be directed to produce the copies of the budget and the balance-sheets so as to justify the enhancement of the fee; otherwise, the only inference that could be drawn was that the rate of fee had been enhanced arbitrarily. In support of his contention, the learned counsel drew our attention to the specific allegations

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made in paras. 9, 10, 13 and 14, which read as under:-

"9. That the Market Committee has rendered no service to the petitioners in the past 10 years and the petitioners enquired by a letter dated 5th September, 1975, copy of which is attached as Annexure-P-6 as to what expenses had been incurred by the Committee in the last 10 years on the production and betterment of agricultural produce oilseeds and cotton (S. 28 (ii), (viii) (xiii)). The petitioners again applied for the copy of the Budget and the Balance-sheets against payment of the prescribed fee under R. 42 and Bye-law 25, copies of the applications are attached as Annexures-P-7 and P-8.

10. That the only services which the Market Committee, Moga is rendering to the petitioner is the harassment and they have now turned even to reply to the letters of the payees of market fee who are paying nearly Rs. 15 lacs per year and in the whole principal market yard of Moga. The Market Committee has due one well for drinking water and four lightening bulbs have been provided which are always fused and are without light and during the rainy season principal Market Yard is without exception under knee deep water. No shelter has been provided by the Market Committee. In fact the crores of rupees collected by the Market Committee, Moga are misused and spent elsewhere.

13. That the Market Committee, Moga has not fixed any fee nor it convened any meeting, nothing was discussed or debated as to its financial position, budget, its need, programme and plannings but under unauthorised directions from the Board, they started charging @ Rs. 2/- per 100 rupees.

14. That the petitioners wanted to deposit fee @ Rs. 1.50 which was refused and the petitioners wrote a letter dated 25-8-1975 vide Annexure-P-9. The petitioners again wrote a letter dated 27-81975 vide Annexure-P-10 demanding the copies of the Balance Sheet of the Market Committee for the years 1971-72, 1972-73, 1973-74, 1974-75 along with the copies of the Budget for 1974-75 and 1975-76 on urgent fee prescribed by Bye-law 25. But the Committee will never supply the copies of Balance Sheet and the Budget and everything will be kept secret for fear of being exposed."

After giving my thoughtful consideration to the entire matter, I am of the view that the contention of Mr. Malik is again untenable and that the petitioners, after making vague allegations are trying to build a point without any foundation. In the return filed in the shape of an affidavit of Shri Kulbir Singh, Secretary, Market Committee, Moga, it has been stated thus :-

"7. In reply to para. 7 of the writ petition, it is admitted that the rate of market fee has been increased from time to time. This has, however, been done on account of the rise in price index and the increase of expenses on the various activities of the Market Committee as envisaged under the Act. It is respectfully submitted that in spite of the increase in rate of market fee, the answering respondent does not have sufficient funds to properly finance the development works already undertaken or those proposed to be undertaken. A perusal of the budget of the Market Committee would show that the expenses likely to be incurred for the year 1975-76 amount to Rs. 61,53,955/- while the total income including the assets amounts to Rs. 55,50,406. There is thus a deficit of Rs. 6,03,549/- Besides the above, certain new schemes relating to the provision of Canteens at Moga and Ajitwal (which is a sub-yard of the principal yard at Moga) have been undertaken by the answering respondent. These Canteens are proposed to be run on no-profit no-loss basis to provide reasonable facilities to the farmers and dealers in the market area. The estimated cost of land and buildings is expected to be more than Rs. 5/- lakhs. Besides the above, the answering-respondent has undertaken the cleaning of mandis, lining of village khals (water courses), link roads; constructions of culverts and bridges; supply of pesticides and spray pumps on subsidized basis as also the electrification of villages. All these activities are going to cost the answering respondent an amount of several lakhs of rupees. The resources of the Committee as they originally existed were too meagre to meet all the expenses involved. Consequently, the Market Committee had no alternative except to ask for more funds. It was after lot of persuasion that the Board has finally taken the decision which was accepted by the Government. The suggestion in the writ petition that the funds of the Market Committee have been surplus is wholly misconceived. It is also wrong to suggest that the Market Committees were ever directed to deposit their entire amounts in the Government Treasury in the year 1974. All that had

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happened was that certain funds were lying in Banks. The Government had to construct certain link roads on behalf of the market committees. This arrangement had been entered on the request of the answering respondent. The estimated expenses had to be handed over to the Government. It was for this purpose that some money was deposited by the answering respondent in the Government Treasury. The purpose in depositing the money was that till such time as it was actually utilised, it could bear some interest. The answering respondent shall crave the indulgence of this Hon'ble Court to refer to the decision of the High Court dated November 8, 1974.

8. Para. 8 of the writ petition is denied. It is wrong to suggest that the Board and the answering respondent have already been given Rs. 5 Crores to the Markfed without charging any interest. The fact of the matter is that on account of the withdrawal of the Cotton Corporation of India from the various marked, the price of cotton came down suddenly. In order to provide and ensure a reasonable price to the farmer, the Government asked the Markfed to enter the market. For this purpose, the Board contributed some amount of money. So far as the answering respondent is concerned, it has not contributed any money at all. The answering respondent believes that the Board has contributed only an amount of Rs. 1,43 crores and not 5 crores.

8. (REPEATED). The suggestion in this paragraph that the Board has contributed Rs. 5 crores is wholly mis-conceived. The answering respondent is not concerned with the opening balance of the Board. The payment of money by the petitioners is admitted. It may, however, be submitted that the entire money collected by the Market Committees is being used for the purposes envisaged under the Act.

9. Para 9 of the writ petition is denied. The amount being collected as market fee is being utilised for various purposes as envisaged under the Act. It is not required under the Act that the service has to be rendered by the Committee to every individual paying the market fee. The Market Committees have to provide facilities as envisaged under the Act. The petitioners had asked for the copies of balance sheets. The balance sheets were originally prepared when the accounts of the Committees were being audited by "the Chartered Accountants. Now, the accounts are being audited by the Examiner, Local Fund Accounts which is a Government Agency. The preparation of balance sheets involved unnecessary expenditure and wastage of time and energy. Consequently, the practice of preparing balance sheets was given up a few years back.

13. Para 13 of the writ petition is denied. The Financial position of the Committee being very tight, it had been regularly considering the matter and it was after lot of persuasion by the Committee that the Board decided to revise the rate of market fee. After the Board accepted the Committee's request and fixed the rate of fee at Rs. 2%, the Committee adopted the same.

14. In reply to para, 14 of the writ petition, it is submitted that in accordance with the decision of the Committee as adopted by them, it was conveyed to the petitioners that they had to deposit the market fee at the rate of Rs. 2%. With regard to the copies of the balance sheets etc., the position has already been explained in the preceding paragraph. Suitable reply was also sent by the answering respondent to the petitioners."

20. From the aforesaid specific averments made in the written statement, referred to above, it is clear that to carry out the purposes of the Act it had become necessary in enhance the rate of the market fee and such an enhancement stands fully justified. The petitioners have failed to point out any specific item/ items which could be termed as unauthorised, as was the position in a Division Bench decision in M/s. Hanuman Dall and General Mills in which case certain definite items were struck down as wholly unauthorised and not falling within the purview of S. 28. It would not be inappropriate to observe that the effort of the learned counsel for the petitioners, during the course of arguments, was that in case certain provisions of Ss. 20 and 28 of the Act could be struck down as unconstitutional, then safely, it could be argued that the enhancement in the fee was in order to incur an expenditure on the items which fell within the purview of those clauses and that those clauses having been held to be unconstitutional, the enhancement in the fee deserved to be struck down. In the wake of the averments made in the written statement, reproduced above, there can be no manner of doubt that the enhancement in the fee has been fully Justified and no ground has been made out for striking down the enhancement in the fee. I do not agree

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with the learned counsel for the petitioners that as copies of the balance sheets had not been given by the respondents, an adverse inference should be drawn against them and that this fact alone would be sufficient to quash the enhancement in the fee. It may, however, be observed that during the course of arguments affidavit of Shri Tirath Singh, Chairman, Punjab State Agricultural Marketing Board was placed on the file, which was not objected to by the learned counsel for the petitioners. From its perusal, I find that details of income and expenditure have been given in respect of the respondent-Committee as well as of the Board. The items on which the expenditure has been incurred or the improvement schemes which are likely to be undertaken and of which there is a likelihood of incurring expenditure, clearly have a correlation with the object to be achieved under the Act.

21. Faced with this situation Mr. Malik drew our attention to the passages in documents. Annexures-W-10, W-11 and W-12, which read as under :-

"Annexure-'W-10' :

The institution of Board and Market Committee do not lag behind in serving the State and the Nation in any sphere whenever there is an occasion for the same. With a view to share the pangs of sufferings hurled upon our Assami and Behari brethren as also of brave Punjabis of Amritsar and Gurdaspur Districts due to havoc of floods, truck-loads of foodgrains were rushed to Assam and over rupees 30 lakhs have been contributed for the Chief Minister's Flood Relief Fund by the Board and the Market Committees."

"Annexure-'W-11' :

The Punjab State Agricultural Marketing Board has decided to set up two ginning factories and six rice shellers in the State in the near future."

"Annexure-'W-12' :

Payments to be made by the Market Committees to the Punjab P. W. D. (B. and R.) for the construction of link roads may be admitted in audit without insisting on the usual formalities of Estimates, Technical sanction etc. till further orders."

On the basis of the aforesaid material, the learned counsel submitted that the Board was indulging in activities which had no correlation with the object to be achieved by the Act and that the enhancement in the market fee could not be justified.

22. In the circumstances of the case, I am unable to agree with this contention of the learned counsel. The documents to which reference has been made above were produced by the petitioners along with the replication which was filed in the shape of an affidavit of Shri K. K. Puri, Director of M/s. Devi Dass Gopal Krishan Pvt. Ltd., Moga, dated 27th March, 1976. So far as Annexures-W-11 and W-12 are concerned, any expenditure incurred by the Marketing Board on the setting up of the rice shellers or ginning factories or by the Market Committees on the construction of the link roads would not be inconsistent with the provisions of the Act and the object to be achieved under the Act. The setting up of the rice shellers would be for the benefit of the producers and, as earlier observed, construction of the link roads also would be for their advantage. So far as Annexure-W-10 is concerned, there can be no gainsaying that giving of donation for the Chief Minister's Flood Relief Fund by the Board or the Market Committee would not be justified as the same has no correlation with the object to be achieved under the Act and in case any amount has been spent by the Committee in this respect, it would certainly be unauthorised and illegal. But, in the instant case, the petitioners have failed to show that any amount was contributed towards the Chief Minister's Flood Relief Fund and that the enhancement in the fee had any correlation with such a contribution. In this view of the matter, on the basis of Annexures-W-10, W-11 and W-12, the enhancement in the fee to be levied by the Committees cannot be struck down.

23. It was also argued by Mr. Malik, though half-heartedly, that the Board had no jurisdiction to direct the Committee to levy the fee as has been done in the instant case by issuing telegraphic instructions dated 21st of August, 1975 (vide Annexure-'P-5' attached to the petition). I am afraid I am unable to agree with this contention of the learned counsel. In the reply filed on behalf of the Committee it has been stated that the financial position being very tight, the Committee had been regularly considering the matter and it was after lot of persuasion by the Committee that the Board decided to revise the rate of market fee and that after the Board accepted the Committee's request and fixed the rate of market fee at Rs. 2/- Per cent., the Committee adopted the same, Further, there is no bar under the Act for

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the Board to revise or fix the rate of market fee. In this situation, the contention of the learned counsel is without any merit.

24. This brings me to Cl. (xvii) of Ss. 26 and 28 of the Act, which provides the expending of the funds of the Board or the Market Committee on any purpose calculated to promote the national or public interest. What had been argued by Mr. Malik, learned counsel for the petitioners, was that the Committee or the Board had no authority to incur expenditure on any purpose calculated to promote the national or public interest and that such a provision in S.26 or S.28 could not be incorporated by the State Legislature as it was not within its competency to do so under Entry 28. This contention of the learned counsel is only of academic importance as it has not been alleged in the petition nor proved that after the enhancement of the fee, any amount has been spent by the Committee or the Board on some purpose calculated to promote the national or public interest. In this situation, I do not propose to enter into any further discussion on this aspect of the matter as it is not necessary to do so for the determination of the controversy raised before us.

25. Before parting with the judgment, it may be observed that Mr. R. L. Batta, Advocate, who was allowed to intervene had adopted all the arguments of Mr. B. S. Malik, learned counsel for the petitioners, except that he did not urge that the Committee could incur expenditure only on the development of the principal market yard and not the notified market area.

26. No other point was urged.

27. For the reasons recorded above this petition fails and is dismissed with costs.

S. S. SIDHU, J. :- I agree.

A. S. BAINS, J.:- I also agree.

Petition dismissed.

**AIR 1976 PUNJAB AND HARYANA 1 "H. D. and G. Mills v. State"**

**PUNJAB & HARYANA HIGH COURT**

Coram : 2 BAL RAJ TULI AND PRITAM SINGH PATTAR, JJ. ( Division Bench )

M/s. Hanuman Dall and General Mills, Hissar, Petitioner v. The State of Haryana and others, Respondents.

Civil Writ Nos. 3274, 2583, 3268 etc. of 1974 and Civil Misc. No. 9010 of 1974, D/- 8 -11 -1974.

(A) Constitution of India, Art.213 and Art.254 - Punjab Agricultural Produce Markets Act (23 of 1961), S.23 (as amended in 1973 and 1974) - PRESIDENT OF INDIA - LEGISLATIVE COMPETENCE - AGRICULTURAL PRODUCE - AMENDMENT - Validity - Original Act received assent of President - Amendment is not invalid merely because the Amending Acts were not reserved for the Assent of President.

ILR (1973) 1 Punj 496, Overruled.

An amending Act does not require the assent of the President merely because the parent Act has received such assent. The President does not become a limb of the State Legislature merely because he gives his assent to certain Bills reserved for his consideration. It is not every amendment that should be submitted for the assent of the President irrespective of whether the amendment involves anything which calls for the assent of the President or not merely because the main Act was reserved for his assent. The amendment of only that provision of an Act, containing provisions in respect of one of the matters enumerated in the Concurrent List, will require the assent of the President for its enforcement, which relates to any such matter but if it relates to the amendment of any other provision with respect to a matter not enumerated in the Concurrent List, it will not require the assent of the President for its enforcement. (Case law discussed). ILR (1973) 1 Punj 496, Overruled. (Paras 11, 16)

Both the Articles 213 and 254 use the words "provision contained in an Act" and not the entire Act. Article 254 (2) also uses the words "matters enumerated in the concurrent List". Reading these two provisions, it becomes abundantly clear that if an Act, when enacted, contains any provision with respect to one of the matters enumerated in the Concurrent List, which is repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the Legislature of the State has to be reserved for the consideration of the President in order to enforce it. Thereafter, if any provision of that Act which does not relate to any of the matters enumerated in the Concurrent List, is sought to be, amended, it will not require the assent of the President. (Para 16)

(B) Punjab Agricultural Produce Markets Act (23 of 1961), S.23 (as amended in 1973 and 1974) - AGRICULTURAL PRODUCE - EQUALITY - STATE - FREEDOM OF TRADE - Enhancement of market fee, - Validity - Fee imposed is compensatory - Art.304 (b) not attracted - Art.14 also not violated.

Constitution of India, Art.304(b) and Art.14.

In view of the services rendered and facilities provided for carrying on the trade, the fee levied by the market committees under Section 23 of the Act is compensatory and its imposition does not hamper trade and commerce and, therefore, Article 304 (b) is not attracted. There is also no violation of Article 14 of the Constitution because no material has been placed on the record to show the rate of such fees in other States. AIR 1962 SC 1406, Followed. (Para 17)

(C) Punjab Agricultural Produce Markets Act (23 of 1961), S.23 (as amended in 1973 and 1974 in Punj. and Har.) and S.27 and S.28 - AGRICULTURAL PRODUCE - FREEDOM OF TRADE - Fee levied under S.23 - Whether a tax or fee - Enhancement of fee - Validity.

Constitution of India, Art.19(1) and Art.265.

The fees are of various kinds and it is not possible to formulate a definition that would be applicable to all cases. The matter shall have to be decided in each case taking into consideration the objects of the Act and the kind of service to be rendered. The

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collections from the fees must not be merged in the general revenue but should be kept apart and appropriated for rendering the services. The amount of the fees charged must have a reasonable correlationship with the cost of the services rendered or to be rendered to the payers of the fees. However, it is impossible to have an exact correlationship and so the correlationship expected is one of general character and not of arithmetical exactitude; and the amounts of fees so collected are not to be spent exclusively for rendering services to the payers of the fees but can also be utilised for carrying out the purposes or objects of the Act under which they are levied. They cannot, however, be utilised for purposes which have no connection with the main purposes of the Act for which fee is levied. (Case law discussed). (Para 31)

The levy permitted under Section 23 is primarily a fee and not a tax. It can also be called a compensatory fee. The amount of the fee collected by the market committees goes to the market committee fund constituted under Section 27 of the Act and that fund has to be utilised for the purposes mentioned in that section and Section 28. The fees collected under the Act cannot be spent for carrying out the governmental functions of the State but for rendering services to the payers of the fees in accordance with the provisions of the Act. (Paras 29, 31)

Since Section 23 of the Act, as applicable to the State of Haryana, only prescribes the maximum limit within which the market committees, according to their needs, can prescribe the fee to be realised from the licensed dealers, it is not possible to strike down the amendments of that section made by the various Acts enhancing the amount of maximum fee. Looking to the various projects to be undertaken for the improvement of the market committees and the funds required for the repayment of loans already taken for the construction of godowns, the levy of fee at the rate of rupees two per one hundred rupees is considered to be justified and in order. (Paras 18 and 39)

The enhancement of market fee made by the State of Punjab is, however, different. They have to charge the fee prescribed in Section 23 of the Act by the Legislature. There is no scope for flexibility. The amount of the fee has been fixed by the Legislature and it has not been left to each market committee to levy fee according to its needs within the prescribed limit. The enhancement in the amount of fee from one rupee and fifty paise to two rupees and twenty-five paise per one hundred rupees was not genuine and it was made with a view to enable the market committees and the Agricultural Marketing Board to reimburse themselves for the amounts which they were directed to contribute to Guru Gobind Singh Medical College at Faridkot. The market committees were having enough income and could meet their legitimate requirements from the amounts of fees which were being realised prior to the enhancement. The new projects to be undertaken by the market committees or the Agricultural Marketing Board have not been stated and, therefore, the enhancement in the fee from one rupee fifty paise to two rupees and twenty-five paise cannot be justified. This enhancement is nothing but a colourable excise of power to levy fee with a view to raise funds for extraneous purposes not intended by the Act and the Punjab Agricultural Produce Markets (Amendment) Ordinance (No. 4 of 1974) and (Amendment) Act (13 of 1974) have to be struck down. The enhancement of fee from one rupee to one rupee and fifty paise by Punjab Act 17 of 1973 is considered to be justified for carrying out the various purposes mentioned in Sections 26 and 28 of the Act and is upheld. (Paras 18 and 43)

It is not open to the State Government to designate a certain institution or project as of public importance and direct the market committees and the Marketing Board to make compulsory contributions thereto. The State Government shall be well advised to compensate the Agricultural Marketing Board and the market committees for the misutilisation of their funds for this unauthorised purpose. (Para 41)

(D) Punjab Agricultural Produce Markets Act (23 of 1961), S.28(xiii) and S.23 - AGRICULTURAL PRODUCE - Levy of fee under S.23 - Amounts spent by market committees on donations given to educational institutions not imparting education in marketing or agriculture are not within S.28 and wholly unauthorised. (Para 36)

(E) Punjab Agricultural Produce Markets Act (23 of 1961), S.28(xiii) and S.23 - AGRICULTURAL PRODUCE - Levy of market fee under S.23 - Amount spent by marketing committee on water supply scheme of a village is not covered by S.28 - Such scheme bas no connection with the marketing of agriculture produce for which the markets have been established. (Para 36)

(F) INTERPRETATION OF STATUTES - Interpretation of Statutes - Statement of object and reasons - Use of.

The statement of object and reasons for the enactment cannot be a direct aid to the construction but it can be used for a limited purpose for finding out the purpose of the enactment by furnishing valuable historical material. (Para 41)

Cases Referred : Chronological Paras

AIR 1973 SC 724 : 1973 Tax LR 581 31, 43

ILR (1973) 1 Punj and Har 496 5, 11

AIR 1972 Raj 168 : 1972 Raj LW 191 14

AIR 1971 SC 1182 : 1971 SCD 489 21

ILR (1969) 1 Punj and Har 756 28

AIR 1968 SC 1408 : (1968) 3 SCR 534 28

AIR 1967 SC 59 : (1962) 3 SCR 250 5

AIR 1965 SC 1107 : (1965) 2 SCR 477 24, 29

AIR 1965 Punj 33 (1964) 66 Pun LR 836 36

AIR 1964 AP 266 : 15 STC 676 11

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AIR 1964 Ker 92 : 1963 Ker LJ 876 11, 12

AIR 1963 SC 966 : 1963 Supp (2) SCR 302 23

AIR 1962 SC 97 : (1962) 2 SCR 659 27, 28

AIR 1962 SC 1406 : (1963) 1 SCR 491 17, 29

AIR 1962 Mys 218 5, 9

AIR 1961 SC 459 : (1961) 2 SCR 537 22, 35

AIR 1959 Pat 488 : 1959 BLJR 362 5, 8

AIR 1957 Ori 96 : ILR (1957) Cut 1 5, 7

AIR 1956 Raj 107 : 1956 Raj LW 417 13

AIR 1954 SC 282 : 1954 SCR 1005 19, 28

AIR 1954 SC 388 : 1954 SCR 1055 20

AIR 1954 SC 400 : 1954 SCR 1046 20

AIR 1953 Pat 14 : 1953 BLJR 151 (FB) 5, 6

Bhal Singh Malik, P.S. Jain and R.L. Batta, for Petitioner; C.D. Dewan, Addl. Advocate-General (Haryana), (for Nos. 1 and 2) and S.K. Lamba (for No. 3), for Respondents.

Judgement

BAL RAJ TULI, J.:- This judgment will dispose of 211 civil writ petitions ( Nos. 2583, 3268, 3270 to 3274, 3712 to 3720, 3722 to 3729, 3753 to 3757, 3768, 3790, 3913 to 3954, 4205, 4206, 4291 to 4293, 4323, 4323, 4366, 4373 to 4376, 4381, 4385 to 4387, 4395, 4396, 4402, 4403, 4405, 4409 to 4412, 4428, 4436, 4438, 4440, 4441, 4467, 4468, 4489, 4544, 4548, 4549, 4570, 4572, 4580, 4584, 4607, 4610, 4617, 4625, 4688, 4692, 4699, 4709, 4717 to 4727, 4730, 4741, 4743, 4775, 4780 to 4782, 4792, 4800, 4818, 4844, 4865, 4866, 4869, 4870, 4874 to 4885, 4892 to 4906, 4910, 4911, 4919, 4923, 4924, 4935, 4947, 4962 to 4964, 4967 to 4972, 4985, 4990, 5002 to 5004, 5007, 5008, 5028, 5029, 5035, 5052, 5053, 5059, 5081, 5084 5100, 5105, 5109, 5113, 5117 and 5122 of 1974) as common questions of law are involved, 127 writ petitions relate to the market committees in the to State of Haryana and 84 to the market committees in the State of Punjab.

2. The Punjab Agricultural Produce Markets Act (Punjab Act 23 of 1961) (hereinafter referred to as the Act), received the assent of the President of India on May 18, 1961, and was published in the Punjab Government Gazette (Extraordinary), Legislative Supplement dated May 26, 1961, and came into force at once. Section 23 of this Act read as under :-

"Section 23. A committee may, subject to such rules as may be made by the State Government in this behalf, levy on ad valorem basis fees on the agricultural produce bought or sold by licensees in the notified market area at a rate not exceeding fifty naye paise for every one hundred rupees;

Provided that-

(a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made; and

(b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made."

In accordance with the provisions of this, section, the market committees levied a fee of forty naye paise per one hundred rupee and no dealer felt aggrieved.

3. The Harayana Government substituted the words "one rupee" in place of "fifty naye paise" by the Punjab Agricultural Produce Markets (Haryana Amendment) Act (28 of 1969), which came into force on September 3, 1969, and thereafter the market committees in the State began to charge fee at the rate of one rupee per one hundred rupees in accordance with that amendment. The objects and reasons for making the increase in the rate of fee were stated as under:-

"Fifty paise ad valorem fee is provided on every 100 rupees as value of the agricultural produce bought or sold in the notified markets under Section 23 of the Punjab Agricultural Produce Markets Act, 1961. Market fee is an important source of income of the market committees. In order to make an increasing use of the market committee's funds for development purposes in accordance with the provisions of the Punjab Agricultural Produce Markets Act, 1961, it is necessary that the resources of the market committees should be increased. It was considered absolutely necessary to increase the minimum market fee to rupee one on the Rabi produce arriving in the mandis. In order to achieve this object, the minimum market fee was increased on the promulgation of an Ordinance, 'The Punjab Agricultural Produce Markets (Haryana Amendment)' which is now being replaced by amending the Punjab Agricultural Produce Markets Act, 1961."

Thereafter, by the Punjab Agricultural Produce Markets (Haryana Amendment) Act (21 of 1973), the words "except in the case of agricultural produce brought for processing", were added after the words "provided that." This amendment is not material for the decision of the points of law involved in these cases. The words "one rupee and fifty paise" were substituted for the words "one rupee" in Section 23 of the Act by the Punjab Agricultural Produce Markets (Haryana Amendment) Act (10 of 1974), which came into force on January 30, 1974. The objects and reasons for the increase were stated as under :-

"At present an ad valorem fee of one rupee is provided on every one hundred rupees as value of the agricultural produce bought and sold in the notified market committees under Section 23 of the Punjab Agricultural Produce Markets Act, 1961. The market committees are required to play a vital role in the development of roads for transportation, setting up godowns for storage of agricultural produce, and providing other facilities to the growers in the notified market areas. It has, therefore, been decided to augment the resources

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of the market committees by increasing the said market fee from one rupee to rupee one and fifty paise."

In fact, no fee was increased by the market committees in pursuance of this amending Act because the increase in the rate of fee was not considered sufficient by the Agricultural Marketing Board to carry out the development projects which had been planned. A suggestion was, therefore, made to increase the rate to two rupees per one hundred rupees. This increase was effected in Section 23 of the Act by the Punjab Agricultural Produce (Haryana Amendment) Ordnance 2 of 1974, which came into force on April 13, 1974. Thereafter, this Ordinance was replaced by the Punjab Agricultural Produce Markets (Haryana Second Amendment) Act (No. 17 of 1974), which came into force on July 23, 1974. The objects and reasons for the increase were stated as under:-

"At present under Section 23 of the Punjab Agricultural Produce Markets Act 1961, an ad valorem fee of rupee one and fifty paise on agricultural produce worth rupees one hundred bought and sold in the notified market committee, is provided. The market committees are required to play vital role in the development of roads for transportation, setting up godowns for storage of agricultural produce and to provide other facilities to the growers in the notified market areas. It has, therefore, been decided to augment the resources of the market committees by increasing the said market fee from rupee one and fifty paise to rupees two."

The result is that the maximum rate of fee has been prescribed as two rupees per one hundred rupees in Section 23 of the Act. The Marketing Board has directed every market committee to charge fee at that rate. The increase in the rate of fee from one rupee to one rupee and fifty paise and then to two rupees has been challenged in the writ petitions which pertain to the State of Haryana.

4. Similar amendments were made by the State of Punjab in Section 23 of the Act with the difference that instead of two rupees as in the State of Haryana, two rupees and twenty-five paise per one hundred rupees is now the fee to be charged in the State of Punjab. The increase from fifty naya paise to one rupee was effected by the Punjab Agricultural Produce Markets (Amendment) Act (No. 25 of 1969), which amended Section 23 of the Act so as to substitute the words "at the rate of one rupee" in place of the words "at the rate not exceeding fifty naya paise", with effect from May 22, 1969. The fee was further increased from one rupee to one rupee and fifty paise with effect from April 20, 1973, by the Punjab Agricultural Produce Markets (Amendment) Act (17 of 1973), and from one rupee and fifty paise to two rupees and twenty-five paise, with effect from 30-4-1974, by the Punjab Agricultural Produce Markets (Amendment) Ordinance (No. 4 of 1974). That Ordinance has been replaced by the Punjab Agricultural Produce Markets (Amendment) Act (13 of 1974) which came into force on August 20, 1974. The Objects and Reasons for enacting the Punjab Agricultural Produce Markets (Amendment) Act (No. 17 of 1973) were stated as under:-

"In order to facilitate the producers to bring their produce to the nearest markets for better marketing, it is necessary to provide better facilities in the villages. To meet the additional expenditure required for providing those facilities and their maintenance, it is considered expedient to enhance the rate market fee leviable by the State Government from one rupee to one rupee and fifty paise per every hundred rupees of agricultural produce."

The objects and reasons for enacting the Punjab Agricultural Produce Markets (Amendment) Act (No. 13 of 1974) were expressed as under :-

" ....to provide link roads, culverts and bridges in the rural areas to effectively link them to the various markets in the State to enable the producer to get competitive prices, and other various objectives as defined under Section 28 of the Act, ........ " These increases in rate of fee by various amending Acts gave been challenge in the writ petitions pertaining to the market committees in the State of Punjab.

5. The first ground of attack by the petitioners is that the Act was reserved for the assent of the President when it was enacted in 1961 and every amendment in any provision of that Act can be effected only after obtaining the assent of the President under Articles 213 and 254 (2) of the Constitution. Since it is admitted by the respondents that the amending Acts were not reserved for the assent of the President, they are invalid and unenforceable. Reliance in support of this submission is placed on a Single Bench judgment of this Court in Karnail Singh Doad v. The State of Punjab, ILR (1973) 1 Punj and Har 496. That case pertained to the amendment in Section 3 of the Act by the Punjab Agricultural Produce Markets (Amendment) Ordinance No. 7 of 1970, which was published in the Punjab Government Gazette (Extraordinary) dated September 11, 1970 and came into operation on that date. By that amendment, the constitution of the Marketing Board was changed. Prior thereto, by an order dated April 2, 1970, the Board then existing was abolished and the abolition of that Board was challenged by the petitioners of that writ petition. After the promulgation of the Ordinance, the State Government reconstituted the Marketing Board in accordance with the amended provisions of Section 3 of the Act. One of the contentions raised before the learned Single Judge was that the Ordinance was inoperative because no instructions were received from the President under Art.213 of the Constitution before its promulgation. It was submitted that the assent of the President was necessary because the original Act,

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some of the provisions of which had been amended, had been promulgated after obtaining the assent of the President. The learned Judge gave effect to this contention and held that the Ordinance, which was later on replaced by an Act, was unconstitutional and hence invalid and that the new Board, constituted after the promulgation of the Ordinance, had never come into existence in the eye of law and the Board, which had been abolished, was held to have continued to be in existence with the first petitioner Karnail Singh Doad as its Chairman. While discussing this constitutional aspect, the learned Judge relied on Mangtulal v. Radha Shyam, AIR 1953 Pat 14 (FB); Sankarsana Ramanuja Das v. State of Orissa, AIR 1957 Orissa 96, which was upheld by the Supreme Court in Sankarshan Ramanuja Das Goswami v. State of Orissa, AIR 1967 SC 59; Rameshwar Kumar v. R.P. Mishra, AIR 1959 Pat 488 and P. Achiah Chetty v. State of Mysore, AIR 1962 Mys 218. These cases are clearly distinguishable.

6. Mangtulal's case AIR 1953 Pat 14 (FB) (supra) was the case of an amending Act which extended the duration of the Principal Act beyond March 14, 1952, and up to March 14, 1954. The original Act, the duration of which was extended, had received the assent of the President because some of its provisions were repugnant to the provisions of the Transfer of Property Act, 1882 - an existing law - with respect to the transfer of property other than agricultural land enumerated in Seventh Schedule, List III, Item 6, within the meaning of Article 254 (1) of the Constitution of India. The extension of its duration without doubt required the assent of the President because the entire Act was being extended for a further period and not that any amendment in one of its provisions, not relatable to any matter enumerated in the Concurrent List, was being made.

7. The case of Sankarsana Ramanuja Das, AIR 1957 Orissa 96 (supra), before the Orissa High Court and the Supreme Court, related to the Orissa Estates Abolition (Amendment) Act (No. 17 of 1954), which substituted the expression "inam estate" in Section 2 (g) of the Orissa Estates Abolition Act, 1951, by the expression "any inam". That Act related to the acquisition of property for public purposes, and required the assent of the President under Article 31-A of the Constitution. One of the contentions raised in that case was that the benefit of Article 31-A might have been available to the original Act, as it was a law for the compulsory acquisition of property for public purposes, but not to the amending Act which was not such a law but only amended a previous law by enlarging the definition of estate. Repelling this argument, their Lordships observed in para. 12 of the report :-

"It assumes that the benefit of Art.31-A is only available to those laws which by themselves provide for computer acquisition of property for public purposes and not to laws amending such laws, the assent of the President notwithstanding. This means that the whole of the law, original and amending, must be passed again and be reserved for the consideration of the President and must be freshly assented to by him. This is against the legislative practice in this country. It is to be presumed that the President gave his assent to the amending Act in its relation to the Act it sought to amend, and this is more so, when by the amending law the the provisions of the earlier law relating to compulsory acquisition of property for public purposes were sought to be extended to new kinds of properties. In assenting to such law, the President assented to new categories of properties being brought within the operation of the existing law, and he, in effect, assented to a law for the compulsory acquisition for public purposes of these new categories of property. The assent of the President to the amending Act thus brought in the protection of Article 31-A as a necessary consequence. The amending Act must be considered in relation to the old law which it sought to extend and the President assented to such an extension or, in other words, to a law for the compulsory acquisition of property for public purposes."

It is thus clear that the Orissa Estates Abolition (Amendment) Act, 1954, extended the provisions of the original Act which related to compulsory acquisition of property for public purposes to new kinds of properties and, therefore, it was clearly relatable to Entry 42 in the Concurrent List and required the assent of the President before its enforcement.

8. The case of Rameshwar Kumar AIR 1959 Pat 488 (supra), before the Patna High Court, related to Land Acquisition (Bihar Amendment) Act, 1956, Section 4 of which amended the provisions of Section 35 of the Land Acquisition Act, 1894, by adding a proviso thereto. It is thus clear that the Bihar Amendment Act directly amended the Land Acquisition Act, 1894, which was an existing law and, therefore, required the assent of the President.

9. P. Achiah Chetty's case AIR 1962 Mys 218 (supra), before the Mysore High Court, challenged the constitutional validity of the City of Bangalore Improvement (Amendment) Act (13 of 1960) which introduced Section 27-A in the parent Act - City of Bangalore Improvement Act (5 of 1945) - validating retrospectively acquisition of land under Mysore Land Acquisition Act for purposes of city improvement in contravention of Sections 14, 15, 16, 17, 18 or 27 of the parent Act. It was held that the provisions of the amending Act were in respect of existing law within the meaning of Article 254 (2) of the Constitution and, the Amendment Act having not been reserved for the assent of the President in accordance with the proviso to Article, 213 (1), was invalid. That Act

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again related directly to acquisition of property - the rangy enumerated in the Concurrent List.

10. The ratio of these decisions, therefore, could not be applied to the case before the learned Judge which did not relate to any matter enumerated in the Concurrent List.

11. On behalf of the respondents, reliance was placed on Sri Durga Rice and Baba Oil Mills Co. v. State of Andhra Pradesh, AIR 1964 Andh Pra 266 and Koteswar Vittal Kamath v. K. Rangappa Baliga and Co., AIR 1964 Ker 92. Some of the observations made by the learned Judges of the Andhra Pradesh High Court in Sri Durga Rice and Baba Oil Mills Co.'s case (supra), are more relevant and pertinent to the kind of amendment with which the learned Judge dealt in Karnail Singh Doad's case ILR (1973) 1 Punj and Har 496 and we are dealing in these cases. It was held by the learned Judges that an amending Act did not require the assent of the President merely because the parent Act had received such assent. The President does not become a limb of the State Legislature merely because he gives his assent is certain Bills reserved for his consideration and that it is not every amendment that should be submitted for the assent of the President irrespective of whether the amendment involves anything which calls for the assent of the President or not Merely because the main Act was reserved for his assent. It was further observed that-

"Often, the parent Act by a State Legislature may contain some provisions which deal with a matter coming either (sic) under List III and it is only to save a law made by such a Legislature from challenge on the plea of repugnancy between it and an existing law or a Parliamentary law that the device of obtaining the President's assent is resorted to."

In that case, the Andhra Pradesh General Sales Tax Act had been reserved for the assent of the President because there were certain provisions in it which dealt with subjects coming under the Concurrent List. The impugned Act amended items 5 and 6 of Schedule III (paddy rice) to the Andhra Pradesh General Sales Tax Act, 1957, which enumerated the goods in respect of which a single point purchase tax only was leviable under Section 5 (3) (b) of that Act, by enhancing the sales tax payable thereon from 3 naye paise to four nays praise in the rupee. The validity of the impugned Act was challenged on three grounds, namely-

"(i) that it operates as a restriction on the freedom of trade contemplated by part XIII of the Constitution, especially, Article 304 (b) and, consequently, it falls within the protection of the proviso and that sic the requirement as to the assent of the President was not satisfied, the legislation is void;

(ii) that the parent Act having been assented to by the President, the amending Act could not become law unless and until the President had accorded his assent to it; and

(iii) that the impugned Act was a colourable piece of legislation as in pith and substance this enactment has modified the Central Sales Tax Act, 1956."

All the pleas were decided against the petitioners and the petitions were dismissed.

12. In Koteswar Vittal Kamath's case AIR 1964 Ker 92 (supra), the validity of Section 3 of the Travancore-Cochin Public Safety Measures Act (5 of 1950), was challenged on the ground that the previous sanction of the President had not been obtained under the proviso to clause (b) of Article 304 of the Constitution. With regard to that contention it was observed by the learned Judges :-

"The condition precedent of President's previous sanction is attached only to legislation which imposes restriction on freedom of trade, commerce or intercourse. Repealing is not imposing restrictions and so the proviso to Article 304 does not affect the validity of the repeal under Section 73 of the Act if the repeal is otherwise valid."

Those observations are also helpful in upholding the constitutional validity of the amendments made in Section 23 of the Act from time to time enhancing the rate of fee.

13. In Jugraj v. Rajasthan State, AIR 1956 Raj 107, the constitutional validity of the Rajasthan Panchayat (Amendment) Ordinance (15 of 1955) was challenged on the ground that the President's assent had not been obtained which was necessary, as it amended certain provisions of the Rajasthan Panchayat Act (21 of 1953). It was observed by the learned Judges-

"But the provisions which have been amended by the Ordinance have nothing to do with any existing legislation of the Central Legislature covered by the Concurrent List. It was, therefore, not necessary to obtain the assent of the President to this modification."

14. In another case, K.N. Joshi v. State of Rajasthan, AIR 1972 Raj 168, constitutional validity of the Rajasthan Urban Improvement (Amendment) Ordinance (1972) was challenged on the ground that the assent of the President had not been obtained and, therefore, it could not be enforced under Article 254 (2) of the Constitution. Repelling this attack, it was observed :

"The Governor has power under Art.213 of the Constitution to promulgate Ordinance in respect of the subject covered by List II of the Seventh Schedule even if the Parent law which contains provisions about acquisition of land was enacted after getting President's assent. The impugned Ordnance deals only with the constitution of the Improvement Trust and therefore, it was not necessary to get the assent of the President on such Ordinance."

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15. After giving my careful consideration to the points canvassed and in the light of the decisions referred to above, I am of the opinion, and I say so with great respect, that the learned Judge erred in holding that the amendment of any provision of the Act requires the assent of the President even if that particular provision, which is amended, does not relate to any matter enumerated in the Concurrent List.

16. Articles 213 (1) and 254 of the Constitution are in these terms :-

"Article 213 (1). If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require :

provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if-

(a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature; or

(b) he would have deemed it necessary to reserve a bill containing the same provisions for the consideration of the President; or

(c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the, assent of the President.

Article 254 (1). If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law trade by the Legislature of State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :

"Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

Both these Articles use the words "provision contained in an Act" and not the entire Act. Article 254 (2) also uses the words "matters enumerated in the Concurrent List." Reading these two provisions, it becomes abundantly clear that if an Act, when enacted, contains any prevision with respect to one of the matters enumerated in the Concurrent List, which is repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the Legislature of the State has to be reserved for the consideration of the President in order to enforce it. Thereafter, if any provision of that Act, which does not relate to any of the matters, enumerated in the Concurrent List, is sought to be amended, it will not require the assent of the President. Only the amendment of that provision of the Act will require the assent of the President which is with respect to one of the matters enumerated in the Concurrent List. Section 3 of the Act, as originally enacted in 1961, did not relate to any of the matters enumerated is the Concurrent List and, therefore, its amendment, in my opinion, did not require the assent of the President. The learned Judge was of the view that since the power to acquire property under the Act was to be exercised by the Marketing Board, the provision with regard to its, constitution related to the acquisition of property and was, therefore, relatable to Entry 42 in the Concurrent List. With great respect, I do not find myself in agreement with the learned Judge. To reiterate, I hold that the amendment of only that provision of an Act, containing provisions in respect of one of the matters enumerated is Concurrent List, will require the assent of tire President for its enforcement, which relates to any such matter but if it relates to the amendment of any other provision with respect to a matter not enumerated in the Concurrent List, it will not require the assent of the President for its enforcement. Since the correctness of the decision of the learned Judge has been doubted on this point, I hold that case has not been correctly decided and overrule the same.

17. Shri P.S. Jain, appearing for some of the petitioners is these cases. Submitted that the assent of the President was necessary under Article 304 (b) of the Constitution as the increase in tae rate of fee affects the free flow of trade and commerce in agricultural produce, which is bought and sold in the market by licensees in the notified market area as a result of which the licensees will be at a disadvantage while competing with the traders of the other States. This plea, has not been specifically taken in the petitions and no material has been pared on the record to show as to what is the rate of the market

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fee being charged by the market committees in other States, with the dealers of which the petitioners intend to trade or compete. Moreover, it has been held by their Lordships of the Supreme Court in Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan, AIR 1962 SC 1406, that compensatory taxes for the use of trade facilities are not hit by the freedom declared by Article 301 of the Constitution. Their Lordships further observed :-

"It seems to us that a working test for deciding whether a tax is compensatory or not is to enquire whether the trades people are having the use of certain facilities for the better conduct of their business and paying not patently much more than what is required for providing the facilities. It would be impossible to judge the compensatory nature of a tax by a meticulous test, and in the nature of things that cannot be done.

... ... ... ... .... ... ... ....

... .... .... .... .... ... ... ....

If a statute fixes a charge for a convenience once or service provided by the State or an agency of the State, and imposes it upon those who choose to avail themselves of the service or convenience, the freedom of trade and commerce may well be considered unimpaired. In such a case the imposition assumes the character of remuneration or consideration charged in respect of an advantage sought and received."

On the parity of reasoning in view of the services rendered and facilities provided for carrying on the trade, it will be reasonable to hold that the fee levied by the market committees under Section 23 of the Act is compensatory and its imposition does not hamper trade and commerce and, therefore, Article 304 (b) is not attracted. There is also no violation of Article 14 of the Constitution because no material has been placed on the record to show the rate of such fees in other States. For all the reasons given above, the challenge to the constitutional validity of the amending Acts is repelled.

18. The most important point argued in these petitions is that the Marketing Board in both the States has directed the market committees to levy the maximum fee of two rupees per one hundred rupees in the Haryana State and two rupees and twenty-five paise for one hundred rupees in the State of Punjab which is too excessive and exorbitant and, therefore, infringes their Fundamental Rights guaranteed under Article 19 (1) (f) and (g) of the Constitution. It is further submitted that in order to justify the imposition of fee the element of quid pro quo, that is, the services rendered to the payers of the fee by the market committees, has to be related to the amount of fee collected from them. In other words, if the cost of the services rendered to the payers of the fee is insignificant or the services rendered are worth much less than the amount charged from them, the fee will amount to tax and colourable exercise of power to impose tax in the garb of fee by the Legislature, the Marketing Board and the market committees. It may be stated here that Section 23 of the Act in the State of Haryana only prescribes the maximum fee that can be levied and not that it must be levied. In the State of Punjab, however, fee to be charged has been fixed by the Legislature and the market committees have no option to charge less. They, of course, cannot charge more unless further amendment is made. Originally, when fifty naye paise for every one hundred rupees was prescribed as the maximum fee, the market committees were directed by the Marketing Board to charge only forty naye paise per one hundred rupees. Similarly, the Marketing Board of Haryana State can direct the market committees to charge less than the maximum amount provided in that section. The section, as amended by the Haryana State, therefore, cannot be struck down as prescribing an excessive amount of fee because it is only an enabling provision and does not provide for any compulsion. The position in the State of Punjab is, however, different as pointed out above. The Marketing Board in both the States has issued directions to the market committees to levy the maximum rate allowed by the Legislature. We have, therefore, to determine whether the imposition of fee at the enhanced rate can be justified as fee and if not, whether it is wholly unauthorised or can be save to any extent on the basis of correlationship of the services rendered to the payers of the fee under the Act. Another question that arises in this connection is the nature of the services to be rendered by the market committees in exchange of the fee charged, that, is, whether they have to be rendered to the payers of the fees exclusively and in entirety or the amount realised can also be spent for carrying out the objects mentioned in Sections 26 and 28 of the Act.

19. The learned counsel for the petitioners have greatly relied on the definition of "fee" stated by their Lordships of the Supreme Court in the Commr. Hindu Religious Endowments. Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282, in the following words (para 44) :-

....... a 'fee' is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed.

Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay, vide Lutz on `Public Finance' p. 215. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases."

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20. The difference between a tax and a fee was brought out again in Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388 wherein the following observations occur (para 22)-

"Fees, on the other hand, are payments primarily in the public interest, but for some special service rendered or some special work done for the benefit of those from whom the payments are demanded. Thus in fees there is always an element of `quid pro quo' which is absent in a tax. It may not be possible to prove in every case that the fees that are collected by the Government approximate to the expenses that are incurred by it in rendering any particular kind of services or in performing any particular work for the benefit of certain individuals. But in order that the collections made by the Government can rank as fees, there must be correlation between the levy imposed and the expenses incurred by the State for the purpose of rendering such services. This can be proved by showing that on the face of the legislative provision itself, the collections are not merged in the general revenue but are set apart and appropriated for rendering these services.

Thus two elements are essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly and in the second place, the amount collected must be ear-marked to meet the expenses of rendering these services and must not go to the general revenue of the State to be spent for general public purposes."

The same observations were repeated in Sri Jagannath Ramanuj Das v. State of Orissa, AIR 1954 SC 400.

21. The matter was exhaustively dealt with by the Supreme Court in The Indian Mica and Micanite Industries, Ltd. v. The State of Bihar, AIR 1971 SC 1182, wherein all the case law on the subject was considered and it was held that before any levy could be upheld as a fee, it must be shown that the levy had a reasonable correlationship with the services rendered by the Government. In other words the levy must be proved to bear a quid pro quo to the services rendered. But in these matters it would be impossible to have an exact correlationship. The correlationship expected is one of a general character and not as of arithmetical exactitude.

22. One of the cases considered by their Lordships was. The Hingir-Rampur Coal Co. Ltd. v. The State of Orissa, AIR 1961 SC 459, wherein the following observations appear in paras 9 and 13 of the report :-

"9. It is true that between a tax and a fee there is no generic difference. Both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes and is not, and need not, be supported by any consideration of service rendered in return, a fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it. If specific services are rendered to a specific area or to a specific class of persons or trade or business in any local area, and as a condition precedent for the said services or in return for them cess is levied against the said area or the said class of persons or trade or business the cess is distinguishable from a tax and is described as a fee. Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilised for all public purposes, whereas a cess levied by way of fee is not intended to be, and does not become, a part of the consolidated fund. It is earmarked and set apart for the purpose of services for which it is levied. There is, however, an element of compulsion in the imposition of both tax and fee. When the Legislature decides to render a specific service to any area or to any class of persons, it is not open to the said area or to the said class of persons to plead that they do not want the service and therefore they should be exempted from the payment of the cess. Though there is an element of quid pro quo between the tax-payer and the public authority there is no option to the tax-payer in the matter of receiving the service determined by public authority. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. Cases may arise where under the guise of levying a fee Legislature may attempt to impose a tax; and in the case of such a colourable exercise of legislative power Courts would have to scrutinise the scheme of the levy very carefully and determine whether in fact there is a correlation between the service and the levy or whether the levy is either not correlated with service or is levied to such an excessive extent as to be a pretence of a fee and not a fee in reality. In other words, whether or not a particular cess levied by a statute amounts to a fee or tax would always be a question of fact to be determined in the circumstances of each case. The distinction between a tax and a fee is, however, important, and it is recognised by the Constitution. Several Entries in the Three Lists empower the appropriate Legislatures to levy taxes; but apart from the power to levy taxes thus conferred each List specifically refers to the powers to levy fees in respect of any of the matters covered in the said List excluding of course the fees taken in any Court." (Emphasis supplied).

"13. It is true that when the Legislature levies a fee for rendering specific services to a specified area or to a specified class of persons or trade or business, in the last analysis such services may indirectly form part of services

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to the public in general. If the special service rendered is distinctly and primarily meant for the benefit of a specified class or area, the fact that in benefiting the specified class or area the State as a whole may ultimately and indirectly be benefited would not detract from the character of the levy as a fee. Where, however, the specific service is indistinguishable from public service, and in essence is directly a part of it, different considerations may arise. In such a case it is necessary to enquire what is the primary object of the levy and the essential purpose which it is intended to achieve. Its primary object and the essential purpose must be distinguished from its ultimate or incidental results or consequences. That is the true test in determining the character of the levy." (Emphasis supplied).

In that case, the Act under consideration was the Orissa Mining Areas Development Fund Act (27 of 1952), which had been passed for the purpose of developing mining areas in the State. The basis for the operation of the Act was the constitution of a mining area and it was in regard to mining areas thus created that the provisions of the Act came into play. The provision for the constitution of an Advisory Committee for a notified mining area was made in Section 4 of the Act which showed that the policy of the Act was to be carried out with the assistance of the mine owners and their workmen. A cess was levied on the mine owners and lessees of mines for the development of the notified mining area. That cess was held to be a fee and not a tax with the following observations:-

"Thus the scheme of the Act shows that the cess is levied against the class of persons owning mines in the notified area and it is levied to enable the State Government to render specific services to the said class by developing the notified mineral area. There is an element of quid pro quo ire the scheme, the cess collected is constituted into a specific fund and it leas not become a part of the consolidated fund, its application is regulated by a statute and is confined to its purposes, and there is a definite correlation between the impost and the purpose of the Act which is to render service to the notified area. These features of the Act impress upon the levy the character of a fee as distinct from a tax.

23. In Sudhindra Thirth Swamiar v. The Commissioner for Hindu Religious and Charitable Endowments, Mysore, AIR 1963 SC 966, the Supreme Court was called upon to consider whether the levy impugned in that case could be justified as a fee. That levy, which was an annual contribution levied under the Madras Hindu Religious Endowments Act (19 of 1951), was upheld on the ground that those contributions, when collected, went into a separate fund and not into the Consolidated Fund of the State and were specifically earmarked for defraying expenses for the services rendered. Further, they were not payable to the Government but were payable to the Commissioner and were levied not as a tax but only as a fee. The Court further observed that-

"A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual services rendered by the authority to each individual who obtains the benefit of the service. If with a view to provide a specific service levy is imposed by law and expenses for maintaining the service are met out of the amounts collected, there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax. It is true that ordinarily a fee is uniform and no account is taken of the varying abilities of different recipients. But absence of uniformity is not a criterion on which alone it can be said that it is of the nature of a tax. A fee being a levy in consideration of rendering service of a particular type, correlations between the expenditure incurred by the Government and the levy must undoubtedly exist, but a levy will not be regarded as a tax merely because of the absence of uniformity in its incidence, or because of compulsion in the collection thereof, nor because some of the contributors do not obtain the same degree of serves as others may."

24. In Corpn. of Calcutta v. Liberty Cinema, AIR 1965 SC 1107, the validity of the levy made under Section 548 (2) of the Calcutta Municipal Act, 1951, came up for consideration before the Supreme Court and it was held that the levy in question was not a fee in return for services as the Act did not provide for any service of a special kind being rendered resulting in benefits to the person an whom it was imposed. In that case, the licence fee was increased from Rs. 400/- to Rs. 6,000/- in 1958 by changing the basis of assessment and finding it at Rs. 5/- per seat. The levy was held to be a tax and not a fee. As a tax it was upheld by majority on the ground that the Corporation was an autonomous body which had to perform various statutory functions. For the performance of those functions, it needed money and its power to collect taxes was necessarily limited by the requirement to discharge those functions and it could fix such rates as may be necessary to meet its needs. That was considered to be sufficient guidance to make the exercise of Corporation's power to fix the rates valid.

25. In para 8 of the report the difference between 'licence fee' and 'fee' for services rendered was pointed out by the reference to Articles 110 (2) and 199 (2) of the Constitution and it was observed that "a provision for the imposition of a licence fee does not necessarily lead to the conclusion that the

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fee must be only for services rendered." With regard to the word "fee" it was observed that it "cannot be said to have acquired a rigid technical meaning in the English language indicating only a levy in return for services", and, therefore, the use of the word `fee' is not conclusive of the question that it must be in return for services and that the position of a section in the Act providing for the fee cannot determine its nature; an imposition which is by its terms a tax and not a fee cannot become a fee by reason of its having been placed in a certain part of the statute.

26. It is not necessary to consider any more cases pointing out the essential characteristics of `fee' in contradistinction to 'tax', as the specific question whether fee levied under the Agricultural Produce Markets Act is `fee' or `tax' has been considered in some cases which are binding on this Court and a reference to them may now be made.

27. In Mohammad Hussain Gulam Mahammad v. The State of Bombay, AIR 1962 SC 97, their Lordships of the Supreme Court held that the fee charged for services rendered by the market committee in connection with the enforcement of the various provision of the Bombay Agricultural Produce Markets Act, 1939, and the provision for various facilities in the various markets established by it was not in the nature of sales tax. The mode of charging fee on the amount of produce bought and sold was only a method of realising fees for the facilities provided by the committee. The levy was thus upheld as a fee and the argument that it was in the nature of a sales tax was repelled.

28. The species question whether a fee levied by a market committee under the Bihar Agricultural Produce Markets Act (16 of 1960), was a fee at a tax came up for consideration before their Lordships of the Supreme Court in Lakhan Lal v. State of Bihar, AIR 1968 SC 1408, wherein the following observations occur in para 7:-

"Counsel next submitted that the market committee has not established any market. According to Counsel, a market must be a well defined site with market equipment and facilities. The argument overlooks the definition of market in Section 2 (h). The market consists of market proper and the market yards. The market yards are well-defined enclosures, buildings or localities but the market proper is under Section 2 (k) read with Section 5 (2) (ii) a larger area. For establishing a market it is sufficient to make a declaration under Section 5 (2) fixing the boundaries of the market proper and the market yards on the recommendation of the market committee made under Rule 59 (2). Under Section 18 (1) the market committee must provide for such facilities in the market as the State Government may from time to time direct. It is not shown that the market committee refused to carry out any direction of the Government. The market committee may, in view of Sections 28 (2) and 30 (i), acquire and own lands and buildings for the market, but it is not always obliged to do so. The market is established on the issue of a notification under Section 5 (2) declaring the market proper and the market yards. The next contention is that the fees levied by the market committee are in the nature of taxes as the committee does not render any services to the users of the market and the levy of the fees is therefore illegal. This contention is not tenable. The market committee has taken steps for the establishment of a market where buyers and sellers meet and sales and purchases of agricultural produce take place at fair prices, Unhealthy market practices are eliminated, market charges are defined and improper ones are prohibited. Correct weighment is ensured by employment of licensed weighmen and by inspection of scales, weights and measures and weighing and measuring instruments. The market committee leas appointed a dispute committee for quick settlement of disputes. It has set up a market intelligence unit for collecting and publishing the daily prices and information regarding the stock, arrivals and despatches of agricultural produce. It has provided a grading unit where the technique of grading agricultural produce is taught. The contract from for purchase and sale is standardised. The provision of the Act and the Rules are enforced through inspectors and other staff appointed by the market committee. The fees charged by the market committee are correlated to the expenses incurred by it for rendering these services. The market fee of 25 naye paise per Rs. 100 worth of agricultural produce and the licence fees prescribed by Rules 71 and 73 are not excessive. The fees collected by the market committee form part of the market committee fund which is set apart and ear-marked for the purposes of the Act. There is sufficient quid pro quo for the levies and they satisfy the test of `fee' as laid down in Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, (AIR 1954 SC 282)."

These observations clearly show that there is close affinity between the provisions of the Bihar Act and the Act, which is for consideration before us, and the above observations supply mutatis mutandis to its provisions. Relying on these judgments of the Supreme Court, a Division Bench of this Court held the levy under S.23 of the Act to be a `fee' and not a `tax' in Ram Sarup v. The Punjab State, ILR (1969) 1 Punj and Har 756. The relevant observations from para 8 of the report are extracted as under:-

"The market-fee is collected under Section 23 and all other moneys received by the market committee are paid into the market committee fund referred to in Section 27 of the Act. The amount received in the market committee fund can be expended by the committee only for three purposes, viz.; (a) for payment to the Market Board as contribution

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such percentage of its income derived from licence fee as is specified in the Act to defray expenses of the office establishment of the Board, and other expenses of the Board incurred by it in the interest of the market committees : (b) for payment to the State Government the cost of any special or additional staff employed by it in consultation with the committee for giving effect to the provisions of the Act in the notified market area in question; and (c) for all or any of the seventeen purposes mentioned in Section 28 of the Act including acquisition of sites for markets and maintenance and improvement thereof, etc. In the absence of any definite material about the income which accrues to a market committee by recovery of market-fee on the one hand and the expenses it has to incur on the items specified in Ss.27 and 28 of the Act, (all of which are admitted to be related to the functions of the committee), on the other, it is impossible to record any finding as to whether there is a quid pro quo between the amount of the fee and the services to be rendered by the committee in question or not. On the material available before us, it is obvious that the amount of market-fee which can possibly be recovered by a committee does not in any manner appear to be disproportionate to the services which it is expected to render to the assesses of such fee, by performing the duties referred to in Section 28. In our opinion, no proper foundation has in fact been laid in this case by the petitioner on which it could build the argument sought to be made out on its behalf. In any event, the petitioner has not furnished any material for substantiating the vague allegation made in sub-paragraph (ix) of paragraph 16 of the writ petition which has already been quoted. Be that as it may, it appears to be wholly futile to go any further into this matter as the market-fee of 0.40 Paise on sale of goods worth Rs. 100/- within the market area cannot be called a tax in the face of the authoritative pronouncements of the Supreme Court in Mohammad Hussain Gulam Mohammad v. The State of Bombay, (AIR 1962 SC 97) and in a recent unreported judgment in Lakhan Lal v. State of Bihar (since reported as AIR 1968 SC 1408)."

The levy of fee at the rate of forty paise for every one hundred rupees was held to be fully authorised and valid as it was within the maximum limit stated in Section 23 of the Act.

29. In view of these authoritative judgments, it is futile for the petitioners to urge that the fee levied under Section 23 of the Act is not a `fee' but a `tax'. Shri Hira Lal Sibal, the learned Senior Advocate for the Agricultural Marketing Board. Punjab, has also argued that if the levy cannot be justified as a fee on the basis of correlationship with the services rendered, the levy may be considered partly as a fee and partly as a tax and should be upheld as such, in view of the judgment of the Supreme Court in The Corporation of Calcutta v. Liberty Cinema, AIR 1965 SC 1107 (supra). In that case, the so-called fee was held to be a tax and the Calcutta Municipal Corporation was held to have the power to impose the tax in order to meet its expenses for carrying out the various obligations imposed on it by the Calcutta Municipal Act. No such power has been given to the market committees by the Legislature to impose a tax to raise revenue for carrying out the objects of the Act and the ratio of the decision in Liberty Cinema's case does not apply. In my view, the levy permitted under Section 23 of the Act is primarily a fee and can also be called compensatory fee on the parity of reasoning with regard to compensatory tax stated in the Supreme Court judgment in Automobile Transport (Rajasthan) Ltd., etc. v. State of Rajasthan, AIR 1962 SC 1406 (supra). The amount of the fee collected by the market committees goes to the market committee fund constituted under Section 27 of the Act and that fund has to be utilised for the purposes mentioned in that section and S.28.

30. Shri Hira Lal Sibal has advances a very ingenious argument but which is not acceptable. According to him, the fee is leviable on the agricultural produce when it is bought or sold and, therefore, it cannot be said that the licensed dealers, who pay the fee as buyers of the agricultural produce, are entitled to any service, in exchange for the fee paid by them. The purchase or sale of the agricultural produce is only the fee levying event and not that the fee is leviable on the agricultural produce. The agricultural produce does not pay the fee; it is payable by the buyer of the produce and, therefore, the buyer of the produce is the payer of the fee and is entitled to services in lieu thereof. The argument is repelled.

31. From the various decisions discussed above, the following propositions emerge:-

1. That the fees are of various kinds and it is not possible to formulate a definition that would be applicable to all cases. The matter shall have to be decided in each case taking into consideration the objects of the Act and the kind of service to be rendered; (2) that the collections from the fees must not be merged in the general revenue but should be kept apart and appropriated for rendering the services; (3) that the amount of the fees charged must have a reasonable correlationship with the cost of the services rendered or to be rendered to the payers of the fees. However, it is impossible to have an exact correlationship and so the correlationship expected is one of general character and not of arithmetical exactitude; and (4) that the amount of fees so collected are not to be spent exclusively for rendering services to the payers of the fees but can also be utilised for carrying out the purposes or objects of

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the Act under which they are levied. They cannot, however, be utilised for purposes which have no connection with the main purposes of the Act for which fee is levied, as explained by the Supreme Court in The Secretary, Government of Madras, Home Department v. Zenith Lamps and Electricals Ltd., AIR 1973 SC 724, with respect to Court-fees. It was said therein that the Court-fees collected can be spent for the administration of justice and the maintenance of the Courts for that purpose but not for road building or building schools etc. On the parity of reasoning it can be said that the fees collected under the Act cannot be spent for carrying out the governmental functions of the State but for rendering services to the payers of the fees in accordance with the provisions of the Act.

It is in the light of these propositions that we have to decide whether the increase in the fee effected by the various Acts stated in an earlier part of this judgment can be justified and the fee has not become so excessive or exorbitant as to change its character from fee to tax.

32. The mandate of the Legislature in Section 27 is that the Market Committee Fund has to be utilised for incurring expenditure under or for the purposes of the Act and any excess remaining thereafter is to be invested in such manner as may be prescribed. Every market committee has to contribute certain percentage of its income to the Agricultural Marketing Board to defray expenses for the office establishment of the Board and such other expenses incurred by it in the interest of the market committees generally and also has to pay to the State Government the cost of any special or additional staff employed by the State Government in consultation with the committee for giving effect to the provisions of the Act in the notified market area. The other purposes for which the market committee funds may be expended are stated in Section 28 of the Act as under :-

"28. Subject to the provisions of Section 27, the market committee funds shall be expended for the following purposes:-

(i) acquisition of sites for the market;

(ii) maintenance and improvement of the market;

(iii) construction and repair of buildings which are necessary for the purposes of the market and for the health, convenience and safety of the persons using it;

(iv) provision and maintenance of standard weights and measures;

(v) pay, leave allowances, gratuities, compassionate allowances and contributions towards leave allowances, compensation for injuries and death resulting from accidents while on duty, medical aid, pension or provident fund of the persons employed by the committee;

(vi) payment of interest on loans that may be raised for purposes of the market and the provisions of a sinking fund in respect of such loans;

(vii) collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of the agricultural produce concerned;

(viii) providing comforts and facilities, such as shelter, shade, parking, accommodation and water for the persons, draught cattle, vehicles and pack animals coming or being brought to the market or on construction and repair of approach roads, culverts, bridges and other such purposes;

(ix) expenses incurred in the maintenance of the offices and in auditing the accounts of the committees;

(x) propaganda in favour of agricultural improvements and thrift;

(xi) production and betterment of agricultural produce;

(xii) meeting any legal expenses incurred by the committee;

(xiii) imparting education in marketing or agriculture;

(xiv) payments of travelling and other allowances to the members and employees of the committee, as prescribed;

(xv) loans and advances to employees;

(xvi) expenses of and incidental to elections; and

(xvii) with the previous sanction of the Board, any other purpose which is calculated to promote the general interests of the committee or the notified market area, or with the previous sanction of the State Government, any purpose calculated to promote the national or public interest."

33. In view of the allegation that the committees were possessed of enough funds to carry out their duties under the Act and that the increases in the fees from time to time were arbitrarily made in order to provide revenue to the Government for its own governmental activities, we directed the market committees as well as the Agricultural Marketing Boards of both the States to file the statements of income and expenditure for the last five years showing in particular the heads under which the amounts were spent. The incomes in those statements are at the rate of one rupee per one hundred rupees which was the rate prevalent in those years. That direction has been complied with in a number of cases which provide the necessary data for determining the quid pro quo as the pattern of expenses in almost all the committees is the same. I shall first deal with the market committees And the Agricultural Marketing Board of Haryana.

34. It is enough to refer to the income and expenditure statements of Market Committee. Hissar, during the last five years. The statement showing the income headwise from 1969-70 to 1973-74 is as under:-

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The statement showing headwise expenditure for those years is as under :-

The details of the amount spent on item No. 5-Works-has also been given as under:-

From these statements it is abundantly clear that the market fee constitutes more than eighty per cent. of the income of the market committee. The amount spent on `works' is nearly one-half of the total expenditure. The major item on which the amount has been spent under the head "works" consists of the amount deposited with the Public Works Department, Hissar, as contribution for construction of village link roads. Strong objection has been taken by the learned counsel for the petitioners to this item of expenditure on the ground that construction of roads is a governmental function and the market fees collected from the licensed dealers cannot be utilised for this purpose. It is also clear from the statement showing the details of works that construction of some link roads was carried out by the market committee itself during all the five years. The learned counsel for the petitioners, on the basis of that item of expenditure, submit that the link roads constructed by the market committee itself fall within the meaning of `approach roads' used in clause (viii) of Section 28 of the Act and the amounts deposited with the Public Works Department, Hissar, for village link roads do not fall within any of the objects stated in Section 28 of the Act. On behalf of the respondents it is submitted that the village link roads also fall within the description of approach roads and they are necessary to be constructed for facilitating the easy transportation of Agricultural produce from the villages to the markets or market places where they are bought and sold providing the main source of income to the licensed dealers. In any case, the construction of roads within the notified market area is a work of Public importance and promotes 'the general interest of the committee and the notified market area which is one of the purposes enumerated in Cl. (xvii) of Section 29 of the Act.

35. After giving my careful consideration, I am of the opinion that the expenditure on the construction of link roads for which amounts were deposited with the public Works Department is fully justified as it is for the benefit of the growers, the licensed dealers and the general Public and promotes the interests of the notified market area. Thus, a service is rendered to the payers of the fee by the development of the market area as per the ratio decidendi of the Supreme Court judgment in The Hingir-Rampur Coal Co.'s case AIR 1961 SC 459 (supra). In that case too, the fee was levied fee the development of the raining areas, although it was payable only by the owners or lessees of the mines and not by workmen whereas the development works coasted of construction of roads, provision of electricity, sewerage and drainage and other amenities in the mining area. It was considered that by such developmental activities' service was being rendered to the payers of the fee. Since transportation is very essential for the development of a market and to enable the growers of the agricultural product to bring the sears to the market places for sale, the construction of link roads becomes pat essential purpose of the market committees. However, the Public Works Department must render accounts of the amounts received by it for the construction of the village link roads to each market committee to enable it to determine whether any further amount is necessary to be spent under this head and whether all the roads for which money was paid lave been construct. The Government cannot utilise that amount as a part of general revenue to carry out its governmental activity of providing main roads is the State. The amount received from the market committees has to be strictly spent only an the construction of approach roads and not main roads. Since no material has been brought to our notice by the petitioners showing that no link roads hart been constructed by the Public Works Department and the amounts deposited by the market committees

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had been misutilised or mis-spent, it cannot be held that no more amount is required by the market committees for the purpose and that the enhancement in the market fee is arbitrary or uncalled for. However, before depositing any further amounts with the Public Works Department, every market committee must obtain the account of the amounts already paid and make further contributions only if any more approach roads arc necessary to be constructed. I have pointed out above that Section 23 only lays down the maximum amount of fee that can be levied and each market committee can levy a lesser amount in case it does not stand in need of any more funds for any particular purpose. The amount collected as fees has, however, to be spent on the various purposes enumerated in Sections 27 and 28 of the Act.

36. Objection was also raised to the donations given by the various market committees to educational institutions imparting general education and not education in marketing or agriculture, as stated in clause (xiii) of Section 28. Such donations are not within Section 28 of the Act. The institutions imparting general education cannot be said to promote the general interest of the committee or the notified market area nor can they be described as promoting national or public interest. I shall dilate or this subject when I discuss the Punjab cases as this point has directly arisen there. Suffice it to say that the amounts spent by the various market committees on donations given to educational institutions not imparting education in marketing or agriculture are wholly unauthorised and no further donations to such institutions should be made. It has also been pointed out that the Market Committee, Hissar, spent Rs. 1,07,794-00 on the water supply scheme for village Gorchhi Gawar which is not covered by the various purposes mentioned in Section 28 of the Act. This objection is also sustained as the water supply schemes are primarily the concern of the Government or the local authorities like the Gram Panchayats, Panchayat Samitis or Zila Parishads. Water supply scheme for a village has no connection with the marketing of agricultural produce for which the markets have been established. The primary object of the Act, broadly stated, is "to protect the producers of agricultural produce from being exploited by middlemen and profiteers and to enable them to secure a fair return for their produce", as was said by a learned single Judge in Mukhtiar Chand v. Marketing Committee, Malout Mandi, 1964 66 Pun LR 836 = (AIR 1965 Punj 33). This expenditure by the Hissar Market Committee was also unauthorised and beyond the purposes of the Act. Provision of Rs. 6 lacs for the construction of a Panchayat Bhawan made by the Market Committee, Hissar, in the current years' budget is also ultra vires Construction of Rest Houses or rest places for the temporary stay of producers and traders visiting the markets will be justified but not the construction of a Panchayat Bhawan which may be constructed by the Pancbayats concerned.

37. The statements furnished by the other market committees of Haryana are on similar lines and need not be discussed separately as Market Committee, Hissar, serves as an exemplar. However, it has been pointed out that the Market Committee, Sirsa spent some amounts on the construction of Gandhi Park and making donations to Maternity Hospital and Arya Kanya Pathshala. If the Gandhi Park is within the market, its construction may be justified but donations to Maternity Hospital and Arya Kanya Pathshala are unauthorised and outside the purposes of the Act. No donations and contributions should be made for such purposes.

38. The Haryana Marketing Board has also filed the statements of its income and expenditure during the last five years from which it is clear that godowns for the storage of foodgrains were constructed at fourteen centres at a cost of Rs. 1,40,94,637-00 and in order to carry out those constructions the Board took a loan of Rs. 91 lacs from A. R. C. in 1972-73 and Rs. 25 lacs in 197374. A list of the works proposed to be undertaken to improve the various market committees in the State of Haryana to make them modern has also been filed as under :-

"1. Water supply schemes.

2. Water cooler rooms for drinking water for the growers.

3. Water trough for the cattle.

4. Public toilets with all arrangements of bath and cloth washing for the growers.

5. Public urinals.

6. Gates, check-post and first-aid post.

7. Cement concrete/red stone pavement on common platforms.

8. Cattle sheds.

9. Parking places for carts and other vehicles.

10. Metalled roads.

11. Earth work, surface dressing, filling of earth and levelling etc., in mandis.

12. Special repairs, additions and alterations in existing buildings.

13. Pucca tharas in front of shops.

14. Street lighting in mandis.

15. Weigh bridges.

16. Large godowns.

17. Office buildings.

18. Kisan Rest Houses.

19. Staff quarters for (a) Secretary (b) other officials.

20. Planting of trees and parks.

21. Rate exhibiting tower.

22. Fire fighting station.

23. Canteen.

24. Library.

25. Grading laboratory.

26. Accommodation for Bank and Post and Telegraph office.

27. Agro-Industries Yard for repairs of agriculture machinery and vehicles.

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28. Recreational facilities.

29. Processing units.

30. Sewerage and drainage."

The learned counsel for the petitioners have only objected to item No. 26 on the list "Accommodation for Bank and Post and Telegraph Office." In my view, the objection is meaningless as the provision for a bank and a Post And Telegraph Office is necessary to afford a necessary facility to the dealers as well as other persons coming to the markets. The water supply scheme mentioned above are understood to be for the markets and not for the villages situate in the notified market area of each market committee. No expenditure can be incurred by a market committee on the water supply schemes for villages.

39. In order to provide more income to the Agricultural Marketing Board, so that further loans may not have to be taken, the Haryana Legislature has amended Section 27 of the Act so as to increase the percentage of contribution by the market committees to the Board, by the Punjab Agricultural Produce Markets (Haryana Amendment) Act (21 of 1973). The comparative figures are as under :

Before amendment After amendment

(i) if the annual income of a committee does not exceed Rs. 10,000 10 per centum 20 per centum

(ii) if the annual income of a committee exceeds Rs. 10,000

on thr first RS. 10,000 10 per centum 20 per centum

on the next Rs. 5,000 or part thereof 15 per centum 30 per centum

on the remaining income 20 per centum 30 per centum

Since Section 23 of the Act, as applicable to the State of Haryana, only prescribes the maximum limit within which the market committees, according to their needs, can prescribe the fee to be realised from the licensed dealers, it is not possible to strike down the amendments of that section made by the various Acts enhancing the amount of maximum fee. Looking to the various projects to be undertaken for the improvement of the market committees and the funds required for the repayment of loans already taken for the construction of godowns, the levy of fee at the rate of rupees two per one hundred rupees is considered to be justified and in order. No interference seems to be called for at this time.

40. The case of the market committees in the State of Punjab is, however, different. As I have pointed out above, they have to charge the fee prescribed in Sec. 23 of the Act by the Legislature. There is no scope for flexibility. The amount of the fee has been fixed by the Legislature and it has not been let to each market committee to levy fee according to its needs within the prescribed limit. It has, therefore, to be seen whether the enhancement in the fee made by the Punjab Government is justified. In the various petitions relating to the State of Punjab it has been stated that the market committees were collecting lacs of rupees every month and the Agricultural Marketing Board was collecting crores of rupees sand are thus possessed of large sums of money which have not been spent on rendering services to the payers of the fee or for the development of the notified market areas, but these amounts have been mis-utilised for giving a donation of rupees one crore to the Guru Gobind Singh Medical College which has recently been established at Faridkot. As I have pointed out above, the fee was fixed as rupee one per one hundred rupees with effect from May 22, 1969, and thereafter the amount of fee was increased to one rupee and fifty paise per one hundred rupees with effect from April 30, 1973, and two rupees and twenty-five paise with effect from April 30, 1974. In these cases also some of the market committees and the Agricultural Marketing Board have filed statements of income and expenditure during the last five years. The Punjab Government has also filed its return in the shape of an affidavit of Mrs. Shant Bhupinder Singh, Under Secretary to Government, Punjab, Development Department. In her affidavit it has been stated that-

"The Finance Minister, Punjab, in his Budget speech in Vidhan Sabha on 27-2-1974. had revealed that Government proposed to raise the rate of market fee by 50 per cent. and to utilise the additional funds so collected for the construction of link roads and bridges to provide better facilities for bringing the produce from far off villages."

Since the Vidhan Sabha adjourned without passing the Amendment Act, the necessity for promulgating the Ordinance arose and that Ordinance has since been replaced by an Act.

41. With regard to the contribution to Shri Guru Gobind Singh Education Trust for setting up the Guru Gobind Singh Medical College at Faridkot, it has been stated by the Agricultural Marketing Board that-

"About a crore of rupees have not yet been given to the Medical College. Faridkot. although the Chairman of the Board received the sanction in respect of the amounts to be contributed by the Board and the various market committees to Shri Guru Gobind Singh Educational Trust."

Along with his affidavit, the Secretary of the Punjab State Agricultural Marketing Board has filed a copy of the letter issued by the Government to the Chairman of the Board which is dated October 22, 1973, on the subject of "Contribution towards the Guru Gobind Singh Educational Trust for setting up the Guru Gobind Singh Medical College at

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Faridkot." It is necessary to set out the contents of this letter in detail. It reads as under :-

"The Governor of Punjab in exercise of the powers vested in him under Sections 28 (xvii) and 26 (xvii) of the Punjab Agricultural Produce Markets Act, 1961, is pleased to declare the contributions, made at the rates prescribed below, by the Market Committees and the Punjab State Agricultural Marketing Board to the Guru Gobind Singh Educational Trust, as a fit and valid charge on their respective funds :-

"(i) Punjab State Agricultural Marketing Board Rs. 30,00,000/-;

(ii) 15 committees with income exceeding Rs. 15 lacs as detailed in annexure 'A' at Rs. 2,31,000/- per committee;

(iii) 9 committees with income between Rs. 10 to 15 lacs as detailed in annexure `B' at Rs. 1,35,000/- per committee;

(iv) 34 committees with income between 5 to 10 lacs as detailed in annexure 'C' at Rs. 54,000/- per committee;

(v) 34 committees with income below Rs. 5 lacs as detailed in annexure `D' at Rs. 14,500/- per committee.

In case the finances of the Marketing Board/Market Committees do not permit the entire contributions at the rate prescribed above during the year 1973-74, they may make the payment in 2 instalments, the first instalment being not less than 50 per cent to be paid immediately and the next instalment in the beginning of the next financial year, provided that the Marketing Board, if the state of its finances so require, may make the payment in 3 annual instalments, the first instalment to be paid immediately.

3. This sanction is being issued as a very special case is being issued as a very special case in the public interest and is not to be treated as a precedent for other contributions."

From this letter it is quit clear that the market committees in the State and the State Agriculture Marketing Board have been directed by the State Government by a peremptory order to make contributions to Shri Guru Gobind Singh Educational Trust for setting up the Guru Gobind Singh Medical College at Faridkot. There is no averment in the affidavit of the Secretary of the Marketing Board or the market committees that they applied for sanction of their contribution to that Trust. The language of the letter shows that the Government itself prescribed the amounts of contribution to be made by each market committee and the Agricultural Marketing Board, whether its finances permitted or not. The order was issued under clause (xvii) of Sections 26 and 28 as being in the public interest. It has now to be decided whether the Government has any such power to direct peremptorily the market committees and the Marketing Board to make any such contribution to any institution whatsoever. Clause (xvii) is almost the same in Sections 26 and 28. The former section deals with the purposes for which the marketing development fund is to be utilised while Section 28 enumerates the purposes for which the market committee funds may be expended. The marketing development fund is the fund maintained by the Agricultural Marketing Board while the market committee funds are maintained by the market committees. Clause (xvii) of Section 26, before it was amended by Punjab Act 23 of 1962, read as under :-

"26 (xvii) with the previous sanction of the State Government, any other purpose which is calculated to promote the general interests of the Board and the committees."

The words "or the national or public interest" were added by the said amending Act Clause (xvii) of Section 28, before the amendment read as under :-

"28 (xvii) with the previous sanction of the Board, any other purpose which is calculated to promote the general interests of the committee or the notified market area."

and the amending Act added the following words thereto :-

"or with the previous sanction of State Government, any purpose calculated to promote the national or public interest."

The necessity for amending these clauses, as stated in the Statement of Objects and Reasons, was as under :-

"Sections 26 and 28 enumerate the purposes for which the marketing development fund and a market committee fund can be expended by the State Agricultural Marketing Board and a market committee respectively. There is no provision in these sections authorising the State Marketing Board or a market committee to make contribution for the relief of distress caused by any natural calamity like flood or to make contribution towards the fund raised in connection with a National Emergency."

It is well-settled that the Statement of Objects and Reasons for the enactment cannot be a direct aid to the construction but it can be used for a limited purpose for finding out the purpose of the enactment by furnishing valuable historical material. To understand the historical background it may be mentioned that in October, 1962, China invaded India and a state of Emergency arose. There were also frequent droughts and floods in various parts of the country and the amendment in clause (xvii) of Sections 26 and 28 was made with a view to enable the market committees and the State Marketing Board to make some contributions for alleviating distress caused by droughts and floods and to help the nation in the evens of a National Emergency. The setting-up of a Medical College does not come within the purview of clause (xvii) of Sections 26 and 28 of the Act. The way the letter dated October 22, 1973, was issued by the Punjab Government clearly shows that the Punjab Government adopted the baby of

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the Guru Gobind Singh Educational Trust and became its foster father but instead of making contributions from its own revenues, it called upon the market committees and the Marketing Board to make such contributions. The education for which the market committee fund and the marketing development fund can be spent by the market committees and the Agricultural Marketing Board should be pertaining to marketing or agriculture and not any other kind of education. The issuance of the letter was, therefore, wholly unauthorised and the Punjab Government forced the market committees and the Agricultural Marketing Board to make the contributions which were wholly outside the purposes of the Act and, therefore, unauthorised and ultra vires. The market committees and the Agricultural Marketing Board cannot make any contributions to Shri Guru Gobind Singh Educational Trust for setting-up of the Guru Gobind Singh Medical College in pursuance of that letter which is quashed. I am further of the opinion that it is not open to the State Government to designate a certain institution or project as of public importance and direct the market committees and the Marketing Board to make compulsory contribution thereto. The State Government shall be well advised to compensate the Agricultural Marketing Board and the market committees for the misutilisation of their funds for this unauthorised purpose.

42. In this background, the enhancement of the fee from one rupee and fifty paise to two rupees and twenty-five paise per one hundred rupees attains importance. The market committees and the Agricultural Marketing Board were directed to make these payments in October, 1973, and the proposal for enhancing the fee came in February, 1974, during the Budget Session of the Vidhan Sabha. The link is, therefore, established that it was to provide the market committees with more money in order to carry out the purpose of the Act, after depleting their funds by forcing them to make contributions for the setting-up of Guru Gobind Singh Medical College it Faridkot, that the enhancement was necessitated. On April 1, 1973, the opening balance in the hands of the Agricultural Marketing Board was Rs. 20,13,921-00 and the income during the year 1973-74 was Rupees 1,75,84,151-00. Thus the amount available to the Agricultural Marketing Board during the year 1973-74 was Rs. 1,95,98,074-00. The expenditure during the year, including the donation of Rs. 10 lags to Shri Guru Gobind Singh Educational Trust, amounted to Rupees 1,13,39,468-00 leaving a surplus of more than Rs. 82 lacs with the Board. The Board has not prepared any plan of constructing further development works for the market committees on which the amount has to be spent necessitating the increase in the fee, as has been done by the Haryana Marketing Board.

43. The statements furnished by the Market Committee, Barnala, with regard to its income and expenditure during the years 1969-70 to 1973-74, which may be taken as an exemplar, reveal that the total income of the market committee during these five years was Rs. 54,55,740-91 while the expenditure amounted to 44,45,485-84, leaving a surplus of nearly Rs. 10 lass. Out of the expenditure, the contributions made to the Marketing Board amounted to Rs. 11,95,209-03. The amount spent on the link roads was Rs. 28,47,552-54. Thus the main expenditure was on the contribution to the Marketing Board and construction of link roads. This committee also made donations of Rs. 58,000-00 to three colleges in 1970-71, Rs. 50,000-00 to a college in 1971-72 and Rs. 1,70,000-00 to colleges in 1973-74 and so it appears that it was a regular feature with this market committee to give donations to educational institutions imparting general education. To the Guru Gobind Singh Medical College. Faridkot, the donation of Rs. 1,35,000-00, as directed by the State Government in its letter dated October 22, 1973, was made. These donations to the educational institutions are wholly unauthorised. Shri Guru Gobind Singh Educational Trust became a beneficiary of one crore rupees from the Agricultural Marketing Board and the market committees under the directions of the State Government necessitating greater burden being placed on the payers of the fee for making possible these contributions. I am, therefore, of the view that the enhancement of fee from one rupee and fifty paise to two rupees and twenty-five paise per one hundred rupees by the Punjab Agricultural Produce Markets (Amendment) Ordinance (No. 4 of 1974), which was later on replaced by the Punjab Agricultural Produce Markets (Amendment) Act (13 of 1974), cannot be justified, as they amounts collected in the form of fee cannot be utilised for any purpose other than the one sanctioned by the Act, as has been held by their Lordships of the Supreme Court in The Secretary, Government of Madras v. Zenith Lamps and Electricals Ltd., AIR 1973 SC 724 (supra). That case related to the matter of court-fees and it was pointed out that-

"the fees taken in courts and the fees mentioned in Entry 66, List I are of the same kind. They may differ from each other only because they relate to different subject-matters and the subject-matter may dictate what kind of fees can be levied conveniently, but the overall limitation is that fees cannot be levied for the increase of general revenue. For instance, if a State were to double court-fees with the object of providing money for road building or building schools, the enactment would be held to be void."

In the historical background, set out above, I am convinced that the enhancement in the amount of fee from one rupee and fifty paise to two rupees and twenty-five paise per one hundred rupees was not genuine and it was made with a view to enable the market committees

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and the Agricultural Marketing Board to reimburse themselves for the amounts which they were directed to contribute to Guru Govind Singh Medical College at Faridkot. The market committees were having enough income and could meet their legitimate requirements from the amounts of fees which were being realised prior to the enhancement. The new projects to be undertaken by the market committees or the Agricultural Marketing Board have not been stated and, therefore, the enhancement in the fee from one rupee fifty paise to two rupees and twenty-five paise cannot be justified. This enhancement is nothing but a colourable exercise of power to levy fee with a view to raise funds for extraneous purposes not intended by the Act and the Punjab Agricultural Produce Markets (Amendment) Ordinance (No. 4 of 1974) and (Amendment) Act (13 of 1974) have to be struck down. The enhancement of fee from one rupee to one rupee and fifty paise by Punjab Act 17 of 1973 is considered to be justified for carrying out the various purposes mentioned in Sections 26 and 28 of the Act and is upheld. However, with regard to the amounts deposited with the Punjab Public Works Department for construction of link roads, the market committees should ask for the accounts before depositing any further amounts for the purpose, as has been said above while dealing with such expenditure in the case of the market committees of Haryana.

44. The petitioners in all the petitions pertaining to the State of Haryana have also challenged the validity of Rule 29 (1) of the Punjab Agricultural Produce Markets (General) Rules, 1962, which reads as under :-

"29 (1). Under Section 23 a committee shall levy fees on the agricultural produce bought or sold by licences in the notified market area at the rates fixed by the Board from time to time :

Provided that no such fees shall be levied on the same agricultural produce more than once in the same notified market area. A list of such fees shall be exhibited in some conspicuous place at the office of the committee concerned."

On the ground that the State Government has delegated its own delegated legislative functions to a subordinate authority, that is, the Agricultural Marketing Board. which goes against the well-known legal principle that there cannot be a delegation of delegated Power. It is further submitted that neither the language of Section 23 of the Act nor the rule-making power conferred on the State Government under Section 43 of the Act permit the grant of authority to the Board to fix the market fee chargeable by the market committees. According to the petitioners, Section 43 (2) (vii) prescribes the framing of rules by the State Government with regard to the maximum fee which may be levied by a committee in respect of the agricultural produce bought or sold by licensees in the notified market area and the manner and the basis thereof and does not provide for any such power being given to the Board to determine the amount of the fee that each market committee should levy. In reply, it has been submitted on behalf of the respondents that it is not a case of excessive delegation of legislative functions by the State Government or second delegation to the Agricultural Marketing Board but Rule 29 only enables the Board to prescribe a uniform rate of fee within the maximum prescribed under Section 23 of the Act for all the market committees in the State to levy in order to carry out the purposes of the Act. In the absence of such a power, every committee shall be at liberty to prescribe the amount of the fee for itself which may result in unhealthy competition in the neighbouring markets and adversely affect the interests of the producers and buyers. I find considerable force in this submission of the respondents. The Marketing Board has the power of supervision over all the market committees in the State and, for the proper functioning of the committees, it may be necessary to prescribe a uniform rate of fee to be charged by all the committees instead of leaving it to the discretion or sweet will of each committee. The levy of uniform fee will help the committees in carrying out the various purposes of the Act with the amount becoming available to them. The challenge to the validity of this rule, therefore, fails.

45. As regards the State of Punjab, the question of fixing the rate of fee by the Agricultural Marketing Board for all the committees in the State does not arise as the Legislature itself has fixed the rate to be charged.

46. No other point has been argued.

47. As a result of the above discussion, 127 writ petitions concerning the market committees of Haryana are dismissed but the parties are left to bear their own costs. 84 writ petitions with regard to the market committees of Punjab are accepted only to the extent that the Punjab Agricultural Produce Markets (Amendment) Ordinance (No. 4 of 1974), replaced by the Punjab Agricultural Produce Markets (Amendment) Act (13 of 1974), are struck down. In all other respects, the petitions are dismissed with no order as to costs.

PRITAM SINGH PATTAR, J.:- I entirely agree.

Order accordingly.

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**AIR 1976 PUNJAB AND HARYANA 262 "Shivcharan Singh v. State"**

**PUNJAB & HARYANA HIGH COURT**

Coram : 2 D. S. TEWATIA AND PRITAM SINGH PATTAR, JJ. ( Division Bench )

M/s. Shivcharan Singh Madan Lal, and others, Petitioners v. The State of Punjab and others, Respondents.

Civil Writ Nos. 6275 and 5916 of 1974, D/- 10 -2 -1976.

(A) Punjab Agricultural Produce Markets (General) Rules (1962), R.2, Cl.(8) and Cl.(11) - AGRICULTURAL PRODUCE - AMENDMENT - Amendments in the definitions of "incidental charges" and "Market charges" by Notification dated 3-5-1974 - Amendments are intra vires the Principal Markets Act and are valid and legal. (Paras 24, 25)

Punjab Agricultural Produce Markets Act (23 of 1961), S.43(2), Cl.(xii).

The only amendment effected in the aforesaid rule by the impugned notification is that the weighing charges of the agricultural produce after finalisation of the bid at the auction were taken out from the package of "incidental charges" and were added to that of the "market charges". In other words, weighing charges which earlier were the responsibility of seller to pay were now sought to be made that of the buyer. (Para 3)

The power of the rule-making authority under Section 43 (2), clause (xii) of the Market Act of 1961 was not confined to the laying down of the rate of the trade allowances but it also extended to the identifying of the trade allowances that were to be made and received in a notified market area. (Para 7)

(B) INTERPRETATION OF STATUTES - Interpretation of Statutes - Definitions - Words not defined - Interpretation.

The legislature was not to give definition of each word used in the enactment for it must be taken that the expressions used in a statute were to carry their ordinary dictionary meaning. (Para 17)

R.L. Aggarwal with Amar Datt, for Petitioners; V.P. Prashar, for the State; N.K. Sodhi (for No. 2) and G.R. Majithia (for No. 3), for Respondents.

Judgement

D. S. TEWATIA, J. :- The petitioners in the two writ petitions Nos. 6275 of 1974 and 5916 of 1974, seek a common pronouncement from this Court to the effect that the amendments sought to be effected to the existing definition of 'incidental charges' and 'market charges' in the Punjab Agricultural Produce Markets (General) Rules, 1962, (hereinafter referred to as the Market Rules) by notification Exhibit P-1 dated 3rd May, 1974, are invalid being ultra vires the powers of the rule-making authority, that is, the Government.

2. The existing rule prior to the impugned amendment, incorporating the definition of 'incidental charges' and 'market charges' is Rule 2, clauses (8) and (11) respectively of the Market Rules and these clauses read as under:-

"(8) "Incidental charges" means the charges payable in lieu of the services rendered in connection with the handling of agricultural produce prior to the finalisation of the bid at the auction, such as unloading, cleaning and dressing charges and shall also include remunerations for weighing of the agricultural produce after finalisation of the bid at the auction."

"(11) "market charges" means all the charges payable by the buyer in lieu of the services rendered in connection with the handling of agricultural produce after the finalisation of the bid at auction, such as the commission of kacha arhtiya brokerage, auction charges, remuneration for pallederi, filling and sewing but shall not include remunerations for weighing."

3. A reading of the aforesaid two clauses would show that the items of charges grouped in the category of 'incidental charges' were made payable to various functionaries by the seller and the charges that fell under the category of market charges were required to be paid to the various functionaries by the buyer and the only amendment effected in the aforesaid rule by the impugned notification is that the weighing charges of the agricultural produce after finalisation of the bid at the auction were taken out from the package of 'incidental charges' and were added to that of the 'market charges'. In other words, weighing charges which earlier was the responsibility of seller to pay was now sought to be made that of the buyer.

4. For facility of reference the relevant provisions of impugned notification at this stage may be reproduced which are in the following terms:-

"(1) These rules may be called the Punjab Agricultural Produce Markets (General) (Second Amendment) Rules, 1974.

(2) In the Punjab Agricultural Produce Market (General) Rules, 1962, in Rule 2.

(3) (i) in clause (8) the words "and shall also include remuneration for weighing

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of the agricultural produce after the finalisation of the bid at the auction" shall be omitted; and

(ii) in clause (11) for the words "filling and sewing but shall not include remuneration for weighing" the words "filling, weighing and sewing" shall be substituted."

5. The petitioners who claim themselves to be the buyers in the concerned respondent market committee have taken up the stand that the rule-making authority by virtue of Section 43 sub-section (2), clause (xii) of the Punjab Agricultural Produce Markets Act, 1961, (hereinafter referred to as the Market Act) had only the power to frame rules specifying the rate of the trade allowance and not to earmark the persons who had to pay the same. I am afraid there is no merit in the aforesaid stand of the petitioners.

6. The relevant provision of Section 43 of the Act is in the following terms:-

"In particular, and without prejudice to the generality of the foregoing power, such rules may provide for:-

(xii) The trade allowance which may be made or received by any person in any transaction in an agricultural produce in a notified market area."

7. A perusal of the aforesaid provision would leave no doubt that the power of the rule-making authority was not confined to the laying down of the rate of the trade allowances but it also extended to the identifying of the trade allowances that were to be made and received in a notified market area. That in fact, the ambit of the aforesaid provision is as wide as mentioned above, is made clear when the same is read with the provisions of Section 30 of the Market Act, which is in the following terms:-

"No trade allowance, other than an allowance permitted by rules or bye-laws made under this Act, shall be made or received in a notified market area by any person in any transaction in respect of the agricultural produce concerned and no Civil Court shall, in any suit or proceeding arising out of any such transaction, recognise any trade allowance not so permitted:

Provided that all market charges shall be paid by the buyer."

8. Provisions of Section 30 make it clear that only such trade allowances shall be permitted to be made or received in a notified market area by any person in any transaction in respect of the agricultural produce concerned as are permitted by rules or bye-laws made under this Act. The legislature in this provision also made it clear that all market charges shall be paid by the buyer.

9. At this stage Mr. Ashri, learned counsel for the petitioners, after referring to the definition of 'trade allowance' as contained in Section 2 sub-section (s) urged that the term 'trade allowance' having included within its ambit allowance having the sanction of the custom in the notified market area concerned as well as the market charges payable to various functionaries and the expression 'allowance ' and 'market charges' having not been further defined, it would be open to the rule-making authority to bring all the chargeable items within the ambit of "market charges' and by virtue of the provisions of Section 30 of the Market Act make them payable by the buyer or do it vice versa by naming them to be 'allowances' and make them payable by the seller.

10. I do not think there is any merit in the contention advanced by the learned counsel. However, before dealing with his contention, it may be useful to recapitulate here a bit of the history of the expression "Trade Allowance".

11. In the Punjab Agricultural Produce Markets Act, 1939, the expression 'trade allowance' was defined by Section 2 (g) in the following terms:-

"Trade allowance" includes such allowances as have the sanction of custom in the notified area concerned."

12. In the Market Act of 1961, trade allowance was defined by Section 2 (s) in the following terms:-

"(s) "trade allowance" includes an allowance having the sanction of custom in the notified market area concerned and market charges payable to various functionaries."

13. A comparative study of the two definitions would show that what was termed 'market charges' in the definition of the Act of 1961 stood included in the Punjab Agricultural Produce Markets; Act, 1939, in the broad expression "allowances". The question arises as to why in the Market Act of 1961, the legislature effected the dichotomy in the definition of the term 'trade allowance' by mentioning the market charges along with the `allowances' as sanctioned by the custom as the two components of the expression 'trade allowance'. The reason for this is

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not far to seek. The legislature in Market Act, 1939, had not specified the person who was to pay the 'trade allowances' which probably meant that either the buyer or the seller alone was to pay the same to various functionaries and, therefore, perhaps no necessity was then felt to distinguish the market charges from the allowances, but in the Market Act, 1961, in Section 30 which otherwise is pari materia with Section 22 of the Market Act, 1939, in all other respects, it was provided for the first time that 'market charges' shall be paid by the buyer and hence arose the necessity to define the expression `trade allowances' more exhaustively.

14. The next question that arises therefore, is as to whether the rule-making authority can, while specifying the allowances and the market charges, so as to include the items of one category into that of the other or do vice versa and thus shift the burden of the buyer to the seller or that of the seller to the buyer.

15. It is, no doubt, true that legislature has not mentioned as to what tantamounts to be the 'market charges' and what constitutes the 'allowance,' but can it be said that the legislature provided no guidance to determine the same.

16. The legislature when framed the Market Act, 1939, had recognised only such allowances as the trade allowances which had the backing of the custom and the Market Act, 1961, also had recognised only such allowances as forming part of the expression 'trade allowances' as had the backing of the custom. The objects and reasons attached with the Market Act, 1939, exhaustively listed the customary exactions and deductions almost invariably made at the expense of the seller either in cash or in kind and thus these were known to the legislature as well as all persons concerned with the trade, but the legislature had both in the Market Act, 1939, as also in Market Act, 1961, taken the precaution of specifying that not all the allowances having the backing of the custom shall be made and received in a notified market area, for only such `trade allowances' were to be permitted to be made and received as were mentioned in the rules and bye-laws. So a discretion was left to the

rule-making authority to either give recognition to all 'allowances' having the backing of the custom or pick and choose therefrom depending upon the situation and the circumstances obtaining in various notified market areas.

17. As to the question as to how one was to decide as to whether a particular exaction is an allowance or a market charge, it must be observed that legislature was not to give definition of each word used in the enactment for it must be taken that the expressions used in a statute were to carry their ordinary dictionary meaning.

18. The expression "allowance' is defined in Juris Secundum Volume III at page 891 to mean something conceded as a compensation and in particular connections as referring to a customary deduction from gross weight of goods.

19. That the expression `allowance' had been understood by the legislature as also the rule-making authority in the sense above mentioned is made clear by a perusal of the provisions of model bye-law 27 as framed by State Marketing Board, Patiala, under Section 44 of the Market Act, 1961, and the relevant portion of it reads:-

"The following trade allowance shall only be made and received within the market area in connection with ready or stop transactions:-

(i) Tare:- The exact weight of the gunny bag or the packing material used.

(ii) Adjustment of weight:- Full adjustment of increase or decrease in the weight of the produce found in the test weighment under Rule 25.

(iii) An allowance determined in arbitration under Rule 13.

(2) Each item of allowance charged under sub-clause (1) shall be separately mentioned in Forms I and J prescribed under the rules.

(3) All samples shall be paid for at sale price, except those taken under bye-law 32.

20. In Juris Secundum Volume 14 at page 402, the meaning assigned to the expression 'charge' when used in commercial sense is the price required or demanded for service rendered.

21. In the Juris Secundum Volume 55 at page 784, the expression "Market" is said to be usually associated with the sale, inspection, and supervision of food and food products designed for use by persons, and, although it has been extended by some Courts to include food for domestic animals, the underlying idea in the term is the sale of products intended and designed primarily for human consumption.

22. Further when the expression "Market" is used along with the term

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"charges" none is left in any doubt about the meaning and sense that it carries and its true meaning can never be misunderstood. When so understood it would mean the charges for the service rendered by various functionaries in the effecting of the sale and purchase of the agriculture product in a notified market area. Such a service could be unloading of the goods when brought into the market; as also their heaping, cleaning, packing, carrying from one place to another in the market area etc. Thus it would be clear even to a layman as to what passes for an `allowance' and the same can never be misunderstood with what passes for the term `market charges'.

23. The provision for 'allowance' in my opinion is made to do justice between the buyer and the seller in regard to the weight and quality of the produce while market charges are the charges to be paid to various functionaries for service rendered by them in regard to the marketing of the goods in question.

24. In view of the above it is quite clear that not only charges mentioned in clause (11) of Rule 2 but even the charges that have been mentioned in clause (8) of Rule 2 under the term 'incidental charges' are payable by the buyer in terms of the provisions of Section 30 of the Act. The rule-making authority by dividing the market charges into two categories of 'incidental charges' and `market charges' and then by making the 'incidental charges' payable by the seller had, contrary to the assertion of the petitioners, tried to benefit the buyer at the expense of the seller against the express provision of Section 30 of the Market Act. Hence it is the seller, if at all, who should have a cause of grievance against the existing provisions of clause (8) of Rule 2 of the Market Rules and not the buyer, against the amendment effected by impugned notification Exhibit P-1 in clause (11) of the said rule which did nothing more than to restore the position as it existed in the original rules framed in 1962, which were amended in 1963, by making the seller to pay the weighing charges as against the unamended Rules of 1962, wherein it was the buyer who was responsible to pay the weighing charges of the produce.

25. For the reasons stated, I am clearly of the view that the amendment effected by the rule-making authority to the existing Market Rules by the impugned notification Exhibit P-1 was within its competence and, therefore, the same being intra vires the principal Market Act are valid and legal. In that view of the matter I find no merit in these two writ petitions and dismiss the same but in the peculiar circumstances of the case I leave the parties to bear their own costs.

PRITAM SINGH PATTAR, J.:- I agree.

Petitions dismissed.

**AIR 1976 PUNJAB AND HARYANA 304 "Daulat Ram Trilok Nath v. State"**

**PUNJAB & HARYANA HIGH COURT**

FULL BENCH Coram : 3 S. S. SANDHAWALIA, PREM CHAND JAIN AND MAN MOHAN SINGH GUJRAL, JJ. ( Full Bench )

M/s. Daulat Ram Trilok Nath and others, Petitioners v. The State of Punjab and others, Respondents.

Civil Writ No. 1877 of 1975, D/- 15 -4 -1976.

(A) Constitution of India, Art.226 - WRITS - AGRICULTURAL PRODUCE - Writ of Mandamus - Claim for refund of excess tax paid - Claim unquantified - Writ petition not maintainable.

AIR 1969 Orissa 180 and AIR 1969 Orissa 182, Dissented from.

Under the earlier unamended S.23 of the Punjab Agricultural Produce Markets Act, the Market Committees were entitled to levy fee ad valorem at the rate of Rs. 1-50 on purchase or sale of agricultural produce worth Rs. 100 only. The fee was raised to Rs. 2-25 by an amendment of S.23. In a spate of writ petitions challenging the vires of the amendment, the Act enhancing the rate of levy of market fee was struck down as unconstitutional. In those petitions though express prayers for refund of the excess tax paid had been made the matter was not pressed and accordingly relief was not granted. Thereafter a spate of writ petitions arose claiming that unquantified sums of excess tax alleged to have been paid under mistake of fact or law be directed to be refunded to the petitioners.

Held, that though the High Court under Art.226, whilst quashing a Statute or setting aside an illegal order could grant as a consequential relief the refund of illegally collected taxes or direct the payment of a specific amount of money, but if the claim for refund was not pressed and therefore no relief was granted in the earlier petition, a fresh petition for mandamus for claim of money simpliciter could not lie. AIR 1969 Orissa 180 and AIR 1969 Orissa 182, Dissented from; AIR 1965 SC 1740, Applied. Case law discussed. (Paras 6 and 22)

The sine qua non for the issuance of a writ of mandamus is the existence of a statutory or a public duty devolving upon the person or the body against whom the said writ is directed. Equally settled it is that along with this must co-exist a corresponding right in the petitioner which would entitle him to claim the enforcement of the said statutory public duty. Unless these two pre-conditions are satisfied, the requisite foundation for the issuance of a writ of mandamus can hardly be said to exist. There is not a single statutory provision in the Punjab Agricultural Produce Markets Act or the Rules framed thereunder, which imposed upon the respondent any statutory public duty to pay unquantified sums of money claimed on behalf of the numerous petitioners. Equally no provision in the same set of laws could be pointed out which inhere in the petitioners a fundamental right to the relief which they seek to claim. (Para 9)

The primary scope and the function of a writ of mandamus is that it is issued to command and execute and not to enquire and adjudicate; not to establish a legal right but to enforce one. It is only where the legal public duty is clear, unqualified and specific that a writ of mandamus can be truly claimed. It has not to be granted where the claim of the petitioner has, in fact, to be first established and adjudicated upon before it can be enforced. (Para 11)

Assuming that a writ of mandamus is competent (as an abstruse legal proposition), the question still remains whether it is a sound and proper exercise of judicial discretion to grant the same in a case of exclusive money claim. It is axiomatic that the writ jurisdiction generally is discretionary but even stricter considerations apply as regards mandamus. (Para 19)

Further, judicial notice can well be taken of the fact as to how overburdened the writ jurisdiction of High Courts has become in the last two decades. Therefore, on such empirical considerations also it is hardly a sound discretion for the High Court to entertain a mere money claim in its extraordinary writ jurisdiction when the same can be adequately dealt with in other forums. (Para 21)

(B) Constitution of India, Art.141 - PRECEDENT - The construction which the Supreme Court itself places on an earlier precedent is obviously binding and authoritative. (Para 16)

Cases Referred : Chronological Paras

AIR 1976 PunjHar 1 : ILR (1976) 1 Punj and Har 807 2, 3

AIR 1975 Del 248 (FB) 13

1974 Delhi LT 120 : (1974) 76 Pun LR (D) 111 13

(1972) Civil Writ No. 1317 of 1972, D/-11-10-1972 (Punj) 22

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AIR 1971 MP 162 : 28 STC 558 18

AIR 1969 Ori 180 15, 16, 17

AIR 1969 Ori 182 15, 16

AIR 1966 SC 334 : (1966) 1 SCR 120 12

AIR 1965 SC 1740 : 1965 SCD 1168 13, 16, 17, 22

AIR 1964 SC 1006 : (1964) 6 SCR 261 16, 17, 22

Kuldip Singh with Rajeshwar Kumar Gupta, J.P. Singh Sandhu and R.L. Batta, for Petitioners; H.L. Sibal with J.L. Gupta, N.K. Sodhi and G.C Garg (for Nos. 2 and 3) and D.N. Rampal, Asst. Advocate-General (for No. 1), for Respondents.

Judgement

S. S. SANDHAWALIA, J. :- Whether a writ of mandamus can or should issue for a claim of money simpliciter- is the significant issue which arises at the very threshold of this case admitted directly to a hearing by a Full Bench.

2. The facts are not in serious dispute. Thirty-one partnership business firms of Tarn Taran, district Amritsar, have jointly moved this writ petition to claim a writ of mandamus for the refund of unspecified sums of money which are alleged to have been paid by them under a mistake of fact or law to the Market Committee, Tarn Taran. It is the common case that under the earlier unamended Section 23 of the Punjab Agricultural Produce Markets Act (hereinafter called the Act) the Market Committees were entitled to levy fee ad valorem at the rate of Rs. 1.50 P. on the purchase or sale of agricultural produce worth Rs. 100 only. By the Ordinance No. 40 of 1974, the aforesaid Section 23 was amended and the market fee was raised from Rs. 1.50 P. to Rs 2.25 P. ad valorem. This ordinance was later replaced by the Punjab Agricultural Produce Markets (Amendment) Act No. 13 of 1974 and was given retrospective effect from the date of the issue of the earlier Ordinance. The vires of the amending Act were challenged by a spate of writ petitions filed by business firms all over the State and it is not denied that some of the present petitioners were also parties to the said writ petitions. Two hundred and eleven such writ petitions came up together before a Division Bench consisting of Tuli and Pattar JJ. and were disposed of by a common judgment in M/s. Hanuman Dall and General Mills, Hissar v. The State of Haryana, AIR 1976 Punj and Har 1. Therein the amending Act enhancing the rate of the levy of market fee was struck down as unconstitutional. It is significant to note that in that set of writ petitions express prayers for the refund of the excess tax had been made but in the concluding and the operative part of the order, the Bench in terms observed that the impugned statute was being struck down but in all other respects the writ petitions were being dismissed with no order as to costs. It was also noticed in the said judgment that no other point of substance apart from that challenging the vires of the statute had been urged before it and indeed it was the common case before us also that the matter regarding the refund of unquantified sums alleged to have been paid in excess was not pressed or argued before the Division Bench.

3. After the aforesaid decision had been rendered there arose a spate of writ petitions of the present nature claiming in effect that unquantified sums of excess tax alleged to have been paid under mistake of law or fact be directed to be refunded to the petitioners. On behalf of the respondents, a four-fold preliminary objection to the very competency of the writ petitions was raised. It was first alleged that a joint writ petition was not maintainable. Apart from this, it was highlighted that the remedy was misconceived and no writ petition under Article 226 of the Constitution for the mere recovery of money could lie and the petitioners must be relegated to filing regular civil suits therefor. Objection was also raised that the direction to refund could be given only by way of consequential relief in the petitions earlier filed but no refund having been granted therein a fresh writ for recovery of money alone was barred. The bar of limitation was pleaded on the ground that under the statutory provisions applicable the claim for refund was being made beyond a period of six months from the 8th of November, 1974, when the decision in M/s. Hanuman Dall and General Mills' case (AIR 1976 Punj and Har 1) (supra) was rendered. Lastly it was claimed that the writ petitions be dismissed for having suppressed material facts on the point whether the sums claimed to be refunded had not been actually recovered by the petitioners from the buyers under the provisions of the Act and the Rules.

4. As the very maintainability of the writs of this nature was put in serious doubt, the Motion Bench thought it expedient to place the matter even for admission before a Full Bench. On the 22nd of August, 1975, the Full Bench admitted

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this petition as a representative one of nearly a hundred others of this nature, for a regular hearing.

5. To clear the ground I may at the very outset point out that on behalf of the thirty-one petitioner-firms here, the primary and indeed the sole relevant claim is the refund of unspecified sums of money alleged to have been paid by them in excess of the lawful fee imposable upon them under the unamended Section 23 of the Act. This claim at once raises the issue whether the scope and nature of the writ of mandamus warrants its issuance for the purpose of recovery of money and money alone.

6. There is no dispute (and indeed it was conceded to be so on behalf of the respondents) that the Courts under Article 226 of the Constitution whilst quashing a taxing statute or setting aside an illegal order can grant as a consequential relief the refund of illegally collected taxes or direct the payment of a specific amount of money. The particular issue, therefore, is whether in the absence of any challenge to a statutory provision or order, the relief for the payment of a sum of money simpliciter can be claimed.

7. As will appear hereafter the issue is concluded against the petitioners by binding and authoritative precedent. Nevertheless the point is of adequate significance to merit a brief examination on principle as well.

8. In Halsbury's Laws of England, scope and the nature of a writ of mandamus has been pithily described as follows:-

"The order of mandamus is an order of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation, or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty."

The statement of the law on the scope of mandamus in Corpus Juris Secundum is-

"\* \* as a writ commanding the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station. It is a proceeding to compel someone to perform some duty which the law imposes on him, and the writ may prohibit the doing of a thing, as well as command it to be done."

9. It is evident from the aforementioned authoritative exposition of the law that the sine qua non for the issuance of a writ of mandamus is the existence of a statutory or a public duty devolving upon the person or the body against whom the said writ is directed. Equally settled it is that along with this must coexist a corresponding right in the petitioner which would entitle him to claim the enforcement of the said statutory public duty. Unless these two pre-conditions are satisfied, the requisite foundation for the issuance of a writ of mandamus can hardly be said to exist. Applying this twin test in the present case, I am of the view that neither one stands satisfied. The array of learned counsel for the petitioners were wholly unable to pin-point even a single statutory provision in the Agricultural Produce Market Act or the Rules framed thereunder, which imposed upon the respondent any statutory public duty to pay unquantified sums of money claimed on behalf of the numerous petitioners. Equally no provision in the same set of laws could be pointed out which would inhere in the petitioners a fundamental right to the relief which they seek to claim. Indeed on the face of it, (as in the present case) in a contentious claim of money regarding which the parties are at issue, it can hardly be ever said that there devolves on one a statutory or a public duty to pay money or a fundamental or unequivocal right to receive the same in the other. The necessary conditions precedent, therefore, for the issuance of a writ of mandamus are thus non-existent.

10. Authoritative legal opinion has repeatedly highlighted the fact that the high prerogative writ of mandamus would issue only to compel performance of constitutional, fundamental or public duties. It needs no great erudition to say that every legal right would not entitle its claimant a writ of mandamus. Can a mere claim of money be raised to the pedestal of a statutory or fundamental right? I believe that the answer to such a query must necessarily be in the negative. As in the present case, the petitioners rest their claim either in contract or in tort. Is a contractual right to money or a tortious claim of damages competent to be treated as a statutory or a fundamental right? I believe that it can possibly be termed neither one nor the other. It has to be borne in mind that not all claims of legal right stand on the exalted footing of statutory and fundamental rights

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or their corresponding duties for which alone the writ of mandamus is a competent remedy.

11. The primary scope and the function of a writ of mandamus has been pithily expressed in the phrase that this writ is issued to command and execute and not to enquire and adjudicate; not to establish a legal right but to enforce one. It is only where the legal public duty is clear, unqualified and specific that a writ of mandamus can be truly claimed. It has not to be granted where the claim of the petitioner has, in fact, to be first established and adjudicated upon before it can be enforced. As in the present case, a variety of financial claims on behalf of the petitioners have been contested on a number of grounds by the respondents which would make it patent that these have first to be established. That obviously is not the scope of a writ of mandamus. Ferris in his authoritative work on the Law of Extraordinary Legal Remedies has this to say on the point-

"The office of mandamus is to execute, not adjudicate. It does not ascertain or adjust mutual claims or rights between the parties. If the right be doubtful, it must be first established in some other form of action; mandamus will not lie to establish as well as enforce a claim of uncertain merit. It follows, therefore, that mandamus will not be granted where the right is doubtful."

12. I refrain from enlarging the examination of the issue on principle, because, as already observed, the matter seems to be well covered by precedent. On the scope and nature of the jurisdiction in a writ of mandamus, it suffices to recall the following observations of their Lordships in Lekhraj Sathramdas Lalvani v. Deputy Custodian-cum-Managing Officer, Bombay, AIR 1966 SC 334-

"But even on the assumption that the order of the Deputy Custodian terminating the management of the appellant is illegal, the appellant is not entitled to move the High Court for grant of a writ in the nature of mandamus under Article 226 of the Constitution. The reason is that a writ of mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge that statutory obligation. The chief function of the writ is to compel the performance of public duties prescribed by statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdictions. In the present case, the appointment of the appellant as a Manager by the Custodian by virtue of his power under Section 10 (2) (b) of the 1950 Act is contractual in its nature and there is no statutory obligation as between him and the appellant. In our opinion, any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a writ under Article 226 of the Constitution."

13. However, the case which directly and conclusively covers the matter against the petitioners is Suganmal v. State of Madhya Pradesh, AIR 1965 SC 1740. Therein also the petitioner had exclusively claimed the refund of tax alleged to have been illegally collected from him by the respondent-State of Madhya Pradesh. The High Court dismissed the petition and on appeal, their Lordships of the Supreme Court concretely formulated and considered the proposition whether the petition under Article 226 of the Constitution praying solely for the refund of money alleged to have been illegally collected as tax by the State was maintainable. They answered the same in unequivocal terms as follows:-

"We have not been referred to any case in which the Courts were moved by a petition under Article 226 simply for the purpose of obtaining refund of money due from the State on account of its having made illegal exactions. We do not consider it proper to extend the principle justifying the consequential order directing the refund of amounts illegally realised, when the order under which the amounts had been collected has been set aside, to cases in which only orders for the refund of money are sought. The parties had the right to question the illegal assessment orders on the ground of their illegality or unconstitutionality and therefore, could take action under Article 226 for the protection of their fundamental right and the Courts, on setting aside the assessment orders, exercised their jurisdiction in proper circumstances to order the consequential relief for the refund of the tax illegally realised. We do not find any good reason to extend this principle and, therefore, hold that no petition for the issue of a writ of mandamus will be normally entertained for the purpose of merely ordering a refund of money to the

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return of which the petitioner claims a right."

Following the abovesaid decision, a Full Bench presided over by Chief Justice T. V. R. Tatachari in Mohan Meakin Breweries Ltd. v. Union of India, AIR 1975 Delhi 248, has categorically opined that a writ of mandamus is not competent in respect of a mere money claim. In coming to the aforesaid conclusion, the Full Bench approved the identical view by an earlier Division Bench in Air Foam Industries (P) Ltd., New Delhi v. Union of India, 1974 Delhi LT 120. Therein the Bench in a very exhaustive and considered judgment dismissed the writ petition in limine (after notice of motion to the respondents) and concluded as follows:-

"In substance the present petition amounts to invoking the jurisdiction of the High Court under Article 226 to decide a money suit. The jurisdiction conferred by Article 226 is not meant for this purpose. If money is due to the petitioners their remedy is in the ordinary Courts of law by a civil action."

14. In the light of the aforementioned discussion I conclude that both on principle and precedent, a writ of mandamus is not maintainable exclusively for the recovery of a sum of money simpliciter.

15. Before parting with this aspect of the case, I feel bound to refer to M. Abdul Hassan v. State of Orissa, AIR 1969 Orissa 180 and Satya Bhushan Ray v. State of Orissa, AIR 1969 Orissa 182 upon which strong reliance was placed on behalf of the petitioners. Undoubtedly these judgments lend support to the proposition canvassed by the learned counsel. However with respect, I must regret my inability to follow the view delineated therein for the reasons which appear hereafter.

16. It may first be noticed that in Satya Bhushan's case (AIR 1969 Orissa 182) the same Division Bench merely followed its own earlier precedent in M. Abdul Hassan's case (AIR 1969 Orissa 180) without any independent or additional reasoning. The two judgments, therefore, are in effect one. The fatal fallacy from which the aforementioned cases seem to suffer is their failure to notice Sugganmal v. State of Madhya Pradesh, AIR 1965 SC 1740 which directly covers the issue on all fours, as I have already noticed. It is apparent from a close perusal of these judgments that this binding precedent was not brought to the notice of the learned Judges of the Division Bench at all. Secondly it has to be borne in mind that in the Orissa cases the learned Judges relied primarily on State of Madhya Pradesh v. Bhailal Bhai, AIR 1964 SC 1006 for arriving at their conclusion. Now it is significant to remember that in Sugganmal's case (supra), their Lordships had themselves considered and extensively quoted from their earlier precedent in Bhailal Bhai's case and it was thereafter that they concluded that no writ of mandamus exclusively for refund of tax was maintainable. The construction which the Supreme Court itself places on an earlier precedent is obviously binding and authoritative and it may, therefore, be aptly said that the Orissa Bench did not correctly appreciate the ratio in Bhailal Bhai's case. Indeed a close reference to that judgment does not at all evidence any such fact that the claim therein was exclusively and only for money.

17. Again a close perusal of the judgment in M. Abdul Hassan's case (AIR 1969 Orissa 180) would reveal that the issue was apparently not adequately canvassed before their Lordships either on principle or on the basis of the relevant case law. There is no adequate discussion of the point on first impression, and as I have already mentioned, the Bench came to the conclusion primarily upon its construction of some earlier Supreme Court authorities. Their reliance on Bhailal Bhai's case (AIR 1964 SC 1006) was not well merited. Equally the other judgments to which a reference has been made do not appear to me as directly covering the issue. Consequently I feel compelled to hold that the view expressed in the Orissa cases runs directly contrary to the ratio decidendi laid down by their Lordships of the Supreme Court in Sugganmal's case (AIR 1965 SC 1740), I would, therefore, respectfully dissent from the Orissa cases.

18. I may also briefly brush aside the reliance on behalf of the petitioners on Caltex (India) Ltd., Indore v Asst. Commr. of Sales Tax, Indore Region, Indore, AIR 1971 Madh Pra 162. This judgment clearly reveals that the claim therein was for the quashing of the order of the Assistant Commissioner of Sales Tax and a consequent refund resulting therefrom. The Bench set aside the relevant part of the impugned order and as an additional relief directed the refund of the tax which had been deposited in pursuance of the same. This case obviously

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is not one of an exclusive claim of money and as noticed earlier, there is no quarrel with the legal proposition that refund of tax or a payment of money may certainly be ordered as a matter of consequential relief.

19. I may now proceed to examine the second facet of the issue. Assuming entirely for the sake of argument that a writ of mandamus is competent (as an abstruse legal proposition), the question still remains whether it is a sound and proper exercise of judicial discretion to grant the same in a case of exclusive money claim. It is axiomatic that the writ jurisdiction generally is discretionary but it appears to me that even stricter considerations apply as regards mandamus. In the Corpus Juris Secundum, this is highlighted by the following statement of law:-

"Mandamus is very generally described as an extraordinary remedy in the sense, as discussed infra 17-29, that it can be used only in cases of necessity where the usual forms of procedure are powerless to afford relief; where there is no other clear, adequate, efficient, and speedy remedy."

It is unnecessary to quote extensively from Halsbury's Laws of England, and it suffices to say that therein also an identical view of the law finds mention.

20. Applying the aforesaid dictum here, can it be said with any degree of plausibility that for a mere money claim the usual forms of the Civil Courts are powerless to afford relief or that they do not provide an adequate remedy to recover plain sums of money? The doors of the ordinary Courts of civil jurisdiction are wide open for deciding contentious money suits. Indeed they appear to my mind as the true and correct forums for determining the plain issues of fact and of law which might inevitably arise therein. Why should the vast net-work of the ordinary Civil Courts functioning for this very specified purpose be denuded of their jurisdiction to adjudicate such claims? Why should the superior Courts take on an unnecessary and onerous burden which can be adequately and competently discharged by the lower Courts? Why should the respondents be denied their ordinary right to defend the claim by the ordinary process of evidence and trial and their consequential rights of appeal? All these are matters which deserve a cogent answer but when posed to the learned counsel for the petitioners they could hardly advance any adequate reply.

21. In the exercise of their power of judicial review, it is not exceptional for the High Courts to strike down the provisions of taxing statutes or mandatory rules framed thereunder. This would inevitably raise innumerable claims of money both by those who had challenged these provisions as also by others who had not been equally vigilant. If it were to be held that all such claims can become directly matters for a mandamus by the High Court, it would inevitably open a pandora's box of ills for the superior Courts, flooding them with varied, diverse, and contentious claims of money alone. I believe judicial notice can well be taken of the fact as to how overburdened the writ jurisdiction of High Courts has become in the last two decades. I, therefore, think that on such empirical considerations also it is hardly a sound decretion for the High Court to entertain a mere money claim in its extraordinary writ jurisdiction when the same can be adequately dealt with in other forums.

22. Apart from first impression, binding precedent also seems to me to lean heavily against the exercise of such discretion for recovery of money claims alone. The only judgment of this Court brought to our notice is categorical. In Civil Writ No. 1317 of 1972 (Ram Chand Syam Dass v. The State of Haryana) decided on 11th October, 1972 (Punj). Tuli, J., rejected a similar claim for a mandamus to refund the tax as wholly misconceived within the writ jurisdiction. Even in Bhailal Bhai's case (AIR 1964 SC 1006) (supra) on which some misplaced reliance was placed on behalf of the petitioners, it has been observed as follows:-

"At the same time we cannot lose sight of the fact that the special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a Civil Court or to deny defences legitimately open in such actions. It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus."

Lastly it is fair to recall that in Sugganmal's case (AIR 1965 SC 1740) (supra), their Lordships concluded as follows on this issue:-

"We, therefore, hold that normally petitions solely praying for the refund of

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money against the State by a writ of mandamus are not to be entertained. The aggrieved party has the right of going to the Civil Court for claiming the amount and it is open to the State to raise all possible defences to the claim, defences which cannot, in most cases, be appropriately raised and considered in the exercise of writ jurisdiction."

Following the abovequoted binding observations, I would decline to exercise the judicial discretion in favour of the petitioners and relegate them to their ordinary remedy by way of civil action which can easily provide them with full and adequate relief.23. In fairness to the respondents, it must be noticed that it was strenuously submitted on their behalf that the claims of some of the petitioners for refund were clearly barred on the principles of constructive res judicata. This was primarily on the ground that these petitioners were parties to the earlier set of writ petitions challenging the vires of the amending statute and the Division Bench in that case had not granted them the relief of refund, though the claim therefor had been duly made in those writ petitions. An argument was also advanced on behalf of the respondents that consequently in the present writ petition there was a patent misjoinder of parties and causes of action. Again the bar of limitation was raised on the provisions of Section 31 of the Punjab Agriculture Produce Market Act, 1961, and Rule 33 of the Punjab Agricultural Produce Markets (General) Rules, 1962. Ancillary issues as to the terminus a quo for the commencement of the period of limitation were also raised claiming that the time should run against the petitioners from the 30th of April 1974, and not from the 8th of November, 1974, when the judgment in the previous set of writ petitions was pronounced. In face of all these defences raised on behalf of the respondents it was claimed that in any case triable issues of fact and law had arisen which would further negate the right of the petitioners to claim any relief within the writ jurisdiction.

24. In view of the fact that I have declined relief to the petitioners on the preliminary ground, I do not propose to examine these collateral matters. The writ petition is consequently dismissed leaving the petitioners to seek their ordinary remedies at law, and without any order as to costs.

PREM CHAND JAIN, J.:- I agree.

MAN MOHAN SINGH GUJRAL, J.: I agree.

Petition dismissed.

**AIR 1974 PUNJAB AND HARYANA 92 (V. 61, C. 30) "Prem Chand Ram Lal v. State "**

**PUNJAB & HARYANA HIGH COURT**

Coram : 1 PREM CHAND JAIN, J. ( Single Bench )

M/s Prem Chand Ram Lal, Petitioner v. The State of Punjab and Haryana and another, Respondents.

Civil Writ No. 2532 of 1972, D/- 13 -3 -1973.

(A) Punjab Agricultural Produce Markets (General) Rules (1962), R.31(9) - AGRICULTURAL PRODUCE - Automatic penalty imposition, without establishing mens rea behind default in fee-payment, is unwarranted by.

Brief Note :- (A) Imposition of by for default in payment of fee is within the discretion of the market committee under this rule and is not a must Penalty does not arise merely on default. Imposition of penalty is a quasi-criminal proceeding. It is necessary before imposition to find out whether the party acted in deliberate defiance of law or in conscious

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disregard of its obligation. In the instant case the Market Committee had imposed penalty without considering the circumstances in which party had not paid the fee. The penalty thus imposed was therefore quashed AIR 1970 SC 253 and (1973) 31 STC 85 (Fund). Rel. on. (Paras 5, 6, 7)

(B) Constitution of India, Art.226, Art.227 - WRITS - HIGH COURT - APPEAL - Authority exceeding jurisdiction - Whether not filing statutory appeal affect tenability of petition under ?

Brief Note :- (B) Petition can be entertained and relief given in case where authority has exceeded in exercise of its jurisdiction although party may not have taken recourse to appeal under the statute. (Para 8)

Puran Chand, for Petitioner G.C. Garg. (for No. 2) and Munishwar Puri (for No. 1). for Respondents.

Judgement

ORDER :- M/s. Prem Chand Ram Lal through Mela Ram partner have filed this petition under Articles 226/227 of the Constitution of India for the issuance of an appropriate writ, order or direction quashing the resolution of the Market Committee, Sangrur, respondent No. 2. dated 4th February 1972 levying market fee and penalty on the petitioners amounting to Rs. 6,538.76. The facts of this case may briefly be stated thus :

2. The petitioners are running their business and are licensees under Section 10 of the Punjab Agricultural Produce Markets Act 1961, hereinafter referred to as the Act. The petitioners are commission agents and Pacca Arhtias and brine Gur. Shakkar and Khandsari from outside Mandis in packed condition at their shops which are situated outside the market yard at Sangrur. The Market Committee, respondent No. 2. wished to less market fee on the sale of Gur. Shakar and Khandsari purchased by the petitioners from outside Mandir and sold at their shops in the packed condition. The petitioner-firm resisted this illegal less by the Market Committee. The Administrator of the Market Committee. On 30th September, 1968. levied market fee of Rs. 5,014/- and levied an equal amount of penalty, and made a demand of Rs. 10,028/- against the petitioners for the year 1967-68. This act of the Administrator was challenged by the petitioners by way of Civil Writ No. 3324 of 1968. The petitioners partially succeeded in their petition. As full relief was not given to the petitioners, they filed a Letters Patent Appeal against the judgment and order of the learned Single Judge but the same was dismissed. The matter did not rest there as the petitioners filed an application for grant of a certificate for filing appeal before the Supreme Court of India and necessary certificate was Granted to them. On the basis of this certificate, the petitioners tiled an appeal before the Supreme Court and moved a stay application on which the stay was granted subject to their furnishing a bank guarantee to the satisfaction of the Market Committee.

3. It is further stated that in spite of the fact that the Market Committee knew that the appeal of the petitioners was pending before the Supreme Court still a resolution was passed on 4th February, 1972, levying market fee on the sale of Gur. Shakar. Khandsari, cereals and rice for the years 1968-69 and 1969-70, to the tune of Rs. 3269.38 and also imposed penalty in the same amount. It is the legality and propriety of this resolution of the Market Committee which have been challenged by way of this writ petition.

4. Written statement has been filed on behalf of the Market Committee by Shri Brij Lal, its Secretary, in which the material allegations made in the writ petition have been controverted.

5. Although various grounds have been taken in the writ petition, but the only ground urged by the learned counsel for the petitioners was that the Market Committee exceeded its jurisdiction in imposing the penalty of Rs. 3,269.38, without first laying a foundation for the less of penalty. According to the learned counsel, the onus was on the Market Committee to show that there was a mens rea and that non-furnishing of the returns by the petitioners for the years 1968-69 and 1969-70 was deliberate with a view to avoid payment of the market fee. After hearing the learned counsel for the parties. I find that there is considerable force in the contention of the learned counsel for the petitioners.

6. From the perusal of the records which were made available at the time of arguments. I find that the Committee, after calculating the, market fee that could be levied on the petitioners for the years 1968-69 and 1969-70, imposed the penalty equal to the amount of the market-fee. In the resolution that was passed for imposing penalty, no ground has been set out as to why an equal amount of penalty was being imposed. Rule 31. sub-rule (9) of the Punjab Agricultural Produce Markets (General) Rules, 1962. hereinafter referred to as the Rules, is in the following terms :-

"31. (9) In addition to the fee or additional fee levied under sub-rule 81 the Committee may recover from the defaulter penalty equal to the fee or additional fee so levied."

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From the bare reading of the above said provision, it is clear that it is the discretion of the Market Committee to impose penalty and also to determine the amount of penalty. Under the said provision, the imposition of penalty is not a must. In certain circumstances, the amount can be less while in another case, it can be more. Though there is no direct case on the point that was debated before me under the provisions of the Act and the Rules made thereunder, but under the General Sales Tax Act. there is a similar provision of imposing penalty and while interpreting that provision, their Lordships of the Supreme Court in M/s. Hindustan Steel Ltd. v. State of Orissa, AIR 1970 SC 253, observed thus :-

"Under the Act penalty may be imposed for failure to register as a dealer Sec. 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory occupation is a matter of discretion of the authority to be exercised judicially and on a consideration of jail the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

A similar matter came up before a Division Bench of this Court also in Khosla Rice Mills v. State of Punjab (1973) 31 STC 85 (Punj) wherein it was observed :-

"Thus in the light of the Supreme Court decision, the impugned order imposing the penalty on the appellant without any material on the record to show that there was a deliberate concealment with a view to avoid payment of the tax and without there being any clear finding in that respect, cannot be sustained and has to be set aside."

7. From the above-mentioned decisions, it is clear that the proceedings for the imposition of penalty are quasi-criminal proceedings and that before a penalty could be imposed. It was incumbent on the department to prove that the party acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. It is also clear from the decision of their Lordships of the Supreme Court that a penalty cannot be imposed merely on the around that it is lawful to do so. The authority has a discretion to impose penalty and that discretion is to be exercised not in an arbitrary manner but judiciously. The authority before imposing the penalty has to apply its mind to all the circumstances of the case and the evidence that may be produced in that respect, and then only pass an order with regard to the imposition of penalty. In the instant case, there is no gainsaying that the Market Committee did not advert to this aspect of the matter and after calculation of the market fee straightway imposed the penalty equal to the amount of the market fee. This could not legally be done. In this view of the matter. I have no other alternative but to quash the resolution of the Market Committee dated 4th February, 1972, to the extent it levies the penalty of an amount of Rs. 3,289.38. It may be observed that the committee may, if so advised proceed to impose penalty on the petitioners in accordance with law.

8. Before parting with the judgment, a preliminary objection raised by Mr. G.C. Garg, learned counsel for respondent No. 2, may be noticed. It was contended by him that the petitioners should have availed of the remedy of appeal under Rule 31(13) of the Rules and that the petitioners having approached this Court without exhausting that remedy are not entitled to the relief an prayed for. I am afraid. I am unable to agree with this contention of the learned counsel I am already found that the Market Committee has exceeded its jurisdiction in imposing penalty on the petitioners. In the view that I have taken. I do not propose to dismiss this writ petition on this preliminary objection.

9. No other point was urged.

10. For the reasons recorded above. I allow this petition and quash the impugned resolution dated 4th February, to the extent it has resulted in imposing the penalty of Rs. 3,269.38 on the petitioners. As the petitioners have partially succeeded. I make no order as to costs.

Petition allowed. @page-PunjHar95

**AIR 1974 PUNJAB AND HARYANA 214 (V. 61, C. 72) "Des Raj v. State"**

**PUNJAB & HARYANA HIGH COURT**

Coram : 1 BAL RAJ TULI, J. ( Single Bench )

Des Raj, Petitioner v. The State of Punjab and others, Respondents.

Civil Writ No. 4141 of 1970, D/- 13 -8 -1973.

(A) Punjab Agricultural Produce Markets Act (23 of 1961), S.12 - AGRICULTURAL PRODUCE - ELECTION - Piecemeal election of members of Market Committee not contemplated by Act.

Brief Note :- S. 12 of the Act contemplates the constitution of a Market Committee of all the elected members and the Official Member at one and the same time. There is no provision in the Act or in the Rules for holding piecemeal election. It is the membership of the complete committee that has to be notified by the State Government. The Court quashed a notification for holding a piecemeal election. (Para 1)

S.P. Jain and O.P. Goyal, for Petitioner; Surjit Singh for Advocate-General (Punjab) (for Nos. 1-3) and H.L. Sarin, Sr. Advocate with M.L. Sarin (for Nos. 4-10), for Respondents.

Judgement

ORDER :- The Market Committee, Abohar, was to consist of 16 members, out of whom 15 were to be elected and 1 to be nominated by the State Government. Nine out of 15 elected members were to be elected by the producers of the area, 4 were to be elected by persons licensed under Section 10 of the Punjab Agricultural Produce Markets Act, 1961, (hereinafter called the Act), and 2 members were to be elected by persons licensed under Section 13 of the Act Elections to the Market Committee were notified to be held on November 17, 1968. The nomination papers of Shri Hanuman Dass, a candidate for producer member seat, were rejected by the Election Officer. He filed a writ petition in this court which was allowed on November 15, 1968. In view of paucity of time, the election of producer members was not held on November 17, 1968, but the election of members by the persons licensed under Sections 10 and 13 of the Act were held and respondents 4 to 10 were elected. The result of their election was announced on November 18, 1968, but their elections were never notified by the State Government, with the result that they never became members of the Market Committee and in fact it was never constituted. For the election of 9 producer members of the Market Committee, a notification was issued on May 26, 1970, which was amended by notification dated June 15, 1970. In pursuance of those notifications, the election programme was notified and the polling was to take place on September 8, 1970. A writ, petition (C.W. 2730 of 1970) was filed in this Court challenging the said notifications which was accepted by Suri, J., on December 1, 1970, on the submission made by the learned Advocate-General for the State of Punjab that the impugned notifications had been rescinded. The learned Advocate-General also submitted that "if any fresh notification is issued, the party aggrieved can have recourse to the remedies available to him in the Court." In view of this submission, the petitioners withdrew the writ petition. At that time it was not disclosed by the State Government that similar notification had been

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issued on November 20, 1970, for holding the election of 9 producer members and that the date for polling had been fixed as January 10, 1971. Accordingly, the petitioner filed the present petition for the quashing of that notification. The Motion Bench, while admitting the petition, stayed the holding of the election. The result is that for about 5 years no Market. Committee, Abohar, has been constituted. In these circumstances, there is no use holding piecemeal elections of elected members for which there is no provision in the Act or the Election Rules. Section 12 of the Act contemplates the constitution of a Market Committee of all the elected members and the official member at one and the same time. It is the membership of that complete committee that has to be notified by the State Government. I have, therefore, no choice except to quash the impugned notification dated November 20, 1970. The State Government is directed to hold fresh elections for all the elected members of the Market Committee, Abohar. This petition is accordingly accepted with costs. Counsel's fee Rs. 100/- to be paid by the State of Punjab.

Petition allowed.

**AIR 1973 PUNJAB AND HARYANA 472 (V 60 C 133) "Anup Singh v. State"**

**PUNJAB & HARYANA HIGH COURT**

Coram : 1 M. R. SHARMA, J. ( Single Bench )

Anup Singh and others, Petitioners v. State of Haryana, and others, Respondents.

Civil Writ No. 2669 of 1972, D/- 4 -10 -1972.

(A) Punjab Panchayat Samitis and Zila Parishads Act (3 of 1961), S.5 - PANCHAYAT - Person disqualified to be Panch or Sarpanch nominated as member of Market Committee - His membership of Panchayat Samiti, if invalid.

Brief Note :- (A) If a person is validly nominated as a member of the Market Committee of a Panchayat Samiti, his membership of that Samiti under Section 5 as a representative of the Market Committee cannot be struck down as invalid merely because he is disqualified to become a Panch or a Sarpanch of Gram Panchayat. (Para 4)

(B) Constitution of India, Art.226 - WRITS - HIGH COURT - AGRICULTURAL PRODUCE - Power of High Court to examine whether or not a person is "producer" within S.2(o) of Punjab Agricultural Produce Markets Act.

Punjab Agricultural Produce Markets Act (3 of 1961), S.2(o).

Brief Note (B) :- The question whether or not a person is a "producer" within Section 2 (o) of Punjab Agricultural Produce Markets Act cannot be examined by High Court in proceeding under Article 226, more so when the Deputy Commissioner concerned has issued a certificate in favour of that person to that effect. Decision of Deputy Commissioner in this regard is final. Merely because such a person is also working as principal of a privately managed School, that by itself cannot come in his way to be a "producer" within Section 2 (o) if he is otherwise so qualified. (Para 6)

(C) Punjab Panchayat Samitis (Co-option of Members) Rules (1961), R.4(3) - PANCHAYAT - Co-option of members - Non-compliance with R.4(3) - Co-option if illegal.

Brief Note :- (C) An unanimous co-option of certain members to a Panchayat

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Samiti by members constituting majority of the total elected or nominated members is not rendered illegal merely on the ground that three day's clear notice of the meeting as required by Rule 4 (3) for that purpose was not given to some members when even if all the members had attended the meeting the result would not have been different. (1972) 74 Pun LR 378, Followed. (Paras 10, 11)

Cases Referred : Chronological Paras

(1972) 74 Pun LR 378 : 1971 Pun LJ 606, Onkar Singh v. State of Haryana 10

(1967) L. P. A. No. 116 of 1967, D/-17-8-1967 (Punj), Didar Singh v. Deputy Commr., Hoshiarpur 7

(1963) 65 Pun LR 1090, Jai Bhagwan Sharma v. Matu Ram 8

Chandra Singh, for Petitioners; Harbhagwan Singh (for Nos. 4 to 6, 8 and 9) and Naubat Singh Dist. Attorney (Haryana), (for Nos. 1 to 3), for Respondents.

Judgement

ORDER :- This is a petition under Articles 226 and 227 of the Constitution. The petitioners have been elected as Primary Members of the Panchayat Samiti, Jind, Respondent No. 4 was nominated as a member of the Market Committee, Jind. As a representative of the said Market Committee, he was duly elected as a member of the Panchatyat Samiti, Jind. A meeting of the elected members of the Panchayat Samiti was held on August 3, 1972, for co-opting five members of the Samiti representing the scheduled castes and women folk. The present petition has been filed by the petitioners challenging the nomination of respondent No. 4 as also the co-option of respondents Nos. 5 to 9, mainly on four grounds.

Firstly, it is alleged that respondent No. 4 contested election to the Haryana Legislative Assembly from Julana constituency in the year 1968 on Swantantra party ticket. His election was challenged by Shri Dal Singh, the defeated candidate, whose petition filed under the Representation of the People Act succeeded. Respondent No. 4 was held guilty to have committed corrupt practices and he was disqualified for a period of six years. It is stated that under Section 11-A of the Representation of the People Act (hereinafter called the People Act) he was disqualified for voting at any election.

Secondly, it is urged that the Sarpanches and Panches elected under the Punjab Gram Panchayat Act are eligible to be elected as members of a Panchayat Samiti. Under Section 5 (a) of this Act, a person who is not qualified to be elected as a member of the Legislative Assembly cannot be elected as a Sarpanch or a Panch. The election as a member of a Panchayat Samiti includes in its ambit the election of a person to any of the institutions which furnish elected members of a Panchayat Samiti. Because respondent No. 4 was debarred to become a member of the Sabha under Section 5 (a) of the Gram Panchayat Act, he could also not be elected or nominated as a member of the Panchayat Samiti representing the Market Committee.

Thirdly, because respondent No. 4 could not be validly nominated as a member of the Market Committee, Jind, on the ground of being a producer, it is submitted that he is working as a Principal of the Jat High and J. B. T. School, Jind, on whole time basis for the last 8/9 years and that his normal course of avocation is teaching profession instead of a producer of agricultural produce as laid down in Section 2 (o) of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter called the Markets Act). Fourthly, the co-option of Respondents Nos. 5 to 9 is challenged on the ground that no statutory notice was given for the meeting held for the purpose of co-opting them.

2. In the return filed on behalf of the respondents, it is admitted that respondent No. 4 was disqualified under the People Act but this disqualification did not debar him to become a member of the Market Committee. Respondent No. 4 has also stated that he owns agricultural land in his own name and cultivates the same himself. He has further stated that he was an agriculturist in the normal course of his avocation. Being an educated person, he has adopted the teaching profession so as to bring about social uplift of the rural population. He derived major part of his income from agriculture, i.e., by selling agricultural produce in the market at Jind.

3. Coming now to the points urged before me, it may be stated that there appears to be no substance in the first contention advanced by the learned counsel. Section 11-A of the People Act lays down that a person found guilty of a corrupt practice by an order under Section 99 shall, for a period of six years from the date on which the order takes effect, be disqualified for voting at any election, but the same Act gives the following definition of the word 'election' in Section 2 (d), which runs as follows :-

" 'election' means an election to fill a seat or seats in either House of Parliament or in the House or either House of the Legislature of a State other than the State of Jammu and Kashmir."

The use of the words 'any election' in Section 11-A of the People Act merely relates to an election to either of the Houses of the Parliament or of a State Legislature. Election to a particular institution or a corporation is governed by the statute which governs such an institution or the corporation. If the Markets Act does not expressly provide that a particular disqualification under the People Act would also be regarded as a disqualification under it, then a person cannot be disqualified to seek election under the Markets Act.

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4. Section 5 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (hereinafter called the Samitis Act), lays down that Primary Members of a Samiti shall be elected out of the -

(i) Panches and Sarpanches of Gram Panchayats in the Block;

(ii) Members of the Co-operative Societies within the jurisdiction of the Samiti; and will also include a member representing the Market Committee in the Tehsil. The qualifications for becoming a Panch or a member of a Co-operative Society or a member of a Market Committee are entirely different because the election of these members is governed by different statutes. Section 5 (a) of the Gram Panchayats Act lays down that no person who is not qualified to be elected as a member of the Legislative Assembly shall be entitled to stand for election or continue to be a Sarpanch or a Panch. This provision merely lays down that a person who is disqualified under Section 11-A of the People Act and who because of this reason is disqualified for voting shall not be eligible to become a Panch or a Sarpanch.

The Samitis Act does not lay down that everybody who has to become its member must be qualified to become a Panch or a Sarpanch. The members of a co-operative society as also of a market committee are eligible to become its members. In the instant case we are concerned with the Markets Act which does not provide that a person in order to be eligible to become a member of a Market Committee must be qualified as a voter under the Peoples Act. Consequently, if respondent No. 4 can validly be nominated as a member of the Market Committee, his membership of the Panchayat Samiti as a representative of the Market Committee cannot be struck down merely on the ground that he was disqualified to become a Panch or a Sarpanch. In view of these reasons, I am of the considered view that there is no merit in the second contention raised by the learned counsel.

5. The third submission raised by the learned counsel is based upon the definition of the word 'producer' as given in Section 2 (o) of the Markets Act, which runs as under :-

"(o) : 'producer' means a person who in his normal course of avocation grows, manufactures, rears or produces as the case may be, agricultural produce personally, through tenants or otherwise, but does not include a person who works as a dealer or a broker or who is a partner of a firm of dealers or brokers or is otherwise engaged in the business of disposal of agricultural produce other than that grown, manufactured, reared, or produced by himself, through his tenants or otherwise. If a question arises as to whether any person is a producer or not for the purposes of this Act, the decision of the Deputy Commissioner of the District in which the person carries on his business or profession shall be final."

6. It is, no doubt, true that a person in order to be styled as a 'producer' must be one who in his normal course of avocation manufactures, rears or produces agricultural produce. The controversy, however, centres round the phrase 'in his normal course of avocation.' It is admitted by the parties that respondent No. 4 has been serving as the Principal of the Jat High and J. B. T. School, Jind, for the last 8/9 years. The petitioners alleged that his normal course of avocation was teaching profession. On the other hand, respondent No. 4 has submitted that he has taken to this profession in order to satisfy his zeal for the rural uplift. According to him, he owns land which is under his personal cultivation and he fulfils the qualifications of a 'producer' as given in the relevant Act. Such a serious controversy cannot be effectively resolved in proceedings under Article 226 of the Constitution.

The legislature was perhaps alive to this situation and has for that purpose laid down that if such a question arises, then the certificate given by the Deputy Commissioner concerned in that behalf shall be final. Respondent No. 4 has filed Annexure R/4/1 which is a certificate dated August 18, 1972, issued by the Deputy Commissioner, Jind. It mentions that the said officer considered all the evidence produced by Shri Narain Singh as also the report submitted by the Sub-Divisional Officer (Civil). From this data, he was satisfied that respondent No. 4 was a 'producer'. The petitioners did not file any replication challenging the basis on which the Deputy Commissioner granted this certificate to respondent No. 4.

Even otherwise, merely because this respondent is also working as the Principal of a privately managed school, it cannot be said that he cannot be styled as a 'producer' within the meaning of the statute. The petitioners are claiming relief under the Markets Act. One of the conditions of this Act is that when a dispute arises about the status of a person as a producer, then the opinion of the Deputy Commissioner in this behalf shall be final. The rights of the petitioners are subject to this condition and it is doubtful whether it would be open to them to challenge the certificate granted by the Deputy Commissioner. The nomination of respondent No. 4 as a member of the Market Committee, Jind, could therefore not be held to be unjustified.

7. The meeting for the co-option of respondents Nos. 5 to 9 was held on August 3, 1972. The notices for this meeting were issued on July 29, 1972. It is submitted that these notices were served upon petitioners Nos. 1 and 4 on August 2, 1972. Rule 4 (3) of the Rules framed under the Samitis Act lays down that at least three days' clear notice should be given to the members for holding a meeting for co-opting the members

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representing the scheduled castes and the women folk. Prima facie, the meeting held on August 3, 1972, in which respondents Nos. 5 to 9 were co-opted, cannot be said to have been held in accordance with law. It is, however, admitted that ten members including respondent No. 4 attended this meeting and the co-option was made unanimously. The question which falls for determination is whether the co-option held in such a meeting deserves to be quashed or not. A similar matter arose in Didar Singh v. Deputy Commr., Hoshiarpur, L. P. A. No. 116 of 1967, decided by this Court on 17-8-1967. Speaking for the Bench, S. B. Capoor, the learned Acting Chief Justice, observed as follows :-

"The contention of Mr. Sibal, that the notice in question fell short by only one day cannot be allowed to prevail, because one would then not know where to draw the line and it might as well be argued that even if the notice fell short by two or three days, the proceedings at such a meeting could not be challenged unless a petitioner proved by positive evidence that prejudice had been caused to him. That in my view would be bye-passing the statute and perhaps even lead to flout it with impunity."

8. In Jai Bhagwan Sharma v. Matu Ram, (1963) 65 Pun LR 1090, question regarding the publication of election programme under the Punjab Municipal Election Rules, 1952, came for consideration. Grover, J., as his Lordship then was, observed as follows :-

"It was held that fourteen clear days must elapse between the dates of service and that of return. It is, therefore, quite obvious that in the present case ten clear days had to intervene between the date of publication of the election programme and the first of the dates specified in it, namely, 29th July, 1961 and 8th August, 1961. Admittedly, in this view of the matter there was a contravention of the mandatory provisions of the aforesaid rule."

9. In view of these authoritative pronouncements, it must be held that the authorities concerned must make rigid compliance with Rule 4 (3) of the Rules framed under the Samitis Act. Under our system of elections, some time is always allowed to the voters and those who seek election for making canvassing in their favour. The denial of this right to the voters may sometimes defeat the very purpose for which the elections are held. In a suitable case, it could be validly urged by a voter or a candidate that the result of an election has been materially affected because of non-compliance with this rule. But, can we say that the co-option of respondents Nos. 5 to 9 is void merely because the meeting held on August 3, 1972 was not strictly in accordance with law? The process of co-option of members is no different from their election. In the case of co-option an electoral college elects the members whereas in an ordinary election members are usually elected by a secret ballot. The election of a member who comes in by the process of co-option can equally be challenged by filing an election petition. Section 121 of the Samitis Act reads as under :- "121. Election Petition :

(1) Any person who is a voter for the election of a Member may on furnishing the prescribed security and on such other conditions, as may be prescribed, within twenty days of the date of announcement of the result of an election, present to the prescribed authority, an election petition in writing, against the election of any person as a Member, Vice-Chairman or Chairman of the Panchayat Samiti or Zila Parishad concerned.

(2) The prescribed authority may -

(a) if it finds, after such inquiry as it may deem necessary, that a failure of justice has occurred, set aside the said election, and a fresh election shall thereupon be held;

(b) if it finds that the petition is false, frivolous, or vaxatious, dismiss the petition and order the security to be forfeited to the Panchayat Samiti or Zila Parishad concerned, as the case may be.

(3) Except as provided in this section, the election of a Member, Vice-Chairman or Chairman shall not be called in question before any authority or in any Court."

Rule 3 of the Rules framed under this Act runs as follows :-

"3. Grounds on which election may be called in question :

The election of any person as a Member, Vice-Chairman or Chairman of a Panchayat Samiti or Zila Parishad, as the case may be, may be called in question by an elector through an election petition on the ground that such person has been guilty of a corrupt practice specified in the Schedule or has connived at, or abetted the commission of any such corrupt practice or the result of whose election has been materially affected by the breach of any law or rule for the time being in force or there has been a failure of justice."

10. A reading of the aforementioned rule shows that an election can be set aside where the result of the election has been materially affected by the breach of any law or the rules applicable to the case. The result of the late service of notice upon petitioners Nos. 1 and 4 for the meeting held on August 3, 1972, was that they were deprived of their right of casting their votes. In law, it can at the most tantamount to rejection of their votes, but in spite of this infirmity it has to be seen whether the rejection of these votes has materially affected the result of the election of respondents Nos. 5 to 9. When the facts and circumstances of the present case are kept in view, it becomes obvious that no such finding can be given.

It is not disputed that ten members who attended the meeting on August 3, 1972, constituted

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the majority of the total elected or nominated members of the Samiti. The co-option held by them was unanimous. Even if all the other elected or nominated members of the Samiti had attended the meetings the result of the election could not have been any different. It is also well settled that an election cannot be set aside on lighter grounds. In Onkar Singh v. State of Haryana, (1972) 74 Pun LR 378, a similar matter came to be considered by a Division Bench of this Court. D. K. Mahajan, J., speaking for the Bench, observed as follows :-

"In the present case there is no manifest injustice inasmuch as the election was unanimous and even if the petitioner was not duly served and did not attend or there was no proper notice, it resulted in no injustice to him. On this short ground I would reject the first contention of the learned counsel for the petitioner."

11. The above-mentioned observations apply with greater force to the facts and circumstances of the instant case because the respondents Nos. 1 and 4 had actually been served.

12. In view of what has been discussed above, I find no merit in this petition, which is dismissed.

Petition dismissed.

**AIR 1972 PUNJAB AND HARYANA 189 (V. 59 C 54) "Jai Ram v. State of Haryana"**

**PUNJAB & HARYANA HIGH COURT**

Coram : 1 A. D. KOSHAL, J. ( Single Bench )

M/s. Jai Ram Hans Raj, Petitioner v. The State of Haryana and others, Respondents.

Civil Writ No.728 of 1970, D/- 26 -7 -1971.

(A) Punjab Agricultural Produce Markets (General) Rules (1962), R.31(8) - AGRICULTURAL PRODUCE - Powers of Committee or Administrator under.

Rule 31(8) authorizes the Committee (whose powers are also exercisable by the Administrator) to assess the amount of a dealer's business on such information as may be available, or on the basis of best judgment, if the account-books of the dealer are reported to be unreliable. Thus the Administrator can revise the entire assessment for the relevant period on the basis of the omission of a licensed dealer to enter certain transactions in the book maintained in Form H. (Para 3)

(B) Constitution of India, Art.226 - WRITS - NATURAL JUSTICE - Natural justice - Compliance.

Every order of a competent authority who has given the party aggrieved full opportunity to have his say and has also complied with the relevant provisions of law cannot be struck down as infringing rules of natural justice. (Para 3)

S.K. Jain, for Petitioner; G.C. Garg, for Respondents Nos.2 and 3.

Judgement

ORDER :- This petition under Articles 226 and 227 of the Constitution of India seeks the issuance of an appropriate writ quashing the assessment notice dated the 8th of January, 1970 (Annexure "A" to the petition) and the demand notice dated the 2nd of March, 1970 (Annexure "B" to the petition) and prohibiting the Market Committee, Ambala Cantonment (hereinafter referred to as the Committee) from recovering from the petitioner, who is a partnership firm carrying on its business as a licensed dealer in agricultural produce at village Mullana within the territorial Jurisdiction of the Committee a sum of Rs.4782.68, and has arisen in these circumstances. According to the provisions of sub-rule (8) of Rule 24 of the Punjab Agricultural Produce Markets (General) Rules, 1962 (hereinafter referred to as the Rules) an auctioneer appointed by the Committee has to fill in the relevant particulars in a book to be maintained in Form H and to secure the signatures of both the buyer and the seller to a transaction of sale of agricultural produce as soon as it has been auctioned.

The practice in vogue at Mandi Mullana is that such a book is maintained not only by the Committee's auctioneer but also by the licensed dealer who conducts the sale on behalf of his principal. On the 9th of December, 1969, the business premises of the petitioner were visited by the Committee's Secretary who found that no entries had been made by the petitioner in its book in Form H with regard to 10 transactions of sale, the auction and weighment of the goods covered by which had already taken place. The total value of such goods was found to be Rs.2204/-.

On the 8th of January, 1970, the Administrator of the Committee issued a notice (Annexure "A" to the petition) to the petitioner declaring that it had not furnished correct returns for the period from the 1st of April. 1969, to the 9th of December, 1969, and that it was necessary to make an assessment in relation to it under Rule 31(1) of the Rules for the period above mentioned and directing it to attend the office of the Committee on the 19th of January, 1970, along with "accounts and documents", the details of which were not specified. Jai Ram, a partner of the petitioner, complied with the direction and produced all the accounts and documents maintained by it for the said period. He also "pleaded guilty and requested for pardon." On the same day the Administrator passed an order, the operative part of which runs as follows:-

"I assess this Uchanti business of the firm in question to the .extent of the transactions made on the 9th of December, 1969, i.e., the assessment at the rate of Rs.22.04 P. per working day with effect from 1-4-1969 to 9-12-1969. (This assessment) is made in exercise of R.31(8) \* \* \* \* \*.

The Secretary may work out the working days and total amount to be recovered and put up along with the demand notice in Form P \* \* \* \*"

In making this order the Administrator took into account not only the plea of guilty and request for pardon made by

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Jai Ram but also the fact that in neither of the books maintained by the Committee's auctioneer and the petitioner in Form H had the said transactions been entered by the time the Secretary of the Committee visited the business premises of the petitioner. He inferred that the intention of the petitioner was to evade payment of the market fee on those transactions and that "there is every reason to believe that it may be the usual practice of the firm."

The notice of demand (Annexure "B" to the petition) required the petitioner to pay Rs.4782.68 in pursuance of the order of the Administrator.

2. The orders contained in Annexures "A" and "B" to the petition have been challenged on the following grounds:-

(i) There was no intention on the part of the petitioner to evade the payment of market fees as was clearly deducible from the fact that the account-books of the petitioner contained full entries with regard to the ten transactions above mentioned. The Administrator had gone completely wrong in not relying upon those books.

(ii) The assessment order does not comply with the provisions of sub-rules (5), (7) and (8) of R.31 of the Rules and is, therefore, without jurisdiction.

(iii) The assessment order was passed in contravention of the principles of natural justice.

3. There is no merit in any of the grounds set out above. The books produced by the petitioner before the Administrator no doubt contained entries with regard to the ten transactions in question but then those entries were made after the Secretary of the Comittee had visited the business premises of the petitioner and had taken exception to the omission of any reference to those transactions in the book maintained by the petitioner in Form H. The fraud having been detected, the petitioner certainly tried to cover it up by making entries ex post facto which cannot condone the fraud already detected. The Administrator was, therefore, fully justified in holding the books of account to be unreliable and the petitioner guilty of an intention of evading payment of market fees.

Sub-rules (5), (7) and (8) of R.31 of the Rules are quoted below:-

"31. \* \* \* \*

\* \* \* \*

(5) If a dealer habitually makes default in the submission of returns or if in the opinion of the Committee may order for the inspection of the dealer's accounts (sic).

\* \* \* \*

(7) The Committee may authorize one or more of its members to carry out the inspection ordered by it under sub-rule (5). Such member or members shall be assisted by such employees of the Committee as may be deputed by it for that purpose.

(8) Such member or members may after inspection prepare a return or may amend the return already furnished, on the basis of transactions, appearing in the dealer's account books, and the Committee may levy a fee, or, as the case may be, an additional fee, under Section 23 on the basis of such return or amended return, but if the account-books are reported to be unreliable, or as not providing sufficient material for proper preparation or amendment of the return or if no such books are maintained or produced, the Committee may assess the amount of the dealer's business on such information as may be available or on the basis of best judgment, and levy fee on the basis of such assessment."

Learned counsel for the petitioner contends that under sub-rule (8) the Administrator could only levy market fee on the ten transactions mentioned above and that he had no jurisdiction to revise the entire assessment for the period 1-4-1969 to 9-12-1969 on the basis of the omission of the petitioner to enter the ten transactions in the book maintained in Form H.In so contending, however, learned counsel ignores the latter part of the clause which authorizes the Committee (whose powers are exercisable by the Administrator in the present case) to assess the amount of a dealer's business on such information as may be available, or on the basis of best judgment, if the account-books of the dealer are reported to be unreliable. The Administrator having held the books of the petitioner to fall in that category and, in my opinion, rightly, the requirements of the rule are fully complied with.

Nor do I see how there has been any Infringement of the rules of natural justice. The phrase "natural justice" is not a magic wand which can be used to strike down every order of a competent authority who has given the party aggrieved full opportunity to have his say and has also complied with the relevant provisions of law. It is not the case of the petitioner that the impugned orders were passed without a proper hearing being given to him. On the other hand, he himself avers that he produced his account-books before the Administrator who checked the same in detail, asked Jai Ram about the reason for the omission of entries with regard to the ten transactions of sale on the 9th of December, 1969, from the book maintained

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in Form H, considered the plea of guilty and the request for pardon made by Jai Ram, and then passed the assessment order, although the same is said to have been passed behind Jai Ram's back. No principle of natural justice can in these circumstances be said to have been transgressed.

4. For the reasons stated, the petition fails and is dismissed with costs. Counsel's fee Rs.100/-.

Petition dismissed.

**AIR 1971 PUNJAB AND HARYANA 50 (V. 58 C 14) "Prem Chand v. State of Punjab"**

**PUNJAB & HARYANA HIGH COURT**

Coram : 1 BAL RAJ TULI, J. ( Single Bench )

M/s. Prem Chand Ram Lal, Sangrur, Petitioners v. The State of Punjab and others, Respondents.

Civil Writ No. 3324 of 1968, D/- 11 -2 -1969.

(A) Punjab Agricultural Produce Markets Act (5 of 1939), Pre., S.23, S.28, S.6(3) - Punjab Agricultural Produce Markets (General) Rules (1962), R.24, R.29 - AGRICULTURAL PRODUCE - PREAMBLE - Market fee is leviable in respect of transactions in which delivery of agricultural produce is actually made in notified market area - Source of supply of agricultural produce i.e. whether it was brought by producers or not is of no consequence.

The Act envisages the establishment of markets for the purchase or sale of agricultural produce and for that purpose the dealers who run their shops in the market area become a very important part of the market. Their transactions relating to the purchase or sale in agricultural produce as specified in the Schedule to the Act are to be regulated. The source of supply of the agricultural produce is immaterial. AIR 1959 SC 300, Disting.

Under Section 23 market fee is leviable in respect of transactions in which delivery of the agricultural produce is actually made in the notified market area. The State Government has framed the rules known as the Punjab Agricultural Produce Markets (General) Rules, 1962, in exercise of its powers under Section 43 of the Act and Rule 24 prescribes the mode of sale of agricultural produce brought into the market for sale. It is not stated in this rule that it relates only to the agricultural produce brought into the market by producers. It is not permissible to add the words 'by the producers' in this rule, as the rule is perfectly intelligible in the form in which it is couched.

The various purposes mentioned in Section 28 of the Act do not lead to the conclusion that the markets are established only for transactions of agricultural produce in which one of the parties is the producer. These purposes are of all the dealers in the notified market area whether they transact their sales or purchases with the producers of agricultural produce or with others, like consumers. AIR 1962 SC 97, Rel. on. (Para 2)

The licensee in view of the provisions of Section 6(3) obtains the exclusive privilege of transacting business in respect of purchase and sale of agricultural produce in the notified market

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area and he is expected to pay for this privilege and the facilities that he is provided with by the market committee as enjoined by the Act and the rules. The responsibility of paying the market fee is of the buyer and if he is not a licensee, then of the seller who is permitted to realise the same from the buyer according to Rule 29(2). Such fees are leviable as soon as an agricultural produce is bought or sold by a licensee. The words "bought or sold" in Section 23 of the Act and in Rule 29 of the rules significantly point out that the market fee is leviable when a licensee for the first time purchases or sells the agricultural produce. In sub-rule (1) of R. 29 it has been provided that no market fee shall be levied on the same agricultural produce more than once in the same notified market area. It is thus clear that on the first transaction with regard to the agricultural produce made within the notified market area, the market fee will be leviable. (Para 7)

(B) Punjab Agricultural Produce Markets Act (5 of 1939), S.23 - AGRICULTURAL PRODUCE - Fee under - It cannot be said that it is a tax in the garb of fee.

AIR 1962 SC 97 and AIR 1968 SC 1408 and ILR (1969) 1 Punj 756, Foll. (Para 9)

(C) Punjab Agricultural Produce Markets Act (5 of 1939), S.43 - Punjab Agricultural Produce Markets (General) Rules (1962), R.18(1) and R.18(2) - AGRICULTURAL PRODUCE - Deletion of Cl. (f) from R.18(1) and R.18(2) not arbitrary or outside purview of the Act. (Para 10)

(D) Punjab Agricultural Produce Markets (General) Rules (1962), R.31(8) - AGRICULTURAL PRODUCE - NATURAL JUSTICE - Best judgment assessment - How made - Assessee not producing account books as it thought that it was not liable to pay market fee - Assessment based on presumption that entire balance of Gur, Shakkar and Khandsari which fell short of annual average was imported and sold by assessee alone - No enquiry with other dealers or with Railway, transport companies, Octroi Department etc. - Held manner of assessment was most arbitrary and not in accordance with rules of natural justice - It was duty of Administrator to make honest enquiries from other sources and to give opportunity to assessee to show that information collected was faulty after communicating it to him.

Case law ref. (Paras 12, 19)

(E) Constitution of India, Art.226 - WRITS - APPEAL - AGRICULTURAL PRODUCE - Alternative remedy - It is not an absolute bar to maintainability of writ petition - Provision of appeal in R.31(13) of Punjab Agricultural Produce Markets (General) Rules (1962) is not adequate or suitable alternative remedy as it requires petitioner to deposit assessed fee before appeal can be heard, a condition not found in the Act itself.

AIR 1966 Punj 490, Rel. on. (Paras 20, 21)

Cases Referred : Chronological Paras

(1968) AIR 1968 SC 1408 (V 55) : Writ Petns. Nos. 103 and 199 of 1967, D/- 26-3-1968, Lakhan Lal v. State of Bihar, Commr. Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt 3

(1968) 69 ITR 738 (Mad), Polisetti Subbaraidu and Co. v. Commissioner of Income-tax, A. P. 18

(1968) Civil Writ No. 1578 of 1966, D/- 31-7-1968 : ILR (1969) 1 Punj 756, Ram Sarup and Brothers v. Punjab State 4

(1967) AIR 1967 SC 973 (V 54) : (1967) 1 SCR 974, Krishna Coconut Co. v. East Godavari Coconut and Tobacco Market Committee 6

(1967) 1967 Cur LJ 512 : 69 Pun LR 701, M/s. J. N. Sharma and Sons v. Assessing Authority 20

(1966) 17 STC 465 : (1966) 60 ITR 239 (SC), State of Kerala v. C. Velukutty 17

(1966) 17 STC 130 : 70 Cal WN 79, Jhagru Shaw v. Commr. of Commercial Taxes 15

(1966) AIR 1966 Ker 55 (V 53) : (1966) 17 STC 380, M. Appukutty v. Sales Tax Officer, Kozhikode 16

(1966) AIR 1966 Punj 490 (V 53) : 68 Pun LR 673, Daya Krishan v. Assessing Authority Cum Excise and Taxation Officer (Enforcement) 21

(1963) 14 STC 159 : 1962 Ker LJ 458, Namadeva Shenoy v. Sales Tax Officer Special Circle, Cannanore 14

(1962) AIR 1962 SC 97 (V 49) : (1962) 2 SCR 659, Mohammad Hussain Gulam Mohammad v. State of Bombay 2

(1961) 12 STC 272 : 1961 Ker LJ 230, Balakrishna and Sons v. Sales Tax Officer 13

(1959) AIR 1959 SC 300 (V 46) : 1959 Supp (1) SCR 92, M. C. V. S. Arunachala Nadar v. State of Madras 2

(1959) AIR 1959 Ori 79 (V 46) : (1958) 9 STC 648, Jamini Narasaya Prusty and Bros. v. State of Orissa 13

D. S. Nehra with K. S. Nehra, for Petitioners; S. K. Jain, for Advocate General (Punjab), G. P. Jain, with G. C. Garg and S. P. Jain also with him, for Respondents Nos. 2 and 3.

Judgement

JUDGMENT :- Messrs. Prem Chand Ram Lal is a firm dealing in Gur,

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Shakkar, Khandsari, Banaspati Oil etc. at Sangrur, and holds the license under the Punjab Agricultural Produce Markets Act (hereinafter called the Act), from the Market Committee, Sangrur. The firm is also licensed under the Punjab General Sales Tax Act. the Central Sales Tax Act and the Punjab Licensing Order for the sale of Gur, Shakkar and Khandsari etc. The firm started business with effect from 1st April, 1967 and during the year 1967-68, in the course of its business, it imported Gur, Shakkar and Khandsari etc. from outside Mandis of Haryana and U. P. for purposes of trade. These goods were purchased from the commission agents (Pacca Arhtias) in packed condition against regular bills and were transported through the railways or by road under railway receipts and goods receipts and octroi was duly deposited at the time of the import. These goods were sold by the petitioner-firm at its shop to the customers in the same packed conditions in which they were imported. The emphasis of the petitioner is on the fact that the transactions of importing goods from outside Mandis had nothing to do with the producers or the Kacha Arhtias. The petitioner-firm did not file any returns with regard to the imported goods in form 'M' and only filed returns in respect of the transactions made with the producers, the value of which was shown as Rs. 2781/- for the year. In November, 1967, the Secretary of the Market Committee, Sangrur, called upon the petitioner-firm to produce its accounts to enable him to levy the market fee on the goods brought by it from outside Mandis of Haryana and U. P. etc. In reply the petitioner submitted that the entries relating to goods bought and sold in the market yard were maintained in the returns filed by it in form 'M' and the necessary fee thereon had already been deposited. The petitioner-firm maintained that it was not liable to pay any market fee on the transactions with regard to the imported goods and was only liable to pay market fee on the transactions had with the producers of the agricultural produce. After some correspondence, the Administrator of the Market Committee levied Rs. 5014/- as market fee on the basis of best judgment assessment and imposed an equal amount by way of penalty by order dated 30th September, 1968. A demand of Rs. 10,028/- was raised against the petitioner-firm and a demand notice was issued for the payment thereof which was received by the petitioner on 14th October, 1968. The petitioner-firm filed the present writ petition on 28th October, 1968, praying for the quashing of the assessment order and the notice of demand, copies of which are Annexures 'L' and 'K' to the writ petition. The returns have been filed by the respondents.

2. The first point argued before me is that no market fee can be levied under the Act in respect of the transactions of purchase or sale which are not made with the producers of the agricultural produce. I find myself unable to agree with that submission. The argument of the learned counsel is that the object of the Act is to regulate the buying and selling of commercial crops, by providing suitable and regulated market, by eliminating middlemen and bringing face to face the producer and the buyer and to ensure a fair price to the producer. The following passage from the judgment of their Lordships of the Supreme Court in M. C. V. S. Arunachala Nadar v. State of Madras, AIR 1959 SC 300, is relied upon :-

"With a view to provide satisfactory conditions for the growers of commercial crops to sell their produce on equal terms and at reasonable prices, the Act was passed on 25th July, 1933. The preamble introduces the Act with the recital that it is expedient to provide for the better regulation of the buying and selling of commercial crops in the Presidency of Madras and for that purpose to establish markets and make rules for their proper administration. The Act, therefore, was the result of a long exploratory investigation by experts in the field, conceived and enacted to regulate the buying and selling of commercial crops by providing suitable and regulated market by eliminating middlemen and bringing face to face the producer and the buyer so that they may meet on equal terms, thereby eradicating or at any rate reducing the scope for exploitation in dealings."

These observations were made by their Lordships with regard to the Madras Commercial Crops Markets Act, 20 of 1933, but this alone cannot be said to be the object of every Marketing Act, like the Punjab Act. The preamble of the Punjab Act is as under :-

"An Act to consolidate and amend the law relating to the better regulation of the purchase, sale, storage and processing of agricultural produce and the establishment of markets for agricultural produce in the State of Punjab."

This Act, therefore, envisages the establishment of markets for the purchase or sale of agricultural produce and for that purpose the dealers who run their shops in the market area become a very important part of the market. Their transactions relating to the purchase or sale in agricultural produce as specified in the Schedule to the Act are to be regulated. The source of supply of the

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agricultural produce seems to me to be immaterial. The market fee is leviable under Section 23 of the Act which is in these terms :-

"A committee may, subject to such rules as may be made by the State Government in this behalf, levy on ad valorem basis fees on the agricultural produce bought or sold by licensees in the notified market area at a rate not exceeding fifty naye Paise for every one hundred rupees :

Provided that -

(a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made; and

(b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made."

It is thus clear that the market fee is leviable in respect of transactions in which delivery of the agricultural produce is actually made in the notified market area. The State Government has framed the rules known as the Punjab Agricultural Produce Markets (General) Rules, 1962, (hereinafter called the Rules), in exercise of its powers under Section 43 of the Act and Rule 24 prescribes the mode of sale of agricultural produce brought into the market for sale. It is not stated in this rule that it relates only to the agricultural produce brought into the market by producers. It is not permissible to add the words 'by the producers' in this rule, as the rule is perfectly intelligible in the form in which it is couched. According to this rule, the agricultural produce brought into the market is to be sold by public auction, the manner of which has been set out in detail. This rule, however, does not apply to retail sales as may be specified in the bye-laws of the committee. Rule 29 relates to the levy of the fee on the sale and purchase of agricultural produce for which provision is made in Section 23 of the Act. Rule 31 provides for the maintenance of accounts with regard to the transactions and the fee to be paid to the market committee and the manner of its assessment. The learned counsel for the petitioner states that the goods imported by the petitioner-firm are not sold by public auction in the market but by private contracts and that no provision with regard to the retail sales has been made in the bye-laws. If that be so, under Rule 24 the petitioner-firm cannot sell the agricultural produce brought by it into the notified market area except by public auction and it may be infringing the provisions of that rule if the sale is not made by public auction in the absence of any provision with regard to the retail sales. The learned counsel has relied upon forms 'I' and 'J' which are issued by the auctioneer to the purchaser and the seller of agricultural produce which are sold in the market and submits that forms 'M' and 'N' also relate to the same transactions. Forms 'I' and 'J' relate to only those transactions which take place by public auction through Kacha Arhtias Form 'I' is issued by the Kacha Arhtia to the buyer and form 'J' is issued by him to the seller but sale by auction is by no means confined to the agricultural produce brought into the market area by the producers themselves and, therefore, the said rules and the forms do not indicate conclusively that the market fee can be levied only on those transactions of purchase or sale in which one of the parties is a producer. The market fee is one of the three principal sources of revenue to the market committee, the other two being license fee and the fines levied by the Courts in respect of the defaults or offences committed under the Act. The receipts from all the sources including these three sources constitute the Market Committee Funds as is described in Section 27 of the Act. Section 28 of the Act enumerates the various purposes for which the Market Committee Funds can be expended as under :-

"28. Subject to the provisions of Section 27, the Market Committee Funds shall be expended for the following purposes :-

(i) acquisition of sites for the market;

(ii) maintenance and improvement of the market;

(iii) construction and repair of buildings which are necessary for the purposes of the market and for the health, convenience and safety of the persons using it;

(iv) provision and maintenance of standard weights and measures;

(v) pay, leave allowances, gratuities, compassionate allowances and contributions towards leave allowances, compensation for injuries and death resulting from accidents while on duty, medical aid, pension or provident fund of the persons employed by the Committee;

(vi) payment of interest on loans that may be raised for purposes of the market and the provisions of a sinking fund in respect of such loans;

(vii) collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of the agricultural produce concerned;

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(viii) providing comforts and facilities, such as shelter, shade, parking accommodation and water for the persons, draught cattle, vehicles and pack animals coming or being brought to the market or on construction and repair of approach roads, culverts, bridges and other such purposes;

(ix) expenses incurred in the maintenance of the offices and in auditing the accounts of the Committees;

(x) propaganda in favour of agricultural improvements and thrift;

(xi) production and betterment of agricultural produce;

(xii) meeting any legal expenses incurred by the Committee;

(xiii) imparting education in marketing or agriculture;

(xiv) payments of travelling and other allowances to the members and employees of the Committee, as prescribed;

(xv) loans and advances to the employees;

(xvi) expenses of and incidental to elections; and

(xvii) with the previous sanction of the Board, any other purpose which is calculated to promote the general interests of the Committee or the notified market area."

The various purposes mentioned in Section 28 of the Act do not lead to the conclusion that the markets are established only for transactions of agricultural produce in which one of the parties is the producer. These purposes are of all the dealers in the notified market area whether they transact their sales or purchases with the producers of agricultural produce or with others, like consumers. I am of the opinion that the market fee is levied for providing facilities to the licensees working in the notified market area and is equitably levied on the quantum of business done by them. These licensees get the privilege of dealing in all kinds of agricultural produce mentioned in the schedule to the Act on a regulated basis with the result that cut-throat competition is eliminated and reasonable profit is assured to them. They are provided with numerous facilities on a collective basis and the market committee requires funds for maintaining the market in a proper shape and to perform the duties imposed on it by the Act, the rules and the bye-laws. The levy of the market fee has been held to be valid and constitutional by their Lordships of the Supreme Court in Mohammad Hussain Gulam Mohammad v. State of Bombay, AIR 1962 SC 97. In that case Section 11 of the Bombay Agricultural Produce Markets Act, 1939 was under consideration. The said section gives power to the market committee subject to the provisions of the rules and subject to such maxima as may be prescribed, to levy fees on the agricultural produce bought and sold by licensees in the market area. It is to be noted that this section is in identical terms as Section 23 of the Act except that in the Act words "bought or sold" are used while in Section 11 of the Bombay Act, the words "bought and sold" are used. It was contended in that case that the fee provided for by Section 11 was in the nature of sales tax. Repelling this contention, their Lordships observed as under :-

"Now there is no doubt that the market committee which is authorised to levy this fee renders services to the licensees, particularly when the market is established. Under the circumstances it cannot be held that the fee charged for services rendered by the market committee in connection with the enforcement of the various provisions of the Act and the provisions for various facilities in the various markets established by it, is in the nature of sales tax. It is true that the fee is calculated on the amount of produce bought and sold but that in our opinion is only a method of realising fees for the facilities provided by the committee. The attack on Section 11 must, therefore, fail."

3. The validity of the market fee was again considered by their Lordships of the Supreme Court in Lakhan Lal v. State of Bihar, Writ Petns. Nos. 103 and 199 of 1967, D/- 26-3-1968 : (Reported in AIR 1968 SC 1408). The Act under consideration was the Bihar Agricultural Produce Markets Act, 1960 and this is what their Lordships observed :

"The next contention is that the fees levied by the market committee are in the nature of taxes as the committee does not render any services to the users of the market and the levy of fees is therefore, illegal. This contention is not tenable. The market committee has taken steps for the establishment of a market where buyers and sellers meet and sales and purchases of agricultural produce take place at fair prices. Unhealthy market practices are eliminated, market charges are defined and improper ones are prohibited. Correct weighment is ensured by employment of licensed weighmen and by inspection of scales, weights and measures and weighing and measuring instruments. The market committee has appointed a dispute subcommittee for quick settlement of disputes. It has set up a market intelligence unit for collecting and publishing the daily prices and information regarding

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the stock, arrivals and despatches of agricultural produce. It has provided a grading unit where the technique of grading agricultural produce is taught. The contract form for purchase and sale is standardised. The provisions of the Act and the Rules are enforced through inspectors and other staff appointed by the market committee. The fees charged by the market committee are co-related to the expenses incurred by it for rendering these services. The market fee of 25 naye paise per Rs. 100/- worth of agricultural produce and the licence fees prescribed by Rules 71 and 73 are not excessive. The fees collected by the market committee form part of the market committee fund which is set apart and ear-marked for the purposes of the Act. There is sufficient quid pro quo for the levies and they satisfy the test of 'fees' as laid down in Commr. Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005 : (AIR 1954 SC 282)."

4. A Division Bench of this Court (Narula and Sandhawalia, JJ.) in Civil Writ No. 1578 of 1966 (Punj), M/s. Ram Sarup and Brothers v. Punjab State, upheld the validity of the market fee levied under the Act. The learned Judges followed the two Supreme Court judgments, cited above, and observed as follows :-

On the material available before us, it is obvious that the amount of market-fee which can possibly be recovered by a Committee does not in any manner appear to be disproportionate to the services which it is expected to render to the assessees of such fee, by performing the duties referred to in Section 28">. In our opinion no proper foundation has in fact been laid in this case by the petitioner on which it could build the argument sought to be made out on its behalf."

In that case a point was raised to the effect that in computing the amount of fee the sales and purchases effected by the petitioner in other market areas in respect of which the market fee had already been paid and which did not involve any transaction with a producer, should have been excluded by the market committee while fixing the liability of the petitioner but it was not decided by the learned Judges.

5. The learned counsel for the petitioner is not correct when he says that no provision for retail sales has been made in the Act or the Rules. Rule 18 of the Rules grants exemption from taking licenses for the purchase and sale of agricultural produce by hawkers and petty retail shopkeepers who do not engage in any dealing in agricultural produce other than such hawking or retail purchases. For the purposes of this exemption a person whose turnover of sales and purchases of agricultural produce does not exceed twenty thousand rupees during a year is to be treated as a petty retail shopkeeper. It is thus clear that if the turnover of sales and purchases made by the petitioner in the instant case exceed rupees twenty thousand during the year, it has to take out the license and comply with all the provisions of the Act, the rules and the bye-laws. The exemption from taking out licenses for the purchase of agricultural produce granted to the dealers under Clause (f) of Rule 18 (1) and (2) was withdrawn with effect from September, 3, 1964 and since that date the dealers who indulge in transaction relating to the purchase or sale of agricultural produce with persons other than the producers directly, are also required to take out licenses and the moment they become licensees with regard to those transactions also, they become liable to pay the market fee in respect thereof under Section 23 of the Act. I have not been able to find any reason for exempting such like transactions from the levy of market fee as has been contended for by the learned counsel for the petitioner.

6. The learned counsel for the petitioner has also drawn my attention to a judgment of their Lordships of the Supreme Court in Krishna Coconut Co. v. East Godavari Coconut and Tobacco Market Committee, (1967) 1 SCR 974 : (AIR 1967 SC 973) in which the interpretation of the words "bought and sold" used in Section 11(1) of the Madras Commercial Crops Market Act, 1933, was under dispute. Section 11(1) of that Act is in these words :-

"The Market Committee shall, subject to such rules as may be made in this behalf, levy fees on the notified commercial crop or crops bought and sold in the notified area at such rates as it may determine."

The facts were that coconut and copra had been declared as a commercial crop to which the provisions of the said Act applied. The licensed dealers in that notified area purchased the coconut and copra from the producers and petty dealers and sold them to customers outside the notified area and in some cases outside the State. The contention of the dealers was that they had not "bought and sold" coconut and copra in the notified area. Dealing with this submission, their Lordships observed as under :-

"That being the position, the next question is whether the Committee could levy fee under Section 11(1) on the transactions effected by the appellants before

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they sold thosegoods to their customers. Mr. Agarwal's contention was that the fee levied under Section 11(1) could only be ha respect of goods 'bought and sold' and not in respect of transactions where goods were only 'bought' or only 'sold'. According to him it is only when a person bought goods and sold those identical goods within the notified area that the fee under Section 11(1) could be levied. According to him, the transactions effected by the appellants consisted in their purchasing the said goods; they stopped at the stage of goods 'bought'. Therefore, the other ingredient for a valid levy of the fee not being present, the fee levied in the present case was not in accordance with the requirements of Section 11(1) and was unwarranted. This contention raises the question as to the meaning of the words 'bought and sold' in Section 11(1). At first sight they would appear to be susceptible of three meanings; viz. (1) that they mean duality of transactions where the same person buys goods and sells those identical goods in the notified area; (2) that they mean, 'bought' or 'sold' the conjunctive 'and' meaning in the context of the sub-section the disjunctive 'or' and (3) that they apply to a transaction of purchase as the concept of purchase includes a corresponding sale. When a person buys an article from another person, that other person at the same tune sells him that article and it is in that sense that Section 11(1) uses the words 'bought and sold'. The incidence of the fee under Section 11(1) is on the goods thus 'bought and sold'."

The analysis of this judgment shows that their Lordships held that the market fee was leviable on coconut and copra bought from petty dealers as well. To that extent, this judgment goes contrary to the submission of the learned counsel. Since the words used in Section 23 of the Act are "bought or sold" and not "bought and sold", the judgment does not help the learned counsel. Another fact that is clear is that the first transaction with regard to the agricultural produce wherein that produce is "bought or sold" and delivery thereof is given within the notified area, attracts the levy of the market fee. This judgment, therefore, far from helping the petitioner helps the respondents.

7. In view of the provisions of Section 6(3) of the Act, no person, unless exempted by rules made under this Act, can, either for himself or on behalf of another person, or of the State Government, within the notified market area, set up, establish or continue or allow to be continued any place for the purchase, sale, storage and processing of the agricultural produce so notified by the State Government or purchase, sell, store or process such agricultural produce except under a licence granted in accordance with the provisions of the Act, the rules and the by-laws made thereunder and the conditions specified in the licence. The licensee thus obtains the exclusive privilege of transacting business in respect of purchase and sale of agricultural produce in the notified market area and he is expected to pay for this privilege and the facilities that he is provided by the market committee as enjoined by the Act and the rules. It has also to be kept in mind that the responsibility of paying the market fee is of the buyer and if he is not a licensee, then of the seller who is permitted to realise the same from the buyer according to R. 29 (2). Such fees are leviable as soon as an agricultural produce is bought or sold by a licensee. The words "bought or sold" in Section 23 of the Act and in Rule 29 of the Rules significantly point out that the market fee is leviable when a licensee for the first time purchases or sells the agricultural produce. In sub-rule (1) of R. 29 it has been provided that no market fee shall be levied on the same agricultural produce more than once in the same notified market urea. It is thus clear that on the first transaction with regard to the agricultural produce made within the notified market area, the market fee will be leviable. I cannot understand why the petitioner is objecting to the levy of the market fee when it has to be paid by the purchaser of the agricultural produce. The petitioner is admittedly the seller of Gur, Shakkar and Khandsari which have been classified as agricultural produce in the schedule to the Act. It is not his liability to pay the market fee because he can pass it on to the purchaser and can realise it from him along with the price of the produce.

8. In view of the above discussion, I am of the opinion that the petitioner is liable to pay the market fee on the sale of Gur, Shakkar and Khandsari made in the notified area of Sangrur Market Committee, provided the delivery in pursuance of the sale was made within the area of the notified market committee. It is immaterial that the said agricultural produce was imported from other Mandis in Haryana or U. P. and was imported into the notified market area in packed condition and was sold out by the petitioner in the same condition.

9. The second point raised by the learned counsel for the petitioner is that the market fee levied by the market committee is a tax in the garb of fee. There is no merit in this submission in

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view of the judgments of their Lordships of the Supreme Court and the Division Bench of this Court cited above. The learned counsel has not been able to advance any other argument in support of his plea. This submission is, therefore, repelled.

10. The learned counsel then argued that it was not open to the State Government to delete Cl. (f) of Rule 18 (1) and (2) and that the deletion of the clause is arbitrary and outside the purview of the Act. I regret my inability to agree to this submission. In view of my decision above that the market fee can be levied on all transactions of sale or purchase made in the notified market area in which delivery is given, it cannot be held that the deletion of Cl. (f) from Rule 18(1) and (2) was arbitrary or outside the purview of the Act. Formerly the State Government had allowed an exemption to the dealers who did not purchase the agricultural produce from the producers directly or sold the agricultural produce not purchased from the producers directly from the provisions of the Act but later withdrew this exemption, vide Notification No. GSR 206/P.A.23/61/S.43/Amd(8)/64, dated 3rd September, 1964. The State Government could withdraw this exemption by the same power by which it had granted it I, therefore, repel this submission of the learned counsel as well.

11. I, however, find force in the last argument of the learned counsel that the assessment order made by the Administrator of the Market Committee is arbitrary and not in accordance with the Rules. The petitioner-firm had been maintaining that it was not liable to pay the market fee on the transactions of sale of Gur, Shakkar and Khandsari, which they had imported from outside Mandis of Haryana, U. P. etc. and that they were liable to pay market fee only in respect of those transactions in which the agricultural produce had been purchased from the producers directly and that agricultural produce was sold. The petitioner-firm was never informed by the Market Committee that this contention of theirs was not correct. The notice to the petitioner-firm was given on 27th September, 1968 for appearance before the Administrator, Market Committee, on 30th September, 1968 and to produce its books of account for the assessment of market fee from it. It was further stated that in the absence of compliance of the notice, the committee would make the assessment under R. 31 (8) of the Rules. Reply to this notice was sent on 2nd October, 1968 but the Administrator passed his order on 30th September, 1968. He passed his order on the report of the Mandi Supervisor and the Secretary of the market committee under R. 31(8) of the Rules. The report of the Supervisor is dated 30th September, 1968 and is addressed to the Secretary of the Market Committee, Sangrur, in which it is stated that in the Mandi from 1961-62 to 1966-67 the average annual income of the committee was derived from 7858 quintals of Gur and Shakkar but in 1967-68, the fee had been received only with regard to 3380 quintals. Therefore, for the remaining 4450 quintals the petitioner-firm was liable to the market fee. The price of 4450 quintals was assessed at Rs. 10,00,000/-. On similar grounds the import of Khandsari by the petitioner-firm was assessed at 780 quintals of the value of Rs. 2,53,500/. Thus the market fee was assessed on an out-turn of Rs.12,53,500/-. The Secretary endorsed this report of the Mandi Supervisor on the same date and on the basis thereof, the Administrator passed the order of assessment.

12. To say the least, this manner of assessment is most arbitrary. It is true that the committee is entitled to make best assessment judgment but it must be based on some reasonable data and not merely on imagination. It was open to the Administrator, Market Committee, or its Secretary to find out from the records of the Railway, the Transport Companies and the Octori Department of the Municipality as to the quantity of Gur, Shakkar and Khandsari imported by the petitioner-firm into the Mandi. On the basis thereof some assessment by exercising judicial discretion could be made but to presume that the entire balance of Gur, Shakkar and Khandsari which fell short of the annual average was imported and sold by the petitioner-firm alone is wholly unwarranted. There are admittedly some other dealers in the notified market area and it was in the fitness of things to make an inquiry from those dealers also. It is evident that no mind was applied to the problem as the Mandi Supervisor made the report sitting in the office and the Secretary endorsed it without there being any objective data before either of them. The Administrator merely accepted their estimate and passed the impugned order.

13. A Division Bench of the Orissa High Court considered the making of the best judgment assessment in Jami Narasaya Prusty and Bros. v. State of Orissa, (1958) 9 STC 648 : (AIR 1959 Orissa 79). In that case the assessees submitted a return of their sales for three quarters but did not include in the return, of the first quarter the sum of Rs. 125 being the sale amount of five

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watches and the officer for that reason added Rs. 15,000 not only to the return made for the period during which the watches were sold but to the returns of all the three periods. The assessees thereupon filed an application under Article 226 of the Constitution for quashing the assessments. It was held that the assessments for the three periods should be quashed inasmuch as they were based upon mere guess-work and there was no proper basis for making the best judgment assessment. As the error was apparent on the face of the order, it was not necessary for the assessees to go in appeal under the Sales Tax Act before invoking the jurisdiction of the High Court under Art. 226. A Division Bench of the Kerala High Court in Balakrishna and Sons v. Sales Tax Officer, (1961) 12 STC 272 (Ker), held that -

"in making a best judgment assessment, the assessing authority discharges quasi-judicial functions and the order he passes must not be capricious, arbitrary or punitive. The order must also disclose the basis for the best judgment assessment, so that the higher authorities may know the grounds on which the assessment has been based."

14. A learned Single Judge of the Kerala High Court (Vaidialingam, J., now a Judge of the Supreme Court), in Namadeva Shenoy v. Sales Tax Officer, Special Circle, Cannanore, (1963) 14 STC 159 (Ker), observed as under :-

"It is needless to state that when the officer proceeds to make a best judgment assessment, there is a duty on his part to make available to the petitioner every point or aspect that he proposes to take into account in making the best judgment assessment, and give the assessee opportunity to place all the objections that may be available to him both under law and on facts, regarding the proposal. After completing all these formalities, it is open to the assessing authority to make the final assessment." In that case the pre-assessment notice issued to the assessee stated that the books of account produced by the assessee had been rejected on account of certain defects and that the officer was estimating the turnover to the best of his judgment, but it did not, as such, indicate the basis the officer had proposed to adopt for making the best judgment assessment. It was held that it could not be said that the assessee had been given a fair and full opportunity to place all his points of view regarding the return that he had filed and, therefore, the order making the test judgment assessment must be set aside.

15. A learned Single Judge of the Calcutta High Court in Jhagru Shaw v. Commr. of Commercial Taxes, (1966) 17 STC 130 (Cal), held as under :-

"It is now a well-known proposition of law that if a Revenue Officer is to make an assessment to the best of his judgment, against an assessee who is in default as regards supplying information, he must not act dishonestly, or vindictively or capriciously, because he must exercise his judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment and for this purpose he may take into consideration local knowledge and repute in regard to the assessee's circumstances and his own knowledge of the previous returns by and the assessments of, the assessee and all other matters which he thinks would assist him in arriving at a fair and proper estimate. Though there must be necessarily some guess work in the matter, it must be honest guess work."

16. In M. Appukutty v. Sales Tax Officer, Kozhikode, (1966) 17 STC 380 : (AIR 1966 Ker 55), a Single Judge of the Kerala High Court (P. Govindan Nair J.) held as under :-

"Principles of natural justice demand that there should be a fair determination of a question by quasi-judicial authorities. Arbitrariness will certainly not ensure fairness. If giving a mere opportunity to show cause and to explain would satisfy the principles of natural justice, the notice to show cause becomes an empty formality signifying nothing, for, after issuing the notice to show cause, the authority can decide according to his whim and fancy. The judicial process does not end by making known to a person the proposal against him and giving him a chance to explain. It extends further to a judicial consideration of his representations and the materials and a fair determination of the question involved.

If the quasi-judicial authority disregards the materials available or if it refuses to apply its mind to the question and if it reaches a conclusion which bears no relation to the facts before it, to allow those decisions to stand would be violative of the principles of natural justice. Arbitrary decisions can also, therefore, result in violation of the principles of natural justice which is a fundamental concept of Indian jurisprudence. In certain cases, where an authority refuses to apply its mind to the question and makes a decision as it likes, it may amount to even a mala fide decision.

The existence of an alternative remedy is not an absolute bar to the issue of a writ of certiorari when there

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has been violation of the principles of natural justice and infringement of fundamental rights. The remedy available by way of appeal to the Appellate Authority and then by way of second appeal to the Tribunal and then by a revision to the High Court is not adequate where an assessee is compelled in the meantime to pay the tax imposed on him by an arbitrary assessment which has been solely guided by the whim and fancy of the assessing authority.

When sales tax is imposed illegally in an arbitrary and capricious manner there is an infringement of the fundamental right of an assessee to carry on his trade or business. Although quasi-judicial authorities have jurisdiction to decide rightly as well as wrongly, no judicial or quasi-judicial authority has the right to decide in an arbitrary manner and if it so decides, the High Court should safeguard the interest of the victim of such decision by interfering under Art. 226 of the Constitution. Further, in such cases, Art. 265 of the Constitution is also violated, inasmuch as there is no collection of tax by the authority of law when assessments are made in an arbitrary fashion."

17. Their Lordships of the Supreme Court in the State of Kerala v. C. Velukutty, (1966) 17 STC 465 (SC), observed as under :-

"Under Section 12(2) (b) of the Act, power is conferred on the assessing authority in the circumstances mentioned thereunder to assess the dealer to the best of his judgment. The limits of the power are implicit in the expression 'best of his judgment'. Judgment is a faculty to decide matters with wisdom truly and legally. Judgment does not depend upon the arbitrary caprice of a judge, but on settled and invariable principles of justice. Though there is an element of guess-work in a 'best judgment assessment', it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case. Though sub-section (2) of Section 12 of the Act provides for a summary method because of the default of the assessee, it does not enable the assessing authority to function capriciously without regard for the available material.

Can it be said that in the instant case the impugned assessment satisfied the said tests? From the discovery of secret accounts in the head office, it does not necessarily follow that corresponding set of secret accounts were maintained in the branch office, though it is probable that such accounts were maintained. But, as the accounts were secret, it is also not improbable that the branch office might not have kept parallel accounts, as duplication of false accounts would facilitate discovery of fraud and it would have been thought advisable to maintain only one set of false accounts in the head office. Be that as it may, the maintenance of secret accounts in the branch office cannot be assumed in the circumstances of the case. That apart, the maintenance of secret accounts in the branch office might lead to an inference that the accounts disclosed did not comprehend all the transactions of the branch office. But that does not establish or even probabilise the finding that 135 per cent or 200 per cent or 500 per cent of the disclosed turnover was suppressed. That could have been ascertained from other materials. The branch office had dealings with other customers. Their names were disclosed in the accounts. The accounts of those customers or their statements could have afforded a basis for the best judgment assessment. There must also have been other surrounding circumstances, such as those mentioned in the Privy Council's decision cited supra. But in this case there was no material before the assessing authority relevant to the assessment and the impugned assessments were arbitrarily made by applying a ratio between disclosed and concealed turnover in one shop to another shop of the assessee. It was only a capricious surmise unsupported by any relevant material. The High Court, therefore, rightly set aside the orders of the Tribunal."

18. In Polisetti Subbaraidu and Co. v. Commissioner of Income-tax, A. P., (1968) 69 ITR 738 (Andh Pra) a Division Bench of the Andhra Pradesh High Court held that "as the estimate was made by the department without disclosing to the assessee the details of material relied upon and the details of comparable cases, it was arbitrary and capricious"

19. In view of these judgments, I am of the opinion that the order of assessment passed by the Administrator, Market Committee, Sangrur, on 30th September, 1968 was arbitrary and not in accordance with the Rules and the principles of natural justice. After the petitioner-firm had failed to produce the account books, it was the duty of the Administrator or the Secretary to make honest enquiries from other sources as indicated above and then to estimate the quantity of Gur, Shakkar and Khandsari sold by the petitioner-firm on which it was liable to pay the market fee. After collecting the information, the assessing authority should communicate that information to the petitioner-firm and give it an opportunity to show that the material collected was faulty and could not be made the basis of the assessment.

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It is true that an element of guess-work enters the estimate of best judgment but it must be an honest estimate as has been emphasised by the learned Judges in the cases cited above. I have, therefore, no option but to set aside the order of assessment and the notice of demand issued in pursuance thereof, Annexures 'L' and 'K', respectively, to the writ petition.

20. The learned counsel for respondents 2 and 3 raised a preliminary objection to the maintainability of the writ petition which is based on sub-rule (13) of Rule 31 of the Rules. This sub-rule provides for an appeal against the assessment order made under sub-rules (8) and (9) to the Chairman of the Board but no such appeal is to be entertained unless the applicant deposits the amount of fee assessed as due from him in full with the Committee concerned. In the first place, the provision of an alternative remedy is not an absolute bar to the maintainability of a writ petition under Art. 226 of the Constitution. In the second place, the provision of appeal has been made in the Rules and not in the Act but it is fettered with a condition that the amount of fee assessed has to be paid before the appeal can be heard. There is no provision in the Act enabling the State Government to impose such a fetter on the right of appeal. In M/s. J. N. Sharma and Sons v. Assessing Authority, 1967 Cur LJ 512 (Punj and Haryana) Rule 61-A of the Punjab General Sales Tax Rules was held to to be ultra vires sub-section (3A) of Section 21 of the Punjab General Sales Tax Act on the ground that the restriction imposed by the rule was far greater than the permitted restriction referred to in Section 21 (3A) of the Act. The fetter imposed by that rule was that the revising authority shall not hear the revision unless the petitioner had deposited the assessed sales-tax.

21. A Division Bench of this Court in Daya Krishan v. Assessing Authority cum Excise and Taxation Officer (Enforcement), (1966) 68 Pun LR 673, held as under :-

"Rules 61-A and 62 of the Punjab General Sales Tax Rules are not an aid to the revisional jurisdiction of the Excise and Taxation Commissioner, but cut at the roots of that jurisdiction conferred by the Legislature. These Rules substantially nullify the revisional powers conferred by Section 21 of the Punjab General Sales Tax Act, and are inconsistent therewith. The requirement of payment of disputed demand as a condition precedent for being heard against the creation of that demand is not inherent in the jurisdiction to hear either an appeal or a revision. Such a hurdle can be created only by the competent Legislature and not by framing a rule which is inconsistent with the section conferring the powers of appeal or revision. The impugned rules substantially take away the right conferred by Section 21 of the Act except in certain rare cases where the Commissioner may find that it is impossible for the aggrieved party to deposit the amount in question. Both the Rules are repugnant to Section 21 of the Act and are of no effect."

I, therefore, hold that the provision of appeal in R. 31(13) of the Rules is not an adequate or suitable alternative remedy as it requires the petitioner to deposit the assessed fee before his appeal can be heard. The writ petition is, therefore, competent.

22. For the reasons given above, the writ petition is accepted and the assessment order dated 30th September, 1968, Annexure 'L' to the writ petition and the notice of demand dated 3rd October, 1968. Annexure 'K' to the writ petition, are hereby quashed. The respondents will be at liberty to make fresh assessment in accordance with law and keeping in view the observations made above. In the circumstances of the case, I make no order as to costs.

Petition allowed.

**AIR 1968 PUNJAB AND HARYANA 127 (Vol. 55, C. 34) "Sahela Ram v. State"**

**PUNJAB & HARYANA HIGH COURT**

FULL BENCH

Coram : 3 MEHAR SINGH, C.J., A. N. GROVER AND HARBANS SINGH, JJ. ( Full Bench )

Sahela Ram Son of Ch. Dhan Singh, Petitioner v. State of Punjab through Secy, to Government Punjab Agrl. Dept. Chandigarh, and another, Respondents.

Civil Writ No. 2189 of 1963, D/- 26 -5 -1967. decided by Full Bench on order of reference made by Dulat and Harbans Singh, JJ., D/- 30 -5 -1966.

(A) Constitution of India, Art.226 - WRITS - AGRICULTURAL PRODUCE - HIGH COURT - CHARGE - MISCONDUCT - Proceeding u/S.15 Punjab Agricultural Produce Markets Act against member of Market committee for his removal on charge of misconduct as such member - Charge including also matters not relating to misconduct as such member - Order of removal - Legality - Interference by High Court.

AIR 1963 Punj 336, Overruled; AIR 1958 All 575 and AIR 1961 Cal 1 (SB), held no longer good law in view of AIR 1963 SC 779.

Punjab Agricultural Produce Markets Act (23 of 1961), S.15.

Per Full Bench : As the proceedings under Section 15 of Act 23 of 1961 for removal of a member of a Market Committee and the consequent order of his removal are quasi judicial in nature the order of the State Government does not become illegal because of inclusion of matters which do not relate to the conduct of the member as a member of the Market Committee when there are matters included in it which relates to the conduct of the member as such member and upon which the action taken or order made by the State Government can be sustained. In other words, ignoring the irrelevant grounds, if on the grounds remaining the action could have been taken by the State Government, then its action cannot be interfered with by the High Court under Art. 226. AIR 1963 SC 779, Foil. AIR 1963 Punj 336, Overruled AIR 1958 All 575 and AIR 1961 Cal 1 (SB), held no longer good law in view of AIR 1963 SC 779 and (1950) 1 KB 636 and 1948-1 KB 223 and 1925 AC 578 and AIR 1943 FC 1 and AIR 1953 SC 318 and AIR 1954 SC 179 and AIR 1957 SC 164. Dist. AIR 1955 SC 271 Explained. (Para 9)

(B) Constitution of India, Art.226 - WRITS - AGRICULTURAL PRODUCE - WORDS AND PHRASES - Order whether administrative or quasi judicial - Test to determine - Punjab Agricultural Produce Markets Act (23 of 1961), S.15, S.3(5) and S.12(6) - Nature of proceedings u/S.15 for removal of member of Market Committee - Order u/S.15 is quasi judicial and not administrative - (Words and Phrases - In its opinion).

Per Full Bench : The test that finally determines the nature of the order is whether the authority making the order has or has not duty to act judicially. If it has the duty to act Judicially, the order is judicial or quasi judicial, but if it has not such a duty and may proceed on consideration of expediency or policy, the order is not a quasi judicial order but an administrative order. Duty to act judicially may be inferred from the provisions of a particular statute under consideration, which would provide for the nature of the proceedings, the opportunity of hearing the party adversely affected or aggrieved, and the nature of consequences flowing from the order or decision of the authority concerned. (Para 5)

If a person is charged with misconduct and/or neglect of duty and he is given charges clearly stated, allowed access to the material or evidence on which the charges are based, and then given an opportunity in his defence to explain away the charges having regard to the material on which the same are based, this fulfils the basic requirements of an enquiry. (Para 6)

Ordinarily the use of the words "in its opinion" in conferring power on an administrative authority would mean that the conclusion reached by the authority is subjective if the statute or the law in question does not provide indications to the contrary, but in the case of Section 15 of Act 23 of 1961 there are clear indications to the contrary, for the whole process of the removal of a member of Market Committee is based on an enquir and proceedings fulfilling all the basic requirements of an enquiry. It follows that the nature of the proceedings under Section 15 of the Act are quasi judicial, and although the section refers to the words 'in its opinion' having regard to the nature of the proceedings and the consequences flowing from the order of removal, such an order of removal has to be held to be quasi judicial. AIR 1962 SC 1110 and 1965 Pun LR 914, Rel. on; AIR 1963 Punj 280 (FB), Explained. 1964-66 Pun LR 226 and 1964-66 Pun LR 828. Discussed. (Para 6)

(C) Constitution of India, Art.226 - WRITS - AGRICULTURAL PRODUCE - MISCONDUCT - Quasi judicial order-Reasons must be given for decision arrived at - Order of removal of member of Market Committee for gross misconduct and neglect of duty without giving any reasons - Order quashed.

Punjab Agricultural Produce Markets Act (23 of 1961), S.15.

Per P. f. Pandit and A.N. Grover JJ. in final order; Section 15 of the Punjab Act (23 of 1961) in terms does not say that the order removing a person from membership should contain the reasons for doing so. All that it lays down is that the State Government should be satisfied that he had been guilty of misconduct or neglect of duty.(Para 16)

But all quasi judicial orders must give reasons for the decision arrived at in the said orders. If the order of removal of a member of a Market Committee under S. 15 of the Punjab Art does not give any reasons for coming to the conclusion that the petitioner was guilty of gross misconduct and neglect

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of duty, the order has to be set aside under Art 226. AIR 1967 SC 1606 and AIR 1966 SC 671, Foll. (Para 17)

Cases Referred : Chronological Paras

(1967) AIR 1967 SC 1606 V 54 : Civil Appeal Nos. 2596 and 2597 of 1966, D/-29-03-1967, Bhagat Raja v. Union of India 14, 17

(1966) AIR 1966 SC 81 V 53 : 1965 3 SCR 536, Dwarka Nath v. Income-tax Officer, Special Circle D. Ward, Kanpur 5

(1966) AIR 1966 SC 671 V 53 : 1966-1 SCR 466, Madhya Pradesh Industries Ltd. v. Union of India 17

(1966) AIR 1966 Punj 139 V 53 : 1965-67 Pun LR 914, Hukam Singh v. Ram Narain Singh 6

(1964) 1964-66 Pun LR 226, Norata Ram v. State of Punjab 7

(1964) 1964-66 Pun LR 381 : ILR (1964) 1 Punj 878, Satya Dev v. State of Punjab 7, 8

(1964) 1964-66 Pun LR 828 : 1964 Cur LJ 388, State of Punjab v. Sugna Rani 7

(1963) AIR 1963 SC 779 V 50 : 1963 Supp 1 SCR 648, State of Orissa v. Bidyabhushan Mohapatra 2, 3, 4, 6, 9

(1963) AIR 1963 Punj 280 V 50 : 1963-65 Pun LR 267 (FB), Jogindar Singh v. State of Punjab 7

(1963) AIR 1963 Punj336 V 50 : 1963-65 Pun LR 571, Railway Board, New Delhi v. Niranjan Singh 2, 3

(1962) AIR 1962 SC 1110 V 49 : ILR (1962) 2 All 661, Board of High School and Intermediate Education, U.P. Allahabad v, Ghanshyam Das Gupta 7, 8

(1962) AIR 1962 Punj 32 V 49 : 1961-63 Pun LR 593, Krishan Khanna v. State of Punjab 3

(1961) AIR 1961 Cal 1 V 48 : 65 Cal WN 361 (SB), Nripendra Nath Bagchi v. Chief Secy. Govt. of West Bengal 3

(1959) AIR 1959 SC 694 V 46 : 1959 Supp (2) SCR 227, Raman and Raman Ltd. v. State of Madras 3

(1958) AIR 1958 All 575 V 45 : 1958 Cri LJ 984, Rameshwar Dayal Gupta v. Regional Transport Authority, Meerut 3

(1957) AIR 1957 SC 164 V 44 : 1957 Cri LJ 316, Dwarka Das Bhatia v. State of Jammu and Kashmir 3, 4

(1955) AIR 1955 SC 271 V 42 : 1954 26 ILR 736, Dhirajlal Girdharilal v. Commr. of Income-tax Bombay 3

(1954) AIR 1954 SC 179 V 41 : 1954 Cri LJ 456, Shibban Lal Saksena v. State of U.P. 3

(1953) AIR 1953 SC 318 V 40 : 1953 Cri LJ 1241, Dr. Ram Krishan Bhardwaj v. State of Delhi 3

(1950) 1950-1 KB 636 : 1950-1 All ER 76, Pilling v. Abergela Urban District Council 3

(1948) 1948-1 KB 223 : 1947-2 All ER 680, Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation 3

(1943) AIR 1943 FC 1 V 30 : 44 Cri LJ 558, Keshav Talpade v. Emperor 3

(1925) 1925 AC 578-94 LJKB 542, Roberts v. Hopwood 3

Anand Swaroop with R.S. Mittal, for Petitioner; P.S. Jain for Advocate General with N.C. Jain, for Respondents.

Judgement

MEHAR SINGH, C. J. : This is the question for consideration of the Full Bench in relation to Section 15 of the Punjab Agricultural Produce Markets Act, 1961 (Punjab Act 23 of 1961), hereinafter to be referred as the Act,-

"If the State Government, acting under Section 15 of the Punjab Agricultural Produce Markets Act, 1961, mentions among the reasons for the proposed removal of a member of the Market Committee, certain grounds which do not relate to the conduct of the member concerned as a member, but at the same time mentions several grounds which relate to his conduct as a member of the Market Committee and an order for the member's removal is made under Section 15 of the Act on the view that the explanation obtained from the member is unsatisfactory, does the order of the State Government become illegal because of the inclusion of matters which do not relate to the conduct of the member as a member of the Market Committee ?"

The question arises in a petition under Article 226 of the Constitution by Sahela Ram petitioner, who was Administrator of the Hissar Market Committee between February 14, 1959, and April 12, 1961. On April 15, 1961, a new Market Committee for the Hissar Market area was constituted under the provisions of the previous Agricultural Produce Markets Act, 1939, and the same has been deemed to have been constituted under the Act by reason of Section 47. Section 15 of the Act is in these words :

"15 The State Government may by notification remove any member if, in its opinion, he has been guilty of misconduct or neglect of duty or has lost the qualification on the strength of which he was appointed :

Provided that before the State Government notify the removal of a member under this section, the reasons for his proposed removal shall be communicated, to the member concerned and he shall be given an opportunity of tendering an explanation in writing."

On June 4, 1963, the petitioner was served, through a registered letter, with three heads ; of charges alleging gross misconduct and neglect of duty in him in the performance of his duties as a member and chairman of the, Hissar Market Committee. In the statement of allegations the first head concerns the drawal of excess T. A., under the second head, which relates to misuse of powers,

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there are four sub-heads out of which three sub-heads concern the conduct of the petitioner after his becoming the chairman of the Hissar Market Committee on its constitution on April 15, 1961, but one head concerns his conduct as an Administrator and hence his conduct before April 15, 1961, although it has been said that that head partly also covers the period after April 15, 1961, and the third head relating to misuse of market committee funds, but of three subheads, two definitely concern his conduct as Administrator of the Hissar Market Committee before April 15, 1961, and the third to his conduct as chairman of Hissar Market Committee after that date. The petitioner was given opportunity to render explanation of the charges against him in the wake of the proviso to Section 15 of the Act and in paragraph 2 of the letter addressed to him, with the statement of allegations, it was stated that,

"if for the purposes of giving your explanation, you wish to inspect any official record in the office of the Market Committee. Hissar, and/or in the office of the State Agricultural Marketing Board, Patiala, you may do so at your own expense and after fixing up an appointment with the concerned officials."

It is obvious that the charges in the statement of allegations were based on the material before the proper authority communicating to the petitioner the reasons for his proposed removal from membership of the Market Committee on the grounds of his guilt of misconduct and neglect of duty as detailed in the statement of allegations. It has not been the case of the petitioner that here was no material or evidence in support of the charges in the statement of allegations.

2. After consideration of the explanation rendered by the petitioner, the Governor of Punjab by his order of November 4, 1963, removed the petitioner from membership of the Hissar Market Committee under Section 15 of the Act on being satisfied that the petitioner had been guilty of gross misconduct and neglect of duty within the scope of that Section. It is this order of removal that has been challenged by the petitioner in the petition, under Article 226 When the petition came for hearing before Dulat and Harbans Singh, JJ. it was urged by the learned counsel for the petitioner that the Governor had taken into consideration at least three of the eight charges against the petitions which did not concern him as member and chairman of the Hissar Market Committee since April 15, 1961, and it was not Hear from the order of removal whether the Governor was satisfied as to the guilt of the petitioner of misconduct and neglect of duty on the basis of such of the remaining five charges which relate to a period after April 15, 1961, when the petitioner became member and chairman of the Hissar Market Committee. It was pressed that it is not possible to reach a conclusion whether the order of removal is based on the three irrelevant charges or the five relevant charges or on all or each one of those charges. So the learned counsel contended that the order could not be sustained. The learned Judges considered two cases, State of Orissa v. Bidyabhushan Mohapatra, AIR 1963 SC 779, and Railway Board, New Delhi v. Niranjan Singh, 1963-65 Pun LR 571 : (AIR 1963 Punj 336) and finding certain inconsistency they have referred the question as above to a larger Bench.

3. The learned counsel for the petitioner contends in the words of S. A. de Smith in Judicial Review of Administrative Action, 1959 Edition page 203 that

"If the exercise of a discretionary power has been influenced by considerations that cannot lawfully be taken into account, or by the disregard of relevant considerations, a court will hold that the power has not been validly exercised, unless the jurisdiction of the ''Courts to interfere has been excluded."

and the statement by the learned author follows observations in three English cases. The first case is Roberts v. Hopwood, 1925 AC 578, in which a metropolitan borough council, having discretion to allow wages to its servants, had paid the same without regard to the fall in the cost of living index, and the district auditor, pursuant to his statutory duty, had surcharged the excess payment upon the councillors, and it was held by the House of Lords that the fixing of the wages was arbitrary without regard to existing labour conditions and was not a proper exercise of its discretion in that behalf by the borough council It was on such facts that Lord Atkinson observed at page 600 that "the council have evidently been betrayed into the course they have followed by taking into consideration the several matters mentioned in Mr. Scurr's affidavit, which they ought not properly to have taken into their consideration at all, and consequently did not properly exercise the discretion placed in them, but acted contrary to law.

The second case is Associated Provincial Picture Houses, Ltd. v. Wednesbury Corporation. (19481 1 K. B. 223 which was a case of a licence granted to a cinema by the authority concerned to' open the licensed place and use the same on Sundays, but subject to the condition that children under 15 years of age were not to be admitted to the performances. The authority could impose conditions on the licence as it thought fit. It was held that the authority had not acted unreasonably or ultra vires in imposing the condition. At page 233 Lord Greene M. R observes, in regard to the particular type of case that,

"the court as entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take

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into account, or conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may be still possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in him."

The third case is Pilling v. Abergela Urban District Council, (1950) 1 K.B. 636, which was a case of a local authority having 'refused licence for the use of land to the occupiers as sites for movable dwellings on the ground that that was detrimental to the amenities of the district, but the statute applicable only gave power to take into consideration matters relating to health and sanitation when exercising discretion in the matter of grant of licence, and it was on that that it was held that

"the discretion which the Section gives to the local authority is to consider such an application for the grant of licence from the point of view of public health and the sanitary conditions at the site, and that they are not entitled under this Section to take into account the question of local amenities."

All these cases are apparently cases of administrative action or administrative orders made by the authorities concerned. The learned counsel for the petitioner has then referred to Keshav Talpade v. Emperor, AIR 1943 FC 1. Dr. Ram Krishan Bhardwaj v. State of Delhi, AIR 1953 SC 318, Shibban Lal Saksena v. State of U.P. AIR 1954 S.C. 179, and Dwarka Das Bhatia v. State of Jammu and Kashmir, AIR 1957 S.C. 164, all cases under the Preventive Detention Law, in which irrelevancy or vagueness of some of the grounds was held to invalidate the order of detention, and the principle underlying has been stated thus at page 168 of the last-mentioned case.

"The principle underlying all these decisions is this. Where power is vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to specified matters, if that satisfaction is stated to be based on a number of grounds or for a variety of reasons, all taken together, and if some out of them are found to be non-existent or irrelevant the very exercise of that power is bad. That is so because the matter being one for subjective satisfaction, it must be properly based on all the reasons on which it purports to be based. If some out of them are found to be non-existent or irrelevant, the Court cannot predicate what the subjective satisfaction of the said authority would have been on the exclusion of those grounds or reasons. To uphold the validity of such an order in spite of the invalidity of some of the reasons or grounds would be to substitute the objective standards of the Courts for the subjective satisfaction of the statutory authority. In applying these principles, however, the Court must be satisfied that the vague or irrelevant grounds are such as, if excluded, might reasonably have affected the subjective satisfaction of the appropriate authority. It is not merely because some ground or reason of a comparatively unessential nature is defective that such an order based on subjective satisfaction can be held to be invalid."

Here again the question of preventive detention is a matter purely for the subjective satisfaction of the authority concerned and obviously the order of an administrative nature. A similar case, though under the Punjab Coal Control Order of 1955, is Krishan Khanna v. State of Punjab, 1961-63 Pun LR 593 : (AIR 1962 Punj 32), in which the order considered was administrative. The principle on which the Supreme Court cases under the Preventive Detention Law proceed was extended by my Lord, the Chief Justice, Tek Chand, J. concurring, in 1963-65 Pun LR 571 : (AIR 1963 Punj 336), to a case of disciplinary action against a delinquent Government servant consequent upon a departmental enquiry when it was found that one of the charges on which disciplinary action was based could not be sustained and Nripendra Nath Bagchi v. Chief Secy. Govt. of West Bengal, AIR 1961 Cal. 1 (SB), is a case in the same direction. However, that can no longer be said to be good law in view of the decision of their Lordships in AIR 1963 S.C. 779, in which there were two charges proved against the delinquent Government servant, but the Orissa High Court, found that out of five heads under one charge, two could not be sustained, the Inquiry Tribunal having already found one other of those five heads as not established, and it proceeded to quash the order made against the Government servant with a direction that the matter of disciplinary action be reconsidered in the a light of its own conclusions. On appeal their Lordships reversed the order of the High Court and observed that

"the constitutional guarantee afforded to a public servant is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed, and that he shall not be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The reasonable opportunity contemplated has manifestly to be in accordance

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with the rules framed under Article 309 of the Constitution. But the Court in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, are not justiciable; nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were unassailable, the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public servant if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the enquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice. The High Court was in our judgement, in error in directing the Governor of Orissa to reconsider the question."

The learned counsel for the petitioner argues that this case is distinguishable from the present case because (a) it involves the doctrine of pleasure concerning Government Servants and the only protection available to a Government servant is the one provided by the Constitution, (b) that in fact in that case both the charges had been established but only two heads out of five of one charge could not be sustained, and so the case is not one in which the punishment or the penalty was imposed on charges which could not be sustained, and (c) that c the above two matters were not a matter o of argument in the Supreme Court. None of these considerations has any substance for c the observation of their Lordships cited s above is clear and distinct and is not affected by any such considerations. The learned counsel for the petitioner has also refered to Rameshwar Dayal Gupta v. Regional Transport Authority, Meerut. AIR 1958 All 575, which was a case of suspension of a motor 15 vehicle permit under Section 60 of the Motor Vehicles Act, 1939, and the suspension had been made on two grounds, one which was not found sustainable by the learned Judges, and they proceeded to quash the order of the Regional Transport Authority, but that case cannot now be held to have been correctly decided in view of the decision in Bidyabhushan Mohapatra's case, AIR 1963 SC 779 because in Raman and Raman Ltd. v. State of Madras AIR 1959 S.C. 694 at p. 698, their Lordships have held that the procedure in regard to the suspension or cancellation of a permit under Section 60 of the Motor Vehicles Act, 1939, is clearly quasi-judicial in nature. The learned counsel for the petitioner then refers to this observation of their Lordships in Dhirajlal Girdhari Lal v. Commissioner of Income-tax, Bombay AIR 1955 S.C. 271. -

"It is well established that when a court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises".

but this observation of their Lordships is on the question whether there should or should not be interference on a finding of fact when interference can only be on a question of law, and all that their Lordships observe is that in the circumstances stated a question of law would arise, and so this case does not advance the argument by the learned counsel.

4. It is then clear that when administrative action is to be taken by an administrative authority, or an order is made by an administrative authority on its subjective satisfaction in the wake of expediency or policy, the action taken or the order made is administrative, and it is to such a case only that what has been observed by their Lordships at page 186 of the report of Dwarka Das Bhatia's case, AIR 1957 SC 164 applies, but not where the conclusion reached by an administrative authority is of a judicial or quasi-judicial nature as appears from Bidyabhushan Mohapatra's case, AIR 1963 SC 779. In the latter case it has been held that where a conclusion is reached on a finding on a number of charges, if some cannot be sustained, but action under the law can be taken on all or any of those charges which are not open to challenge, the High Court in exercise of its jurisdiction under Article 226 of the Constitution cannot interfere The learned counsel for the petitioner, however, urges that for the matter of his argument it makes no difference whether the order made or action taken is administrative or quasi-judicial. but this obviously is not correct in view of the dicta of their Lordships in the cases cited above.

The question posed then is what is the nature of the order made by the State Government or the Governor under Section 15 of the Act; is it an administrative order or a quasi-judicial order, for it is the answer

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to this question that to my mind would settle whether there is substance or not in the only argument urged by the learned counsel for the petitioner on the question referred to this Bench.

5. The matter when is an order an administrative order and when judicial or quasi-judicial, has come for consideration of their Lordships of the Supreme Court in a number of cases, the latest reported case being Dwarka Nath v. Income-tax Officer, Special Circle, D. Ward, Kanpur, AIR 1966 S.C. 81. It is, however, not necessary to 3.0 into the details of the discussion on the matter for in the last analysis the test that finally determines the nature of the order is wither the authority making the order has or has not duty to act judicially. If it has the duty to act, judicially, the order is judicial or quasi-.judicial, but if it has not such a duty and may proceed on consideration of expediency or policy, the order is not a quasi-judicial order but an administrative order. Another way of saying the same thing is that where the imperative requirement of the law is that the authority deciding a matter must act fairly, in which inheres objective consideration based on definite and defined material, its decision or order is quasi-judicial, but if it may act fairly or is expected to act fairly, and it is not obligatory to do so under the law. its order or action based on expediency or policy is administrative in nature. It is very rare that a statute in so many words provides that a particular authority is to act judicially in deciding a particular matter. It is evidence from the dictum of their Lordships in Dwarka Nath's case, AIR 1966 SC 81 that duty to act judicially may be inferred from the provisions of a particular statute under consideration, which would provide for the nature of the proceedings. the opportunity of hearing the party adversely affected or aggrieved, and the nature of consequences flowing from the order or decision of the authority concerned. It is in this approach that It has to be seen what is the nature of the impugned order in this case.

6. The terms of Section 15 of the Act have already been reproduced above. It is inherent in the Section that when there is material before the State Government it comes to a tenative conclusion subject to the explanation of the member concerned, on charges of misconduct or neglect of duty, for this Court will immediately quash the order if there is no material or evidence whatsoever to support such a conclusion. So the Government proceeds on material showing that the member concerned has been guilty of misconduct and/or neglect of duty. After having formed a tentative opinion, it gives the reasons for the proposed action to remove him as a member of the Market Committee under the Section so as to enable him to explain the charges against him. After he has rendered such explanation, the State Government takes into consideration the material before it, the nature of the charges, the explanation rendered by the member concerned, and it is then that it forms an opinion whether he is or is not guilty of misconduct and/or neglect of duty. It appears from this case that the present petitioner was also given an opportunity of access to the material on which the charges were based. So it comes to this (a) that charges are settled on the basis of definite material made available to the member concerned, (b) that he is given an opportunity to render an explanation on his side of the charges against him and, to help him in his defence, he can have recourse to the material forming basis of the charges, and (c) that it is on consideration of such material, the nature of charges, and the explanation rendered by the member concerned that the State Government forms an opinion on the question whether or not he has been guilty of misconduct and/or neglect of duty. This meets practically all the substantial requirements of an enquiry. It is true that the nature of the enquiry is not as in the case of a trial, but that is never necessary unless it is so provided. If a person is charged with misconduct and/or neglect of duty and he is given charges clearly stated, allowed access to the material or evidence on which the charges are based, and then given an opportunity in his defence to explain away the charges having regard to the material on which the same are based, this fulfils the basic requirements of an enquiry. When an opinion is formed in regard to the guilt or otherwise of the member concerned in the terms of the Section, in those circumstances, it appears to me clear that the opinion of the State Government as to such a conclusion is reached objectively and consequently the order made under the Section in the wake of such an opinion is a quasi-judicial order. Some emphasis has been laid by the learned counsel for the petitioner that the main body of the Section uses the words 'in its opinion', and the learned counsel presses that whenever such words are used in conferring powers on an administrative authority, the conclusion reached by such an authority is reached by it on its subjective satisfaction or consideration and not objectively. Ordinarily this would be so if the statute or the law in question does not provide indications to the contrary, but in the case of Section 15, as already shown, there are clear indications to the contrary, for the whole process of the removal of a member of Market Committed is based on an enquiry and proceedings fulfilling all the basic requirements of an enquiry. Mere use of those words alone will not turn those proceedings as administrative and the conclusion as a subjective determination reached in the wake of expediency or policy. The consequence of removal of member under Section 15 of the Act supports

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this conclusion. In Section 3(5) of the Act it is stated that

"No person shall be eligible to become a member of the Board who. . . (c) has been removed under . . . Section 15 of the Act", and according to Sub-Section (6) of Section 12 of the Act, "subject to rules made under this Act, the disqualifications specified in Sub-Section (5) of Section 3 shall also apply for purposes of becoming a member of a Committee," So an order of removal under S. 15 leads to disqualification to become a member of a committee in future. A Division Bench of this Court, consisting of Dulat and Mahajan JJ. in Hukam Singh v. Ram Narain Singh, 1965-67 Pun LR 914 : (AIR 1966 Punj. 139), has also held so. Taking all these matters into consideration. I am of the opinion that the nature of the proceedings under Section 15 of the Act are quasi-judicial, and, although the Section refers to the words 'in its opinion' but in spite of that, having regard to the nature of the proceedings and the consequences flowing from the order of removal, such an order of removal has to be held to be quasi-judicial and hence, in my opinion, within the dicta of their Lordships in Bidyabhushan Mohapatra's case, AIR 1963 SC 779.

7. There is no direct case of this Court on this aspect of the matter under S. 15 of the Act but Section 16(1)(e) of the Punjab Municipal Act, 1911 (Punjab Act 3 of 1911), provides that

"The State Government may, by notification remove any member of committee if in the opinion of the State Government he has flagrantly abused his position as a member of the committee or has through negligence or misconduct been responsible for the loss, or misapplication of any money or property of the committee."

There is a proviso to this which reads- "Provided that before the State Government notified that removal of a member under this Section, the reason? for his proposed removal shall be communicated to the member concerned, and he shall be given an opportunity of tendering an explanation in writing."

There is then Sub-Section (2) of this very Section according to which if a person is removed under this Section then he 'shall be disqualified for election for a period not exceeding five years.' This provision is somewhat analogous to S. 15 of the Act, with, if not exactly similar, analogous conse-quence. This Section has come for consideration of a Full Bench of this Court consisting of Dulat. Tek Chand and Mahajan, JJ. in Jogindar Singh v. State of Punjab, 1963-65 Pun LR 267 :(AIR 196S Puni 280) (FB) The judgement of the Bench was delivered by Dulat J., who after referring to the proviso, as reproduced above, observed -

"What is sought to be read into this provision or superimposed on it is another requirement, namely, a judicial enquiry, as is held in the ordinary Courts. I am unable to see how any such thing can be read into the terms of this statute or in any other manner implied by the provisions contained in it. Mr. Sarin says that if any fact has to be considered by the state Government and an opinion formed in respect of it, then the only way to proceed is judicially, and the conclusion must be that since the State Government is required to form its opinion about certain facts while removing a member, it must necessarily proceed to determine these facts in a judicial or quasi-judicial manner. I am, however, wholly unable to agree that a fact is incapable of being discovered except in a judicial or quasi-judicial manner, for, if that were so, then every administrator who, like anybody else, has to take his decision by discovering the relevant facts, would in every case be bound to proceed judicially, even when taking an administrative decision. The fallacy lies in thinking that the manner in which the ordinary Courts proceed is the only manner in which a fact can be properly discovered. What has to be ascertained in the present case is whether the State Government, when considering the removal of a member under Section 16, is at any stage required to proceed judicially. It is true that the State Government has to form an opinion whether the particular member has or has not flagrantly abused his position as a member of the Committee, but there is no indication that it must do so in a judicial or quasi-judicial manner except to the extent mentioned in the proviso in question, the requirements of which are only two - (1) that reasons for the proposed removal must be communicated to the member, and (2) that he must be allowed an opportunity of tendering an explanation in writing. In the face of these explicit terms, which both define and limit the nature of the proceedings, it is, in my opinion, idle to suggest that something more is necessary."

These observations make it at once clear that the learned Judge was not inclined to hold that the removal of a municipal commissioner under Section 16(1)(e) of Punjab Act 3 of 1911 is a judicial or a quasi-judicial act, but at the same time he was satisfied that the proceedings leading to such a removal must conform to the requirements of the statute. There is. however, this observation also by the learned Judge -

"Some emphasis was laid on the expression 'flagrantly' used in Section 16(1) (e) and it was said that, even if the petitioner had broken the law to the detriment of the municipal committee on one or two occasions, it cannot be said that he had 'flagrantly abused his position,' indicates that the abuse of position must have occurred over a long period of time and in connection with repeated acts. I do not think the word 'flagrantly abused his position as a member of the Committee' carry any such

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implication. What the clause means is that if a member of a Committee, in disregard of his duty, does any act or acts, which shock a reasonable mind, then he can be removed by the State Government, and again it is the State Government that has to form that opinion."

This observation was considered by Mahajan J., who was also a party to the Full Bench decision, in a subsequent case in Norata Ram v. State of Punjab, 1964-66 Pun LR 226, and the learned Judge observed -

"It is significant that Dulat J., who delivered the judgement of the Full Bench clearly laid down that what is flagrant abuse is an act which shocks a reasonable mind. Therefore, unless the facts establish that the acts alleged shock a reasonable mind, there can be no ''flagrant abuse", and along with this consideration the learned Judge also took into consideration the fact that action in the shape of removal cannot be taken without an opportunity to the member to explain his position with regard to the allegation against him and he then comes to the conclusion that "no manner of doubt is left in my mind that the determination as to whether there has been a flagrant abuse of his position by a member of a committee has to be objectively determined and not subjectively".

This is how the learned Judge, who was himself a party to the Full Bench decision, reads that decision. In Satya Dev v. State of Punjab, 1964-66 Pun LR 381, Harbans Singh J., followed Joginder Singh's case, 1963-65 Pun LR 267 :{AIR 1963 Punj 280) (FB) while sitting with Dua J., and in State of Punjab v. Sugna Ram, 1964-66 Pun LR 828. a Division Bench consisting of Dulat and Harbans Singh JJ., after referring to the already cited two cases, held that

"In view of the above decisions, it can be said that it is now the firm opinion of this Court that the orders passed by the State Government under clause (e) of Sub-Section (1) of Section 16 of the Municipal Act are subject to scrutiny by this Court with a view to check two matters: First, whether the grounds of removal are extraneous to the conduct of the member as such, and secondly, if the grounds are not extraneous, to see that the act or acts done by the member in disregard to his duty are such as can shock a reasonable mind." If one of the grounds of interference by this Court in such a decision, as is the opinion of the learned judges, is to scrutinise whether the act or ads done by the member of the municipal committee in disregard of his duty are such as can shock a reasonalble mind, such scrutiny can only be possible if there is material which this Court can consider in that respect. This Court can only consider such material if it was the basis of the decision of the State Government in reaching the same conclusion. If the State Government is required to reach this conclusion on definite material then it is expected to act objectively as in the opinion of Mahajan 3. in Norata Ram's case 1964-66 Pun LR 226.

In Satya Dev's case 1964-66 Pun LR 381 Dua, J., while agreeing with Harbans Singh J., cited copiously the observations of their Lordships in Board of High School and Intermediate Education, U.P. Allahabad v. Ghanshyam Das Gupta, AIR 1962 S.C. Hit). to support the manner in which this Court interferes in orders of removal of Municipal commissioners by the State Government under Section 16(1)(e) of Punjab Act 3 of 1911. No doubt the learned Judge does not in so many words say that such an order is judicial or a quasi judicial order, but when the learned Judge proceeds on the basis that such an order is within the scope of the dicta of their Lordships in Ghanshyam Das Gupta's case, AIR 1962 SC 1110 it means as much, and his inclination is obvious. So at least Mahajan, J. in Norata Ram's case, 1964-66 Punj LR 226 is clear that such an order is a quasi-judicial order, and Dua, J. in Satya Dev's case, 1964-66 Pun LR : 381 tends to that opinion following Ghanshyum Das Gupta's case, AIR 1962 SC 1110. The only observation that may be said to be to the contrary is the one cited first from the judgement of Dulat J. in Joginder Singh's case, 1963-65 Pun LR 267 : (AIR 1963 Punj 280) (FB) but in the subsequent case of Sugna Ram, 1964-66 Pun LR 828, the learned Judge agrees with Harbans Singh J. that this Court will interfere in an order under Section 16(1)(e) of Punjab Act 3 of 1911 to see that the act or acts done by the member concerned in disregard to his duty are such as can shock a reasonable mind. The opinion of Mahajan, J., in Norata Ram's case, 1964-66 Pun LR 226 and of Dua, J., in Satya Dev's case, 1964-66 Pun LR 381 lends support to the conclusion that I have reached above as to the nature of the proceedings under Section 15 of the Act and the consequent order following on such proceedings.

8. There is then Ghanshyam Das Gupta's case, AIR 1962 SC 1110 whose examination result of the year 1954 had been cancelled and who had been barred from appearing at the next examination of 1955 on the ground of having used unfair means in the examination. The rule which their Lordships were considering is reproduced in paragraph 10 of the judgement and reads in this manner -

"It shall be the duty of the Examinations' Committee, subject to sanction and control of the Board -

(1) to consider cases where examinees have concealed any fact or made a false statement in their application forms or a breach of rules and regulations to secure undue admission to an examination or used unfair means or committed fraud (including impersonation) at the examination or are guilty of a moral offence or indiscipline and

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to award penalty which may be one or more of the following -

(i) Withdrawal of certificate of having passed the examination;

(ii) cancellation of the examination;

(iii) exclusion from the examination.

There was no provision of the manner in which the Examinations' Committee was to carry out its duty under that rule There was no express provision that the Committee was to act judicially while exercising its powers under the rules, and there was obviously no provision with regard to an opportunity of hearing being given to the examinee concerned. The examinee in that case had not been heard before the Examinations' Committee imposed the penalty already referred to. After pointing out the various facts which the Examinations' Committee is required to decide under the rules. their Lordships observed - "Until one or other of these five facts is established before the Committee, it cannot proceed to take action under Rule 1(1). In order to come to the conclusion that one or other of these facts is established, the Committee will have to depend upon materials placed before it, for in the very nature of things H has no personal knowledge in the matter. Therefore, though the Act or the Regulations do not make it obligatory on the Committee to call for an explanation and hear the examinee, it is implicit in the provisions of R. 1(1) that the Committee must satisfy itself on materials placed.

"before it that one or other of the facts is established to enable it to take action in the matter. It will not be possible for the Committee to proceed at all unless materials are placed before it to determine whether the examinee concerned has committed some misconduct or the other which is the basis of the action to be taken under Rule 1(1). It is clear therefore that consideration of materials placed before it is necessary before the Committee can come to any decision in the exercise of its powers under Rule 1(1) and this can be the only manner in which the Committee can carry out the duties imposed on it.

We thus see that the Committee can only carry out its duties under Rule 1(1) by judging the materials, placed before it. It is true that there is no Us in the present case, in the sense that there are not two contesting parties before the Committee and the matter rests between the Committee and the examinee: at the same time considering that materials will have to be placed before the Committee to enable it to decide whether action should be taken under Rule 1(1), it seems to us only fair that the examinee against whom the Committee is proceeding should also be heard. The effect of the decision of the Committee may in an extreme case blast the career of a young student for "life and in any case will put a serious stigma on the examinee concerned which may damage him in later life. The nature of misconduct which the Committee has to find under Rule 1(1) in some cases is of a serious nature, for example, impersonation, commission of fraud, and perjury; and the Committee's decision in matters of such seriousness may even lead in some cases to the prosecution of the examinee in courts. Considering therefore the serious effects following the decision of the Committee and the serious nature of the misconduct which may be found in some cases under Rule 1(1) it seems to us that the Committee must be held to act judicially in circumstances as these. Though therefore there is nothing express one way or the other in the Act or the Regulations casting a duty on the Committee to act judicially, the manner of the disposal, based as it must be on materials placed before it. and the serious effects of the decision of the Committee on the examinee concerned, must lead to the conclusion that a duty is cast on the Committee to act judicially in this matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examinees before it can take any action in the exercise of its power under Rule 1(1). We are therefore of opinion that the Committee when it exercises its powers under Rule 1(1) is acting quasi-judicially and the principles of natural justice which require that the other party, (namely, the examinee in this case) must be heard, will apply to the proceedings before the Committee."

When the dicta of their Lordships in this case is applied to the present case in that the State Government has to form an opinion under Section 15 of the Act as to the guilt or otherwise of the member concerned in regard to his having committed misconduct and/or neglect of duty and the consequence flowing that the member is totally debarred in future from seeking the membership of the Market Committee, the present case is a very close parallel to Ghanshyam Das Gupta's case, AIR 1962 SC 1110. It is on a similar consideration of this very case that Dua, J.. sought support of it in Satya Dev's case, 1964-66 Pun LR 381 which as stated, was a case under Section 16(1) of Punjab Act 3 of 1911. In my opinion, Ghan-shyam Das Gupta's case. AIR 1962 SC 1110 supports the view that 1 have taken above with regard to the nature of the proceedings under Section 15 of the Act "and the consequent order thereon, just as Mahajan, J. has taken a similar view with regard to the proceedings and the consequent order under Section 16(1)(e) of Punjab Act 3 of 1911, and Dua, J. has tended to the same view in the case already referred to.

9. In the view that I have taken above, I would answer the question before the Full Bench in this manner that as the proceedings under Section 15 of the Act for removal of a member of a Market Committee and the consequent order of his removal are quasi-judicial in nature, the order of the State

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Government does not become illegal because of inclusion of matters which do not relate to the conduct of the member as a member of the Market Committee when there are matters included in it which relate to the conduct of the member as such member and upon which the action taken or order made by the State Government can be sustained. In other words, ignoring the irrelevant grounds, on the grounds remaining if the action could have been taken by the State Government, then its action cannot be interfered with by this Court. In view of the decision of their Lordships in Bidyabhushan Mohapatra's case, AIR 1963 SC 779. It is in this manner that I would answer the reference to this Bench.

10. A. N. GROVER, J. :- I agree.

11. HARBANS SINGH, J. :- I agree.

(After the receipt of opinion of the Full Bench on the question of law referred by Dulat and Harbans Singh, JJ., the petition was finally heard by A.N. Grover and P.C. Pandit, JJ. and the final order was passed on 26-5-1967.

P. C. PANDIT, J. :- (His Lordship after reiterating in Paras 12 to 13 the facts of the case leading to the order of reference to the Full Bench and the opinion of the Full Bench proceeded as follows :)

14. Learned counsel for the petitioner, in the first place, contended that the order complained of was quasi-judicial in nature. Under the law, therefore, it must state the reasons for coming to the conclusion that the petitioner was guilty of gross misconduct and neglect of duty. As that had not been done and only the conclusions had been mentioned in the impugned order, it deserved to be quashed on that ground alone. In this connection, reference was made to a decision of the Supreme Court in Bhagat Raja v. Union of India, Civil Appeals Nos. 2596 and 2597 of 1966, D/-29-3-1967 : (AIR 1967 SC 1606).

15. Section 15 of the Act, under which action was taken by the State Government against the petitioner, runs thus :-

"The State Government may by notification remove any member if, in its opinion, he has been guilty of misconduct or neglect of duty or has lost the qualification on the strength of which he was appointed :

Provided that before the State Government notify the removal of a member under this Section, the reasons for his proposed removal shall be communicated to the member concerned and he shall be given an opportunity of tendering an explanation in writing."

16. According to the learned counsel for the State, all that this Section requires is that the State Government should indicate the reasons for the proposed removal to the member concerned and give him an opportunity of tendering his explanation in writing and after that if in its opinion he had been guilty of misconduct or neglect of duty, he can be removed from the membership by issuing a notification in that behalf. Admittedly, a show-cause notice was issued to the petitioner in the instant case. He tendered his explanation in writing and thereafter the impugned action was taken by the State Government. Thus, according to him, it could not be said that the provisions of the Section had not been complied with. The learned counsel submitted that the petitioner fully knew what the charges against him were and he had been given an opportunity to meet them. There was no violation of the principles of natural justice. That being so, he submitted, both the provisions of law and the principles of natural justice had been observed. Section 15 in terms does not say that the order removing a person from membership should contain the reasons for doing so. All that it lays down is that the State Government should be satisfied that he had been guilty of misconduct or neglect of duty. According to the Counsel reading the impugned order along with the show-cause notice given to the petitioner, one can easily find out the reasons for his removal.

17. After hearing the learned counsel for the parties and going through the judgement of the Supreme Court in Bhagat Raja's case, C. As. Nos. 2596 and 2597 of 1966, D/-29-3-67 : (AIR 1967 SC 1606), I am of the view that the impugned order has to be set aside on the short ground that no reasons have been given by the State Government therein for coming to the conclusion that the petitioner was guilty of gross misconduct and neglect of duty. As held by the Full Bench in this case, and it was not disputed by the learned counsel for the parties, the order complained of was quasi-judicial in nature. In Bhagat Raja's case, C. As. Nos. 2596 and 2597 of 1966, D/-29-3-67 : (AIR 1967 SC 1606), the Supreme Court quoted with approval the following observations of Subba Rao, J., in Madhya Pradesh Industries Ltd. v. Union of India, AIR 1966 SC 871 :-

"The condition of giving reasons is only attached to an order made by the Government when it functions judicially as tribunal in a comparatively small number of matters and not in regard to other administrative orders it passes.

Our constitution posits a welfare state ....... In the context of a welfare State, administrative tribunals have come to stay. Indeed, they are the necessary concomitants of a welfare State But arbitrariness in their functioning destroys the concept of a welfare State itself. Self-discipline and supervision exclude or at any rate minimise arbitrariness. The least a tribunal can do is to disclose its mind The compulsion of disclosure guarantees consideration The condition to give reasons introduces clarity and excludes or at any rate minimises arbitrariness; it gives satisfaction to the party against whom the order is made; and it also enables

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an appellate or supervisory court to keep the tribunals within bounds. A reasoned order is a desirable condition of judicial disposal ...... If tribunals can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But, if reasons for an order are to be given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard.

......... .A judge is trained to look at things objectively, uninfluenced by considerations of policy or expediency; but, an executive officer generally looks at things from the stand-point of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to charge from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties; and the least they should do is to give reasons for their orders. Even in the case of appellate courts invariably reasons are given, except when they dismiss an appeal or revision in limine and that is because the appellate or revisional court agrees with the reasoned judgement of the subordinate court or there are no legally permissible grounds to interfere with it. But the same reasoning cannot apply to an appellate tribunal, for as often as not the order of the first tribunal is laconic and does not give any reasons. That apart, when we insist upon reasons, we do not prescribe any particular form or scale of the reasons. The extent and the nature of the reasons depend upon each case. Ordinarily, the appellate or revisional tribunal shall give its own reasons succinctly; but in a case of affirmance where the original tribunal gives adequate reasons, the appellate tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons. What is essential is that reasons shall be given by an appellate or revisional tribunal expressly or by reference to those given by the original tribunal. The nature and the elaboration of the reasons necessarily depend upon the facts of each case ....."

According to the above observations, it seems that all quasi-judicial orders must give the reasons for the decision arrived at in the said orders. In the present case, as I have already said, no reasons were recorded by the State Government in the impugned order. What the Section required was that the State Government should be of the opinion that the person concerned had been guilty of misconduct or neglect of duty, before he could be removed from the membership. This very conclusion, without disclosing any reasons for coming to the same, has been stated in the said order. This is con- trary to the decision of the Supreme Court) mentioned above.

18. In this view of the matter, it is needless to go into the other contentions raised by the learned counsel for the petitioner.

19. The result is that this petition succeeds and the impugned order is quashed on the ground mentioned above. In the circumstances of this case however, there will be no order as to costs.

20. A. N. GROVER, J. :- I agree.

Order quashed.

**AIR 2009 RAJASTHAN 121 "Krishi Upaj Mandi Samiti, Beawar v. Shree Gopal Products"**

**RAJASTHAN HIGH COURT**

Coram : 2 ASHOK PARIHAR AND K. S. CHAUDHARI, JJ. ( Division Bench )

Krishi Upaj Mandi Samiti, Beawar v. M/s. Shree Gopal Products and Ors.

D.B.S.A. (Writ) No. 352, 313 of 2002, 481 and 482 of 2004, D/- 27 -4 -2009.

Rajasthan Agricultural Produce Markets Act (38 of 1961), S.17 - AGRICULTURAL PRODUCE - NATURAL JUSTICE - DOCTRINES - PROMISSORY ESTOPPEL - New Industries - Grant of exemption from recovery of mandi tax - Subsequent withdrawal - Ground that there was no provisions under Act with regard to granting any exemption or relaxation on levy of mandi tax - Benefit which could not have been granted under particular statute can always be withdrawn by State Government - In such circumstances, principles of natural justice are not attracted - Even prior opinion of Advocate General was not mandatory - Further once benefit could not have been granted under statute, principle of doctrine of promissory estoppel would not come into play

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in case of any subsequent withdrawal.

Judgment of single Judge, D/-18-02-2002, Reversed.

Evidence Act (1 of 1872), S.115. (Paras 5, 6)

Inderjeet Singh, for Appellant; B.S. Chandel, Dy. G.C. Suresh Pareek, N.C. Sharma, V.K. Goyal, for Respondents.

Judgement

JUDGMENT :- Since on similar set of facts the common order dated 18-2-2002 passed by the learned single Judge is under challenge, all the appeals have been heard together and are being decided by this common order.

2. Under the provisions of the Rajasthan Agricultural Produce Markets Act, 1961, the mandi tax could be imposed by an notification to be issued by the State Government. In the present case, the State Government vide notification dated 26-7-1995 as also dated 14-11-1996 granted certain exemptions on recovery of mandi tax in regard to newly established industries for a particular period. However, the above notifications dated 26-7-1995 and 14-11-1996 were withdrawn and cancelled by the State Government vide notifications dated 3-4-1998 and 7-4-1998 mainly on the ground that under the Act of 1961, there is no provision in regard to granting any exemption or relaxation on levy of mandi tax.

3. The notifications dated 3-4-1998 and 7-4-1998 came to be challenged by the respondents before this Court. While allowing the writ petitions vide impugned judgment dated 18-2-2002, the learned single Judge set aside both the impugned notifications dated 3-4-1998 and 7-4-1998 mainly on the ground of violation of principles of natural justice as also holding that the benefit granted earlier could not have been withdrawn without obtaining legal opinion of the Advocate General.

4. After hearing learned counsel for the parties, we have carefully gone through the material on record as also relevant provisions of the Act of 1961 and the Rules made thereunder.

5. The power of levying mandi tax cannot be disputed. However, admittedly, there is no provision under the Act of 1961 or the Rules made thereunder in regard to granting any exemption or relaxation in levying of such mandi tax in part or for a particular period. The benefit which could not have been granted under the particular statute can always be withdrawn by the State Government. In such circumstances, the principles of natural justice are not attracted. Learned counsel for the respondents could not show any provision wherein the legal opinion of the Advocate General was mandatory. However, even otherwise, there is a legal presumption that before issuing a notification, the opinion of the Advocate General must have been obtained by the concerned authorities. Learned counsel for the respondents also raised the plea of doctrine of promissory estoppel. However, as has already been referred above, once a benefit could not have been granted under a statute, the principle of doctrine of promissory estoppel would not come into play in case of any subsequent withdrawal, moreso, when such benefit has not been claimed under any other statute.

6. Having considered entire facts and circumstances, in our opinion, the impugned judgment dated 18-2-2002 passed by the learned single Judge cannot be sustained in the eye of law. Accordingly, the appeals are allowed. The impugned judgment dated 18-2-2002 passed by the learned single Judge is quashed and set aside. There shall be no order as to cost.

Appeals allowed.

**AIR 2008 RAJASTHAN 79 (DB) "Ram Karan Choudhary v. State of Rajasthan"**

**RAJASTHAN HIGH COURT**

Coram : 2 N. P. GUPTA AND MOHAMMAD RAFIQ, JJ. ( Division Bench )

Ram Karan Choudhary, etc. v. State of Rajasthan and Anr. etc.

Spl. Appl. Writ Nos. 912 of 2000, 559 of 2001 and 178 of 2002, D/- 10 -1 -2008.

Constitution of India, Art.14 - Rajasthan Agricultural Produce Markets Act (38 of 1961), S.34A - Auction EQUALITY - AGRICULTURAL PRODUCE - AUCTION SALE - TENDER - Tender conditions - Application form duly signed by prospective bidders agreeing with tender conditions - Said condition clearly stipulated role of Director as positive requirement of confirmation of sale, a condition precedent for entitling prospective bidder to deposit the remaining 75% amount - In view of said condition it cannot be said that, Director had no jurisdiction, or say altogether, in the matter of confirmation of auction - Refusal to grant approval to auction by Director - Not illegal. (Paras 20, 23)

Cases Referred : Chronological Paras

AIR 2002 Raj 285 22

(2001) W P No. 2150 of 1999 Dated : 2-5-2001 4

AIR 1999 SC 1786 : 1999 AIR SCW 1376 2

AIR 1979 SC 381 4

S. S. Purohit, Advocate, for Appellant in SAW No. 913/2000. Ravi Bhansali, Advocate for Appellant in SAW Nos. 559/01 and 178/2002 and for Respondent in SAW No. 912/2000. Anil Bhandari, Advocate, for Respondent in SAW Nos. 559/2001 and 178/ 2002.

Judgement

ORDER :- These three appeals though arise out of different orders, having passed by different benches, relating to different areas, and having different facts, still ultimately involve the common question, and therefore, they are being decided by this common order.

2. Appeal No. 912/2000 has been filed against the order passed by the single Judge in Writ Petition No. 2734/2000, dismissing the writ petition, on the ground, that entire rights and liabilities flow from a contract between the petitioner and the Committee, and for enforcement of contractual relations, writ petition is not maintainable. It was also found, that it involves disputed questions of fact, and that, according to the judgment of Hon'ble the Supreme Court, in State of Himachal Pradesh v. Raja Mahendra Pal, (AIR 1999 SC 1786), the Constitutional Courts should insist upon the party to avail alternative remedy, instead of invoking the extraordinary writ jurisdiction of the Court, and then generous, general and casual approach was not approved to clothe the High Court with the power and jurisdiction under Article 226. Thus, it was found, that the petitioner can conveniently agitate the claim before the Civil Court. Thus, the writ petition was dismissed.

3. Then, Appeal No. 178 has been filed against the judgment of the learned single Judge dt. 7-8-2001, in Writ Petition No. 2300/99, finding, that this Court has considered the question of similarly situated auction, in the same auction, and in view of the view taken by the learned single Judge of this Court regarding the same auction, granting indulgence to the petitioner in that case, it would not be proper to distinguish this case also, and therefore, it was directed that members of the association, those who have not withdrawn their amount deposited at the auction, will be entitled to get their auctions regularised in accordance with law. With these observations, the writ petition was disputed. From this order it does not appear, as to in which case the view was taken by the learned single Judge, no reference thereof is there, nor any judgment is available on the file. Be that as it may. This was a petition filed by Nokha Khadhya Vyapar Mandal.

4. Then, Appeal No. 559/2001 arises out of the judgment of learned single Judge dated 2-5-2001, passed in Writ Petition No. 2150/99. This was a petition also filed by a trader of Nokha. This is a detailed speaking judgment, running into four pages. It has been noticed therein, that the controversy lies in a very narrow compass, as the petitioner was auction bidder for a piece of land, from Krishi Upaj Mandi Samiti, hereafter referred to as 'the Samiti'. He complied with all the terms and conditions incorporated in the Act, and rules, framed for allotment, but he had been deprived of the possession of the said piece of land, on the ground, that the approval had not been accorded by the higher authorities, as contemplated under clauses 10 and 15 of the conditions, wherein approval of the Director, of the auction bid, was required in every case. It was found, that there can be no quarrel to the settled legal proposition, that where the Act or the

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Rules provides for approval of such auction, the auction is unenforceable and inexecutable, unless the approval is sought by the authority. However, it was found, that any circular or executive instruction, issued by the State Government, in violation of statutory provisions of the Act, or the Rules, is null and void, and does not require to be observed, for the reason, that such circular/orders might be issued to oblige a particular section of society. Then, attention of the Court was invited to the circular issued by the State Government, for seeking approval of the Director of the Mandi Parishad, and the said circular was sought to be supported by legal authority comprised in Section 34-A. However, the learned single Judge found, that it is settled proposition of law, that what cannot be done "per directum is not permissible to be done per obliquum". Then, the judgment of Hon'ble the Supreme Court, in Jagir Singh v. Ranbir Singh, reported in AIR 1979 SC 381, was relied upon, for the proposition, that an authority cannot be permitted to evade a law by "shirt or contrivance", and it was concluded, that no approval was required in this case, and the auction made in pursuance of Annex. R/2/1 was required to be confirmed without seeking any approval or direction, from the authority concerned. Thus writ petition was allowed.

5. Appeals Nos. 559 and 178 have been filed by the State and the Krishi Upaj Mandi Samiti, while Appeal No. 912 has been filed by the trader, against the State and the Samiti. This matter relates to Krishi Upaj Mandi Samiti, Fruits, Vegetables and Woollen, Bikaner.

6. The facts of the case in Appeal No. 912 are, that the appellant filed the writ petition, alleging, that the petitioner is a trader having licence by the Samiti, dealing in agricultural produce. Then, after giving certain facts it was pleaded, that Mandi Samiti prepared a plan and earmarked 250 shops/godowns for being given on allotment by way of auction. It is alleged, that reserve price was to be fixed by the Samiti, and every bidder was required to deposit a sum of Rs. 5,000/- as earnest money. The allotment was to be made for a period of 99 years. Then, it is pleaded that the State Government issued an order dt. 27-9-1992, constituting a committee, for the purpose of allotment of plots, for shops and godowns. This has been produced as Annexure-2.

Then, advertisement was issued being Annexure-5, containing terms and conditions of auction. By this Annexure-5 the auction was scheduled to be held on 15-7-1998. Then, certain pleadings have been taken about the exercise undertaken for fixation of reserve price. Then, it is pleaded that the auction was made on 15-7-1998 to 20-7-1998, and more than two years have passed, yet the market could not be developed, and the object of the Act (Rajasthan Agricultural Produce Markets Act, 1961) could not be achieved, as, had the auction been finalised, and remaining 3/4th price would have been accepted and the possession of the plots would have been given to the petitioner, then by this time, the market could have been constructed, and developed. Then, it is pleaded that the Director had no authority, right or jurisdiction, to interfere in the matter, and to pass any order for cancelling the auction, conducted by the Mandi Samiti, as the Committee was formed as per the directions of the State Government, which worked out the auction proceedings, and conducted the actual auction, and ¼th price was deposited, and the bids were finalised, thereafter nothing remained there, and the petitioner has claimed to be entitled to get his plot, by depositing 3/4th price, with this, it is pleaded, that the association took up the matter with the Mandi Samiti, and the Mandi Samiti appraised the association of the letter Annexure-15, and a look at Annexure-15 shows, that thereby photo copies of the letter of the Directorate dt. 28-4-1999 and 15-6-1999 were enclosed. According to the petitioner, thereupon a representation was given to the Minister, but in vain, except that they received the letter dt. 17-7-2000, from the Mandi Samiti, asking the petitioner to receive back the amount, by producing the original receipt. This is produced as Annexure-17. The petitioner has precisely assailed this Annexure-17, inter alia on the ground, that with depositing ¼th price right has been created in the bidder, and in such circumstances, approval cannot be refused, much less without hearing the bidder, and thus, the action was decried. It was pleaded, that there is nothing to show, that auction was conducted in any manner violating to any law. Then, justification was pleaded for fixation of reserve price, and it was prayed, that Annexure-17 may be quashed, and respondents be directed to receive the balance amount, and grant lease of the auctioned plot.

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7. Since this writ petition was dismissed immediately on its filation, as it was filed on 9- 8-2000, and it was dismissed on 10-8-2000, reply was filed on behalf of Samiti before this Appellate forum, and the stand taken is, that the petitioner has concealed the material fact from this Court, and had made false statement, inasmuch as the final allotment could have been made only after receipt of acceptance from the competent authority, which was not given. Then, giving parawise reply, the material stand taken was, that the petitioner, while filling up the application form, agreed with the terms and conditions of the auction, in which one of the conditions is, that the entire auction shall be depending upon the consent of the Director, Agriculture Marketing, Jaipur, and that, this condition was also there in the application form itself. The copy has been produced as Annexure R/2. Then, it was pleaded that a notice was already published in the newspaper about auction having been cancelled, and calling upon the bidders to take away the amount, which has been produced as Annexure R/3. It was pleaded, that by mere depositing ¼th amount, no rights have been created. Reply has also been given to various other paras of the writ petition, which need not detain us.

8. Then, the facts of Appeal No. 559 are, that the petitioner therein filed the writ petition, alleging to be a licensed broker of 'A' Class and 'B' Class. Then, it was pleaded, that the Samiti earmarked place for about 183 shops, out of which 53 shops have been constructed, and remaining open space was to be given on license, for which conditions have been framed. According to which conditions, allotment has to be made through open auction, reserve price was fixed, every bidder was to deposit Rs. 10,000/- as earnest money, and allotment was to be made for a period of 99 years. Conditions No. 3, 4 and 5 have been reproduced in the writ petition. Then, it is pleaded that the State Government constituted a committee for allotment vide order dt. 27-9-1982, Annexure-3. This is the same document as produced in Appeal No. 912, as Annexure-2. Then, it is pleaded that a notice was issued for auction to be held on 24th, 25th, and 26th February, 1999, and the advertisement has been produced as Annexure-4, wherein the petitioner participated, and gave the highest bid of Rs. 2,71,000/-, for Plot No. 175, and deposited ¼th of the amount on 26th February, itself. Then, the matter was sent for approval. However, it was informed by the Director, to the Krishi Upaj Mandi Samiti, that sale has been approved for 53 bidders, and for remaining shops no approval was given, and on that basis, action cannot be annulled, or cancelled. Then, it is also pleaded that when the reserve price was notified in the advertisement, now the Committee is estopped from refusing to grant lease on the principle of promissory estoppel. Then, certain pleas were taken about sufficiency of the reserve price, and action being violative of principles of natural justice, and so on. With this, Annexure-7 has been sought to be quashed, and direction has been prayed, for being granted the lease of the shop in question. In this petition a reply has been filed on behalf of the Samiti, pleading inter alia, that as per Section 34A, the Government has laid down certain guidelines, which are required to be complied. Then, it was pleaded that though the petitioner quoted certain terms and conditions of the auction, but has not mentioned the entire conditions, as some of them are clear against him. Then, it is pleaded that according to advertisement an application form was required to be filled containing terms and conditions of the auction, which were to be agreed by the bidder, before taking part in the auction, thereafter only he was entitled to take part, provided he deposits security amount of Rs. 10,000/-, and true and correct copy of the application form, containing terms and conditions, has been produced as Annexure R/2/1, which clearly stipulated, that the entire action was dependent upon the consent of the Director, and that the conditions mentioned in the advertisement were only few important conditions, and not all the conditions, because all the conditions can be seen from Annexure R/ 2/1 only. Copy of the advertisement has been produced as Annexure R/2/2. According to the respondent, since the auction was subject to the approval and conformity by the Director, the proposal was sent for approval by the Secretary, and the Director approved only the auction of 53 plots and directed re-auction of the remaining plots. It was submitted, that in view of the terms and conditions, no right accrues in favour of the petitioner, without approval from the Director. It was thus pleaded, that the Director had the power, and action was sought to be supported. Likewise, the State Government has also filed separate reply, and has practically adopted the reply of the Samiti, and again produced those very documents.

9. Then, the facts in Appeal No. 178 are, that the Nokha Khadhya Vyapar Mandal had filed a Writ petition, espousing the cause of various members of the association, obviously cause of its members, pleading inter alia, that at the auction the highest bidders deposited ¼th amount, which bids have been pleaded to be just and proper, and therefore, the bidders are entitled to the plots. However, the matter was sent to the Director, even though it was not needed, and the Director approved only 53 plots, and for the remaining, approval was not given, rather fresh auction was directed to be held. This information was communicated vide Annexure-4 dt. 15-6-1999, which in turn refers to the communication dt. 6-5-1999, copy of which was never provided. Then, in substance, the challenge to the action of Director, is practically on the same ground, as raised in Writ Petition No. 2150/99, giving rise to Appeal No. 559, and practically similar is the reply.

10. Arguing the appeal No. 912 it was contended by the learned counsel for the appellant, that the learned single Judge was clearly in error, in dismissing the writ petition, on the ground of it involving the disputed questions of fact, so also on the ground of availability of alternative remedy. According to the learned counsel, the basic facts about the plot having been put to auction, the petitioner having given highest bid, having deposited ¼th amount on that day itself, and that auction having been cancelled by the Director, are all facts which are not in dispute, and the only question was, as to whether the Director had any jurisdiction, to interfere in the matter, much less to cancel the auction, as the appellant had claimed, that with deposit of ¼th price, the auction stood finalised, and the rights accrued to the petitioner. Thus, none of the grounds given by the learned single Judge are sustainable, and the order is liable to be set aside. Then, arguing on merits, it was contended, that the respondent Samiti is the statutory body, and is governed by the provisions of the Act, and the Rules framed thereunder, which nowhere provide for any such confirmation from the Director, or State, much less does it confer any power to cancel the allotment, and that being the position, there is no escape from the conclusion, that the petitioner is entitled to be given the plot, by receiving the remaining 75% amount, which the petitioner is always prepared to pay. Thus, the order is wholly without jurisdiction, and is liable to be quashed.

11. On the other hand, learned counsel for the respondent, instead of addressing on the grounds given by the learned single Judge, contended on the lines of the pleadings taken in the reply, and contended, that a look at the advertisement Annexure-5 itself shows, that as an eligibility condition to participate in a bid, the necessary requirement is, that for that purpose application form has to be obtained by depositing Rs. 100/-, then that application form is submitted by filling in completely, along with security amount of Rs. 5,000/-, upto 10th July, 1998, and the advertisement does not give the condition of auction, but only purports to give important information, "MUKHYA JANKARI". With this it is contended, that accordingly the petitioner filed application, and the proforma of the application has been produced as Annexure-R/ 2/1, which clearly shows, that the applicant has carefully read the terms and conditions, and has prayed for being permitted to participate in the auction, agreeing with the conditions, and the conditions are contended to be as many as 28, out of which Condition No. 13 clearly stipulates, that after depositing of 25% of the bid money, balance 75% shall be paid by the bidder within the specified time, after receiving the approval from the Director, Likewise, again in Condition No. 16 it is stipulated, that the possession of the plot shall be delivered to the successful bidder, only after receiving concurrence from the Director. Thus it is clear, that requirement of approval was one of the conditions of the auction, which the petitioner had agreed, and therefore, it is not open to him to decry the action of the Director, in not according approval of the auction. It was also contended, that the petitioner has not produced, or even challenged the original order of the Director, declining to approve the auction, and Annexure- 17 merely communication, informing to take back the amount deposited by the petitioner, by submitting original receipt.

12. In rejoinder, learned counsel for the petitioner appellant contended, that the petitioner was never communicated the order Annexure R/l, whereby the auction wascancelled. Then, regarding Annexure R/2, it was contended, the documents as produced by the respondent are mere photo stat copies, not bearing any signature of any authority, and in any case, do not bear any signature of the petitioner, as, if the petitioner had submitted this application, or appended his signatures, the respondents could have very well produce the original, or authenticated copy of the document bearing the petitioner's signature. In that view of the matter, the petitioner is not bound by this Annexure R/2, and maintained, that action of the Director is wholly without jurisdiction.

13. Other arguments were made by the either side, on the aspect of determining reserve price, its correctness or otherwise, but then, we need not dilate on that aspect, as the main question is, as to whether the Director had any authority to take the action, as taken, not to approve the auction.

14. Then, arguing the other two appeals, being Nos. 178 and 559, learned counsel for the appellant submitted, that since in view of Annexure R/2/1 it is clear, that in condition No. 10 it was clearly stipulated, that after depositing 25% of the bid amount, balance 75% shall be paid, approximate within a period of one month, on auction being approved by the Director, and then Condition No. 13 further stipulates, that the possession shall be delivered to successful bidder, only after receiving concurrence from the Director, and thus, the Director had the power to approve, or disapprove the auction. Then assailing the reasonings of the learned single Judge, it was contended, that of course there is no quarrel with the legal proposition, that whatever is prohibited by law to be done, cannot be done by an indirect and circuitous contrivance, nor any one can be permitted to evade the law, but then under the Act, and/or the Rules, there is no provision whatever, laying down the procedure or conditions, as to how such allotment is to be made, and/or how the auction is to become final. Thus, this area is a completely gray area, and therefore, if the Mandi Samiti had laid down conditions, including conditions requiring approval from the Director, it cannot be said to be tantamounting to resorting to any circuitous contrivance, or violation of law. With this it was submitted, that since according to advertisement Annexure R/2/2, every aspirant to participate in the auction, is to obtain application form by paying Rs. 100/-, then is to fill up that form completely, along with security amount of Rs. 10,000/-, and obtain other informations from the office, and it is with eyes open, that the bidders had appended their signatures on the conditions, and deposited the security amount, and thereupon only, they were allowed to participate. As such, once having participated, by agreeing to the conditions, it is not open to them, now to turn around, and decry, or ask for ignoring of those conditions. It was also contended, that the conditions are laid down in accordance with the guidelines given by the State Government, which the State is competent to lay, by virtue of Section 34-A of the Act, and therefore, the impugned order passed in Writ Petition No. 2150, is liable to be set aside, and since the impugned order in Writ Petition No. 2300 has only been passed taking into account the order passed in Writ No. 2150, both the orders are liable to be set aside.

15. Learned counsel for the respondent, on the other hand, in these appeals, supported the impugned order, by maintaining the stand, that the Director had no jurisdiction.

16. Thus, from the narration of the facts of these cases it is clear, that the main controversy involved in the matters is, as to whether the auction made by the auction committee, was required to be approved by the Director, and/or the Director has any say, or authority, or jurisdiction, in the matter?

17. So far as Appeal No. 912 is concerned, at the outset we may observe, that we are not able to appreciate, and are also not agreeing with, the reasonings given by the learned single Judge, for dismissing the writ petition, more so when, at that time, other matters were already pending before this Court, and which matters had subsequently been allowed. It is significant to note, as contended by the learned counsel for the appellant that the factual part of the matter is not at all in dispute. Then since the views of the other learned single Judge, about the powers of the Director, are under challenge in other two appeals the question of the powers of the Director is required to be gone into, on merits, by us in these appeals, and was required to be gone into by the learned single Judge.

18. To start with we may have a bird's eye view of the provisions of the Act, and

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the Rules made thereunder. Chapter I is about definitions, Chapter II is about constitution of markets, then Chapter III is about market committee, its constitution, incorporation, functions and duties, appointment of sub-committees and joint committees, appointment and salaries of servants of the market committee, members, officers etc. to be deemed public servant, execution of contracts, power of market committee to issue licenses, suspension or cancellation of licenses granted under Section 14, then power to remove the persons from market yards, appeals against certain specified orders, then power to collect market fees, and then the provisions have been made for market committee fund. Then, provision is made for the purpose for which the fund is to be expended, power to borrow is provided, and power to acquire land is provided. Then, Chapter IV deals about trade allowance. Then Chapter IV-A is about state agricultural marketing board, its composition, constitution etc. Then, Chapter V provides for liabilities of Chairman, vice chairman, and members, for removal from office, personal liability of members for the loss or misapplications, then it provides for duties of the officers and members of committee to furnish information, then power to enforce attendance etc., supersession of market committee, appointment of an administrator, power of entry and search, then makes provision for certain penalties. Then, Section 34-A makes provision about directions by the State Government, then provision is made for delegation of powers, and bye-laws. Then, coming to Rules, they also do not make any provision, about the manner in which the allotment is to be made, or property is to be transferred etc. Learned counsel for the traders were pointedly asked also by the Court, if there be any provision in the Act, or the rules, laying down any procedure, criteria, guidelines etc. in the matter of allotment of land, to be made whether by auction, or otherwise, but learned counsels could not. That being the position, the whole thrust of the judgment rendered in the writ petition No. 2150, being the basic judgment in the matter, does not stand any more. Then, comes the question, as to how, in absence of any provision in the Act, or the Rules, the things are, and are required to be, regulated.

19. Obviously, since the Samiti is the statutory body, the actions are to be guided predominantly, by considerations of Article 14, and to be bereft of any arbitrariness. If the matter is examined from that stand point, it is not in dispute, that the advertisement was issued for auction. Then, from a look at the advertisement it is clear, that it clearly stipulates the intending bidder to obtain application form, by depositing Rs. 100/-. Then, application form is to be duly filled, and submitted along with requisite security money, and thereupon the applicant is to get permission, for participating in the auction. Though in all the writ petitions it has not been the averment, that the prospective bidders did deposit the amount, to obtain the application form, then filled it, and the only averments made are, about having deposited the security money. With this, in all the three matters it is positive case of the Samiti, that the prospective bidders did submit the application, agreeing with the conditions of the auction, by appending their signatures, and copies of those conditions, which are in the nature of Uniform conditions, applicable for all the prospective bidders, have been produced, and then, significantly this factual averment of the samiti has not been controverted, or disputed, by taking any otherwise pleading, by any of the petitioners, of course, the paper, containing conditions of auction, that has been produced by the Samiti does not bear any signatures of the prospective bidder, the writ petitioner, but then, in absence of any controversion, even by taking a stand, to the effect, that along with application form they were not supplied with any of the conditions, or by contending, that they did not agree to any of those conditions, there is no reason to believe this stand of the Samiti, that the prospective bidder were provided these conditions along with the application form, which were duly submitted by them, to have been agreed. At this stage it may be observed, that it is not the case of any of the writ petitioner, that any differential treatment is being meted out by the samiti to any individual bidder, or even different Mandi Samities are giving differential treatment to the prospective bidders.

20. Thus, the net result comes to is, that the matter rests in the realm of mutual agreement between the parties, comprised in the application form, duly signed by the prospective bidder, agreeing with the conditions, having been submitted to the Samiti, and such agreement is not shown to be in

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any manner, either arbitrary, or violative of Article 14. With this, since the writ petitioners had participated in the auction, now they cannot back out, or disown, or decry, the conditions. The obvious conclusion flowing therefrom is, that the two conditions being condition Nos. 13 and 16 in the writ petition No. 2734 giving rise to Appeal No. 912, and condition Nos. 10 and 13 in the other writ petitions, do clearly stipulate positively, rather stipulate the role of the Director, as a positive requirement of the confirmation of the sale by the Director, as a condition precedent for entitling the prospective bidder to deposit the remaining 75% amount. In that view of the matter, it cannot be said, that the Director has no jurisdiction, or say altogether, in the matter of confirmation of auction.

21. It may be observed, that so far the reasonings given by the Director are concerned, since the order of the Director has not been challenged in any of the writ petitions, either by filing copy thereof, or even by making a prayer about quashing of that particular order, that aspect need not be gone into by us.

22. Apart from the above, a look at the provisions of Section 34-A of the Act does show, that it does confer a power on the State, to issue instructions to the Samiti for carrying out the purposes of the Act, which instructions are required to be followed by the Board or the Committee, and the Committee or the Board is not to depart from the general instructions issued under Sub-section(1). The provisions of Section 34-A did come up for consideration before a Division Bench of this Court, in the case of Ved Prakash Ramesh Chandra v. State and Ors., reported in 2002 (3) WLC (Raj) 207 : (AIR 2002 Raj 285) and therein, in para 20, this Court has held as under :-

"20. Next, Section 34A of the Act of 1961 authorises the State Government to issue general instructions to be followed by the Board or such committee for carrying out the purposes of the Act. These instructions may include directions relating to the purposes for which and the manner in which the market committee fund or the marketing development fund shall be spent and the manner in which the surpluses with the Board or the Committee shall be kept. Not only this, sub-section (2) of Section 34-A prohibits market committees from departing from any general instructions issued by the State Government under sub-section (1). The procedure for allotments of the shops or auction of the shops and guidelines for above purposes and fixing of the guidelines are certainly instructions for carrying of the purposes of the Act and falls within Section 34-A. It nowhere abdicates the power of the committee, therefore, the learned single Judge was right in holding that the State Government is legally competent to issue general instructions for carrying out the purposes of the Act and the instructions dated 26-4-1995 are binding on the Samiti."

23. The net out come of the above discussion is, that it cannot be said, that the Director, in any manner lacked jurisdiction, or authority, to decline to approve the auction, and since admittedly the auction has been cancelled by the Director, the writ petitioners cannot be said to be entitled to have any direction issued, directing the Mandi Samiti to allot them the plot, by receiving balance 75% of the bid amount, from the highest bidders.

24. Resultantly Appeal No. 912/2000 fails, and the other two appeals No. 178/ 2002 and 559/2001 succeed, and the writ petitions as filed in all the three matters are dismissed.

25. However, at the same time what we find is, that the bidders had deposited 25% of the amount, and have approached this Court for challenging the action in canceling the allotment, and calling them upon to take away their amount, and in some of those matters, the petitioners have been granted relief also by the single Bench of this Court. That being the position, may be, that the stand taken by the writ petitioners did not ultimately find favour in law, but then, it cannot be said, that the course of action adopted by the writ petitioner, was altogether misconceived. With this, admittedly the Mandi Samiti has retained 25% of the bid money, as deposited by the highest bidders, and has enjoyed the fruits of it. Considering these circumstances, we think it appropriate, even while dismissing the writ petitions, to direct, that the petitioners shall be entitled to receive back the amount deposited by them, along with interest @ 9%, to be computed to begin from the date of filing of writ petition before this Court, uptill the actual date of payment to the concerned bidder. Accordingly, the respondent Mandi Samiti is directed to refund the received amount to the highest bidders, along

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with interest as above. The parties shall bear their own costs of this litigation.

Order accordingly.

**AIR 2005 RAJASTHAN 305 "R. S. C. S. Producers Assocn. V. State of Rajasthan"**

**RAJASTHAN HIGH COURT**

Coram : 2 RAJESH BALIA AND DINESH MAHESHWARI, JJ. ( Division Bench )

Rajasthan State Certified Seeds Producers Association, Sri Ganagar, Appellant v. State of Rajasthan and others, Respondents.

Special Appeal No. 478 of 2000, D/- 27 -5 -2005.\*

Rajasthna Agricultural Produce Markets Act (38 of 1961), S.17 - AGRICULTURAL PRODUCE - WRITS - CENTRAL EXCISE - CONTRACT - Market fees - Refund of - Petition by Producer's Association challanging levy of market fees - Court while admitting petition allowed collection of market fees and directed that it will be refunded in case petition succeeds - Refusal to grant refund while allowing petition on ground of unjust enrichment - Not proper - Principle of unjust enrichment cannot be applied ipso facto in absence of any requirement under statute.

Constitution of India, Art.226.

Central Excise Act (1 of 1944), S.11B.

Contract Act (9 of 1872), S.70. (Paras 7, 9, 13)

Cases Referred : Chronological Paras

State of Orissa v. Mahanadi Coalfields Ltd., AIR 1996 SC 3339 : 1996 AIR SCW 2674 : 1996 DNJ (SC) 234 10

R. Mehta with G. R. Goyal, for Appellant; Ravi Bhansali, for Respondents.

\* Against order of Dr. B. S. Chauhan, J. in Civil Writ Petn. No. 1685 of 1992, D/- 13-3-2000.

Judgement

JUDGMENT :- The appeal has been listed for orders on office report that paper book required to be submitted by the appellant has not been submitted. The learned counsel for the appellant states that they have already filed the paper books.

2. However, we shall presently notice that necessity of paper book in the present case is not required inasmuch as no dispute of fact is required to be gone into and only question that is required to be considered in this appeal is that whether the learned single Judge was justified in refusing refund of cess deposited by the petitioner-appellant under the orders of the Court and subject to condition of the order. The learned single Judge denied refund on the principle of unjust enrichment.

3. The parties have agreed that the appeal may be heard finally.

4. The appellant-petitioner filed the writ petition claiming relief against levy of market fee levied under the provisions of the Rajasthan Agricultural Produce Markets Act, 1961. At the time of admitting the writ petition on 27-3-1992, the Court made the following interim order :

"Meanwhile, the members of the petitioner-Association may not be compelled to take a licence but they will continue to pay market fee and that fee will be kept in separate acount of the market committee and shall be refund to the petitioner in case the writ petition succeeds with interest at the rate of 12%".

5. By order dated 17-9-1997 after hearing the parties the order dated 27-3-1992 was confirmed. The petition ultimately came to be allowed by the learned single Judge vide judgment under appeal dated 13-3-2000. However, instead of ordering refund of the market fee under the orders of the Court and subject to condition noticed above, the learned single Judge passed the following order:

"Thus, in view of the above, no order of refund can be made in favour of the petitioners, as it is not their averment anywhere in the petition that they had not passed over the liability to the consumers. In such circumstances, refund would prove to be a wind-fall for them. The consumers on whom the liability has been passed on, are not before this Court. Moreso, the recovery could not have been made from the petitioners after the notification dated 5-8-1998. It is clarified that if there is any recovery pending,respondents may realise from the petitioners."

6. Aggrieved with this order, this appeal is before us.

7. It may be noticed that the petition was not for claiming refund but for challenging the levy at the time of inception and there could not have been any averment by the petitioners in the petition that the market fee paid by them has not been passed on to the consumers. Looking for such an averment in the petition which has been filed before collection of market fee and which was paid under the orders of the Court during the pendency of the writ petition was obviously an incorrect premise.

8. It is also not the case of the respondents that there is any legislative provision which affects the right of the tax payer to claim refund, if ultimately tax is not found due and leviable inasmuch it is not only the levy of market fee but collection thereof shall also have to be authorised by law. An unauthorised collection of tax by the State, unless otherwise provided under the statute, ordinarily cannot be withheld by the State.

9. The principle of unjust enrichment evolved for sustaining the provisions of Sec. 11-B under the Central Excise Act and for directing the refund to be made after commencement of Sec. 11-B to be strictly in accordance with provision made under Section 11B of the Central Excise Act cannot be applied ipso facto to the facts of the present case where there is no such requirement under the Statute.

10. It is pointed out by the learned counsel for the petitioner that question of refund of market fee collected in the circumstances like the present one is squarely covered by the Supreme Court decision rendered in State of Orissa v. Mahanadi Coalfields Ltd., 1996 DNJ (SC) 234 : (AIR 1996 SC 3339). It was a case, which has reached the Supreme Court, where the refund of amount of tax was denied to the respondent Mahanadi Coalfields Ltd. which has been deposited with the State of Orissa under the directions of the Court.

11. The objection of the State for withholding the refund on acount of unjust enrichment was held to be frivolous by the Supreme Court in view of the conditions imposed by the Supreme Court under which the amount has been deposited. The Court noticed the submission that refund must be refused because it will amount to unjust enrichment and held :

"We consider it to be frivolous. The submission that the refund must be refused because it would amount to unjust enrichment cannot be countenanced since this Court's order dated 3-1-1994 in no uncertain words provided that on the respondents succeeding in the writ petitions, they shall, without any other confidition or stipulation, be granted refund together with accrued interest. By our order of 11-8-1995, we secured the amount by directing Mahanadi to deposit the amount in this Court subject to their contentions. Accordingly, the amount of Rs.49,22,68,098.89 came to be deposited on 31-8-1995."

12. In view of the aforesaid conclusion, the Supreme Court directed to refund tax deposited with interest.

13. The facts of the present case are no different. As we have reproduced interim order passed by this Court, the Court has issued unconditional order that in case the appellant succeeds, the amount shall be refunded with interest @ 12%. Apparently, in view of the aforesaid decision, there was no justification for withholding the refund by this Court at the time of making an order while allowing the writ petition without noticing the fact that there was no statutory provision authorising the State to withhold the refund of tax collected without authority of law.

14. In the circumstances, the appeal is allowed. We direct that the amount deposited under the orders of the Court as market fee with the respondents be refunded with interest @ 12% per annum till the date of decision by the learned single Judge and thereafter @ 9% per annum until the date of payment.

No order as to costs.

Appeal allowed.

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**AIR 2000 RAJASTHAN 358 "Fal Sabji Kreta Vikreta Vyapar Sangh v. State of Rajasthan"**

**RAJASTHAN HIGH COURT**

(JAIPUR BENCH)

Coram : 2 Dr. AR. LAKSHMANAN, C.J. AND ARUN MADAN, J. ( Division Bench )

Fal Sabji Kreta Vikreta Vyapar Sangh, Appellant v. State of Rajasthan, Respondent.

Civil Spl. Appeal No. 533 of 2000 in Civil Writ Petn. No. 4217 of 1998, D/- 17 -7 -2000.

Rajasthan Agricultural Produce Markets Act (38 of 1961), S.36(2)(g) - Rajasthan Agricultural Produce Markets Rules (1963), R.75(ii) - AGRICULTURAL PRODUCE - AGRICULTURAL PRODUCE - GOVERNMENT POLICY - State Govt. Notification dt. 31-7-98 - Brokers - Rate of commission - Policy-decision taken by State Govt. to increase commission of 'A' Class brokers from 4% to 6% - Utility beneficial effect of - Cannot be scrutinised by Court - No interference can be made with increase in rate.

Constitution of India, Art.226.

AIR 1998 SC 1703, Foll. (Paras 12, 15, 17)

Cases Referred : Chronological Paras

State of Punjab v. Ram Lubhaya Bagga, AIR 1998 SC 1703 : (1998) 4 SCC 117 : 1998 AIR SCW 1480 : 1998 Lab IC 1555 (Foll.) 16

M/s. Shiv Shankar Dal Mills etc. v. State of Haryana, AIR 1980 SC 1037 8, 15

M/s. Narayan Hari Shankar v. State of Rajasthan, 1977 Raj LW 485 13

Bapubhai Ratanchand Shah v. State of Bombay, AIR 1956 Bom 21 14

Prem Krishan Sharma, for Appellant.

Judgement

Dr. AR. LAKSHMANAN, C. J. :- This appeal is directed against the judgment of learned single Judge (G. L. Gupta, J.) dated 4-4-2000 dismissing the writ petition on the ground that amendment in the rules does not frustrate the object of the Rajasthan Agricultural Produce Market Act, 1961 (hereinafter, to be referred as 'the Act of 1961').

2. The writ petition was filed by the appellant, which is a registered body, praying as under :-

(i) by issuance of an appropriate writ, order or direction declare the notification dated 31-7-1998 as ultra vires and completely against the purpose;

(ii) by issuance of an appropriate writ, order or direction, direct the respondent that no such increase should be made by the State Government; and

(iii) by issuance of an appropriate writ, order or direction it may also be ordered that the State Government should recover the excess amount charged by the brokers after 31-7-98.

3. By notification dated 31-7-98, the State Government has increased the rate of commission to A-Class brokers from 4% to 6%. The increase in the rate of commission from 4% to 6% is under challenge in the writ petition on the following grounds :

(a) That there is no justification behind this increase and that the amount will go to the middle man.

(b) The action of the Government in increasing the commission is clearly against the spirit of the Agricultural Produce Market Act and by this increase, the purpose of the Act and the establishment of the markets has been frustrated.

(c) The purpose of the Act was to eliminate the rate of middle man but by this increase, the role has been made very lucrative instead.

(d) The object of the Act was to benefit the producer as well as the consumer, but by this notification the Government has completely ignored the purpose and has benefited the middle man.

(e) There is no rationale behind the increase and there was no necessity for the increase.

4. Along with the writ petition certain Annexures were filed.

5. Reply was filed on behalf of the State of Rajasthan. According to the State, the Government

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has taken a policy-decision for increasing rate of commission from 4% to 6% and the notification has been issued after considering all the relevant factors and that the State has always a right to change its policy from time to time under the changing circumstances; and that the same cannot be questioned in a Court of law unless the said policy is arbitrary or violative of law.

6. G. L. Gupta, J. by his order dated 4-4-2000 dismissed the writ petition on a consideration of the entire materials placed before him. The learned Judge was considering the only question raised by the appellant/petitioner as to whether amendment in the rules frustrates the object of the Act of 1961 and after reproducing the preamble of the Act has held as follows :-

"The obvious purpose of the Act is to establish markets for agricultural produce for the State and also to regulate the buying and selling of the agricultural produce. The commission is given to the brokers for the help they render in the sale and purchase of the agricultural produce. Since the commission payable to 'A' Class broker was already payable, may be at 4 per cent which has now been increased at 6 per cent, it cannot be said that the amendment has frustrated the objectives of the Act.

The change in the rate of commission of the brokers is the policy matter for the consideration of the State Government. The State Government has taken decision of increasing the broker's commission after having the information from the other States of the country and also the other relevant factors. Since there was long standing demand of the brokers, the matter has been considered by the State Government and it has been thought proper to increase the commission. It may be that the increase is likely to benefit around Rs. 90,000/- p.m. to the brokers working in the market but that cannot be a ground to strike down the provision of increasing the rate of commission. This Court can be justified in interfering with the notification order only when it is shown that the amendment violates any of the provisions of the Constitution or of the Act of 1961. It is also not found that the amendment is arbitrary since the State Government has decided to increase the rate of commission after having information from other States."

7. Being aggrieved, the petitioner-Sangh has filed the above appeal and reiterated the very same grounds which have been raised in the writ petition.

8. We have heard Mr. Prem Kishan Sharma, learned Counsel for the appellant at the admission stage. The learned Counsel reiterated the same arguments advanced before the learned single Judge. We have carefully considered the points raised in the said appeal and urged by the counsel at the time of hearing. The learned Counsel has cited the judgment reported in M/s. Shiv Shanker Dal Mills v. State of Haryana, AIR 1980 SC 1037, in support of his contention.

9. The Rajasthan Agricultural Produce Markets Act, 1961 which received the assent of the President on 3rd November, 1961 was enacted to provide for the better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Rajasthan. The legislation of the subject has already been enacted by the States of Bombay, Madras, Andhra Pradesh, Punjab, Madhya Pradesh, Hyderabad and other States. The State of Rajasthan has from its very inception attached great importance to the regulation and improvement of primary marketing in agricultural produce. With the above object, the Act of 1961 was enacted. That providing to establish and regulate markets for sale or purchase of agricultural produce is to protect farm producers from being exploited by the middlemen and profiteers and also to secure fair return of their produce. That does not restrict freedom of trade and commerce. The Act restrains chances of further exploitations of the agriculturist and farm producers. On the contrary the Courts have held that similar enactment is beneficial to both agriculturist as well as traders dealing in farm produces. There is a definite public purpose behind the Act, namely establishment of regulated markets for purchase and sale of agricultural produce to protect the agriculturist from being exploited by the middlemen and profiteers. The Act is also intended to enact for the better regulation of buying and selling of agricultural produce and for the establishment of markets therefor in the State. The whole object of the Act is the supervision and control of the transactions of purchase by the traders from the agriculturist in order to prevent exploitation of the later by the former.

10. We have perused the reply filed by the State in the writ petition. It is stated that in

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big cities like Jaipur, Jodhpur, Bikaner, Ajmer and Sri Ganganagar, the separate fruit and vegetable market committees are situated to manage only fruit and vegetable markets and in other places where there are separate fruit and vegetable markets are not situated their sale and purchase of fruit and vegetables are managed by the local market committees in the notified area. It is further submitted that for each market committee there are bye-laws of each and every market committee framed under guidance of the State Government. As already noticed, the aims and objects of the Rajasthan Agricultural Produce Markets Act are to regulate the sale and purchase of the agricultural produce to protect farmers from the exploitation by middlemen and to make available good quality products in fair price to the consumers. It is stated that the brokerage to the brokers was fixed at the rate of 4 per cent after the commencement of the Act of 1961 and that there are 300 commission agents registered and in the year 1998-99 a sum of Rs. 5,13,98,680/- has been collected as mandi fee by the Lal Kothi Fruit and Vegetable Market Committee at the rate of 1.6%. Vide notification dated 31-7-1998, the State has increased the rate of commission to 'A' Class brokers from 4 per cent to 6 per cent which would be charged from the purchasers by the commission agents. It is also not in dispute and has been specifically stated in the reply since the commencement of the Act of 1961 the rate of commission to the 'A' class brokers on fruit and vegetables was 4 per cent and due to increase of prices in every commodity and also increase in the mandi fee charged from the brokers by the State Government from time to time, the 'A' class brokers made demand for enhancement of the rate of commission. It is further submitted that the State received number of representations on different times from 'A' class brokers for enhancement in the rate of commission and the State after a detailed examination and after receiving the comparative rate of commission charged by the brokers in the neighbouring States have taken a policy-decision for increasing the rate of commission from 4% to 6% vide notification dated 31-7-1998. Thus, it is submitted by the State that the notification had been issued after considering all the relevant factors.

11. We are of the opinion that since this is a policy-decision of the Government, it is empowered to make amendment in the rules after considering all the relevant factors. The Government after considering all the relevant factors has thought it proper to increase the rate of commission of the brokers which was only 4% since 1963 and has increased the rate of commission from 4% to 6% only in the year 1998.

12. The Rajasthan Agricultural Produce Markets Rules, 1963 have been framed by the State Government u/S. 36 of the Act of 1961. Clause (g) of sub-section (2) of Section 36 of the Act stipulates that the State Government may provide for the trade allowance which may be made or received by any person in any transaction in the agricultural produce in the market area. Under clause (ii) of Rule 75 of the Rules, it was provided that the commission payable to 'A' class broker shall be 4.00 per cent in case of fruits and vegetables and 1.75 per cent for other commodities and other charges shall be such as may be specified in the bye-laws of the Market Committees. The rate of commission had been increased by the notification. Thus, it is very clear that the State Government was well within its legislative powers to amend clause (ii) of Rule 75 of the Rules and the rate of per cent of the brokers' commission could also be increased. It is thus seen that the commission which was fixed at 4% in 1963 has not been increased till the impugned notification was issued in 1998 and the same has been increased after due consideration of all the relevant factors and the various representations made by 'A' class brokers demanding increase. In our opinion, the State Government is well within its jurisdiction to increase the commission and for that purpose is entitled to take a policy-decision.

13. In this context the judgment rendered by Sen, J. (as he then was) and reported in M/s. Narayan Hari Shanker v. State of Rajasthan, 1977 Raj LW 485, can be beneficially looked into. In the said case the question of enhancement of levy was questioned. The learned Judge held that whether the levy is a fee or a tax, should primarily be seen from the legislative provisions authorising such levy. It is always necessary in such cases to enquire what was the essential purpose which it intends to achieve. The learned Judge has further held that the levy of market fee at the rate of Re. 1/- per Rs. 100/- worth of agricultural produce is not excessive as to be a

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pretext of a fee and not fee in reality nor can it be said that the levy from the fee leaves a large surplus which is utilised by the Government for general purpose of the administration and that the receipts of the Mandi Committee do not go into the consolidated funds of the State; it is set apart and earmarked into the Mandi Committee Fund for the fulfilment of the various objects and performance of the functions of the Mandi Committee for the carrying out the various purposes of the Act.

14. In Bapubhai Ratanchand Shah v. State of Bombay, AIR 1956 Bom 21, Chagla, C.J. speaking for the Bench has observed that it is perfectly competent to the State Legislature to prohibit business being done in a particular place and also permit a business being done under certain conditions if public interest demands that a particular business should only be carried on under restrictions and limitations.

15. It is argued by the learned Counsel for the appellant that there is no justification behind the increase and that the amount does not go to the State and it will go to the middleman who is already earning manifold; and frustrates the purpose of the Act as to eliminate the rate of middleman. We are unable to give our seal of approval to the said contention. As already noted, it is the policy-decision of the State Government to increase the commission to 'A' class brokers from 4% to 6% considering all the attendant circumstances. If the contention of the appellant is accepted, it would be impossible for the State or the Legislature to put on the Statute Book any legislation if their Association have been affected by the increase. The contention of the appellant comes to this that the State Legislature cannot make proper provision for brokers. As already noticed the payment of commission is in existence from the commencement of the Act and the rate of commission had been fixed at 4% in 1963 and the brokers are the integral part of the purchase and sale of the agricultural produce from the producers/traders and the consumers. As already seen from the reply to the writ petition that more than 300 commission agents had been registered and in the year 1998-99 the amount of Rs. 5,13,98,680/- has been collected as mandi fee by the Lal Kothi Fruit and Vegetable Market Committee at 1.6%. Under such circumstances, no Court can countenance such argument advanced by the appellant. The judgment cited by the learned Counsel for the appellant reported in M/s. Shiv Shanker Dal Mill's case (AIR 1980 SC 1037) (supra), has no relevance to the question at issue in this case. The said case relates to refund of illegal recovery of market fee to the dealers. While considering the said question the Supreme Court held that Article 226 grants an extraordinary remedy which is essentially discretionary, although founded on legal injury and it is perfectly open for the Court exercising this flexible power to pass such order as public interest dictates and equity projects. In the said case the refund was ordered since it was discovered later that the collection to be erroneous and that there is no law of limitation especially for public bodies, on the virtue of returning what was wrongly recovered to whom it belongs. This judgment, in our opinion, will be of no assistance to the question raised in this appeal and the same is distinguishable on facts and law.

16. In a very recent judgment, reported in State of Punjab v. Ram Lubhaya Bagga, (1998) 4 SCC 117 : (AIR 1998 SC 1703), the Supreme Court has said that the right of the State to change its policy from time to time under the changing circumstances cannot be questioned and that the wisdom of the policy cannot be judicially scrutinised though the Court can consider whether the policy is arbitrary or violative of law. In that case, the Supreme Court was considering the change in policy in regard to reimbursement of medical expenses to its serving and retired employees. According to the previous policy promulgated in 1991 reimbursement in medical expenses charged by certain designated hospitals were admissible. However, according to the new policy, treatment could be had from any hospital but reimbursement of medical expenses was to be restricted to the level of expenditure as per the rate fixed by the Director, Health and Family Welfare, Punjab for a similar treatment package or actual expenditure whichever is less. The new policy further laid down certain other terms and conditions. The respondent before the Supreme Court contended that it would not be permissible for the State of Punjab to change its policy. The Supreme Court declaring the new policy as constitutionally valid held that the right of the State to change its policy from time to time under the changed circumstances is neither challenged nor could it be and that it is not normally within the domain of any Court to weigh pros and cons of the policy or to scrutinise it and test the

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degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law.

17. The above recent ruling of the Supreme Court is directly on the point at issue. In the instant case the State Government changed its policy based on a number of circumstances and factors as already noticed from the reply filed by the State in writ petition. As pointed out by the Supreme Court in the above judgment it would be dangerous if the Court is asked to test the utility beneficial effect of the policy or its appraisal based on facts set out on affidavits and Court would dissuade itself from entering into this realm which belong to the executive.

18. For the foregoing reasons, we dismiss this appeal.

Appeal dismissed.

**AIR 1998 RAJASTHAN 5 "Krishi Upaj Mandi Samiti, Chittorgarh v. Mahaveer Oil Mill"**

**RAJASTHAN HIGH COURT**

Coram : 2 N. L. TIBREWAL AND Dr. B. S. CHAUHAN, JJ. ( Division Bench )

Krishi Upaj Mandi Samiti, Chittorgarh, Appellant v. Mahaveer Oil Mill, Chittorgarh and others, Respondents.

Civil Special Appeal No. 823 of 1994, D/- 1 -8 -1997.

(A) Rajasthan Agricultural Produce Markets Act (38 of 1961), S.14 - Rajasthan Agricultural Produce Markets Rules (1963), R.64 - AGRICULTURAL PRODUCE - Agricultural Samiti requiring Trader to take goods through principal market yard - Direction by High Court that Committee cannot insist on goods being taken through principal market yard - Not proper - Same is inconsistent with purpose for which statute is enacted. (Para 16)

(B) Constitution of India, Art.226 - WRITS - Writ jurisdiction - Powers of Court - High Court cannot issue direction contrary to statutory rules. (Para 17)

Cases Referred : Chronological Paras

AIR 1996 SC 2173 : 1996 (9) SCC 309 : 1996 AIR SCW 2785 : 1996 Lab IC 1843 : 1996 All LJ 1210 17

AIR 1996 SC 3285 : 1996 (4) SCC 453 : 1996 AIR SCW 2398 17

AIR 1993 SC 352 7

AIR 1990 SC 123 : 1989 (3) SCC 709 15

AIR 1986 SC 1490 17

1984 Cri LJ 794 (Raj) : 1983 WLN 412 14

AIR 1983 SC 1246 11

AIR 1978 PunjHar 53 (FB) 13

1978 WLN (UC) 310 12

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AIR 1969 SC 329 6

AIR 1966 SC 385 11

AIR 1966 Raj 142 11

1926 AC 37, Whitney v. IRC Lord Dunedin 15

M. S. Singhvi, for Appellant; N. P. Gupta (for No. 1) and S. M. Singhvi (for Nos. 2 and 3), for Respondents.

Judgement

Dr. CHAUHAN, J.:- The instant appeal has been filed under S. 18 of the Rajasthan High Court Ordinance, 1949 against the judgment and order dated 5-11-1993 passed in S. B. Civil Writ Petition No. 2541/92. By the aforesaid judgment and order, the writ petition of respondent No. 1 had partly been allowed holding that the appellant-Samiti can charge the market fee from respondent No. 1 but the appellant-Samiti cannot insist that the respondent No. 1 has to take the agricultural produce through the principal market yard/market yard to its manufacturing unit.

2. The respondent No. 1, carries on the business of oil mill and admittedly his oil mill is situated within the market area notified under the provisions of Rajasthan Agricultural Produce Markets Act, 1961, hereinafter called 'the Act', was served a show cause notice on 24-5-90 contained in Annex.-1 to the writ petition to explain why he has not shifted to principal market yard in spite of the fact that he had been allotted a shop therein and if his explanation was not found satisfactory, why action should not be initiated against him and in the meanwhile, his licence granted under S. 14 of the said Act was suspended for a period of six months. The order of suspension of the licence was also communicated to the respondent No. 1/petitioner vide order dt. 8-6-1990 contained in Annex.-2 to the writ petition. Respondent No. 1/petitioner made an application and gave an undertaking dated 3-7-90 contained in Annex.R.2/9 that he would shift after the rainy season to the principal market yard and abide by the provisions of the Act and the Rajasthan Agricultural Produce Markets Rules, 1963, hereinafter called 'the Rules'. There had also been a meeting of traders and officers of the appellant-Samiti on 3-12-90 wherein a large number of traders including the present respondent No. 1/petitioner participated and gave an undertaking that they would shift their business within the principal market yard by 8-12-90. The said memorandum of compromise/agreement is contained in Annex.R.2/10. On the basis of the aforesaid undertakings, the licence of the respondent No. 1 was renewed under the provisions of S. 14 of the Act. Instead of complying with the undertaking and the terms of agreement, the respondent No. 1 filed a writ petition before this court praying that the appellant-Samiti be restrained from charging the market fee from him; restraining the appellant- Samiti from insisting that sale and purchase should be made from the market yard; restraining the appellant-Samiti from insisting on the respondent No. 1's shifting his business to the market yard and further restraining the appellant-Samiti to cancel or suspend the licence of respondent No. 1 and to issue a further direction to the appellant- Samiti to renew the licence of the respondent No. 1 from time to time. In the writ petition, various allegations had been made against the appellant-Samiti particularly sufficient facilities had not been provided under the market yard and charges of exhorbitant fee etc. The appellant- Samiti filed a counter-affidavit controverting all the allegations. The appellant also took a stand that respondent No. 1 had given the undertaking to shift his business and entered an agreement with the appellant-Samiti and, therefore, his writ petition should not be entertained as he did not comply with the said undertaking/agreement. The learned single Judge vide his impugned judgment and order held as under:

i. Once a market area has been declared under the Act then no sale and purchase can take place other than the market area i.e. either in principal market yard or in sub-market yard;

ii. All the sales and purchases of the agricultural produce taken within the said market area are subject to market fee;

iii. The commercial establishment of the respondent No. 1/petitioner was admittedly within the market area and, thus, even if he brings the oil seeds from outside the market yard then too, he has no option but to pay the market fee;

iv. Rule 64 requires that all the produce which are brought in the market area for sale, they have to be sold in the market area and in no other place;

v. If the market fee has already been paid as the agricultural produce has been purchased from other market yard then under Rule 58 of the Rules, the trader shall produce a declaration in

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Form 11 in the prescribed manner that on the notified agricultural produce, fee has already been levied in other market area of the Samiti;

vi. However, the Market Committee cannot insist that the trader/respondent No. 1 shall have to take the agricultural produce through the principal market yard to its manufacturing unit.

3. The appellant being aggrieved from the last observation that the trader cannot be forced to take the agricultural produce through the market yard if it has been purchased from outside the said market yard, has preferred this appeal.

4. Heard Mr. M. S. Singhvi, learned counsel for the appellant and Mr. N. P. Gupta, learned counsel for the respondent No. 1.

5. Mr. Singhvi has submitted that once the respondent No. 1/petitioner had given the undertaking to shift in the market yard as referred to above and on his undertaking, the suspension of his licence had been revoked and further been renewed, it was not open for him to challenge the order of the appellant-Samiti to shift in the principal market yard.

6. In Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati, AIR 1969 SC 329, the Apex Court has held that once an order is passed which is accepted by the other side and benefit has been driven out of it, it is not open to the said party to challenge the said order.

7. Moreover, a party cannot be allowed to blow hot and cold in the same breath which is based on the principle of election. In R. N. Gosain v. Yashpal Dhir, AIR 1993 SC 352, the Hon'ble Supreme Court has observed as under (at page 355):

"10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid and then turn round and say it is void for the purpose of securing some other advantage'."

8. Thus, it is settled law that after taking advantage under an order, a party may be precluded from saying that it is invalid and asking to set it aside.

9. In view of his acquiescence alone, the respondent No. 1/petitioner should have been found non-suited to maintain the writ petition before this court.

10. Under the statutory provisions S. 4 of the Act provides for declaration of the market area. Section 14 empowers the Market Committee to issue licence and renew the same after its expiry in accordance with the rules and bye-laws which includes the permission to operate in market area on payment of prescribed fee. Section 15 provides for suspension or cancellation of a licence granted under S. 14 if there is any breach of terms and conditions of the licence or for the reasons mentioned therein. Section17 empowers the Market Committee to collect the market fee and S. 39 provides for the revisional power of the Director of the Market Committee in case any person is aggrieved by any order passed by the Market Committee. The Director has the power to examine the legality or propriety of any decision or order passed by the Market Committee under the rules and he has further been empowered to modify, annul or reverse the said order.

11. The scheme of the Act has been examined by the courts from time to time and the provisions of the Act had been found to be intra vires. It has been held that establishment of regulated markets is a well known expedient for ameliorating the condition of agricultural purchasers by eliminating the middle man and bringing the consumers in direct contact with the purchasers and thereby seeking an ordered plan of agricultural development. (Vide Jan Mohd. Noor Mohd. Bagban v. The State of Gujarat, AIR 1966 SC 385). In Bhikam Chand v. The State, AIR 1966 Raj 142, this court observed that the provisions of the Act provide for a scheme of marketing in agricultural commodities for better regulation of the trade of buying and selling agricultural commodities by providing for the control of the various trading activities in specified areas by introduction of the system of compulsory licencing of the trade. The Hon'ble Supreme Court examined the provisions of the similar Act in the case of Sreenivasa General Traders v. State of Andhra Pradesh, AIR 1983 SC 1246, and observed that supervision of the operations in the notified market area can be more conveniently done, if business is carried on in a specific area or areas intended for that purpose.

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12. In Rikhab Chand Jain v. State of Rajasthan, 1978 WLN (UC) 310, this Court has observed that the provisions contained in R. 64 are essential for the proper and effective implementation of the provisions of the Act as it will assist the Market Committee in better enforcing of the terms and conditions of the licences issued by it under S. 14 of the Act and in collecting the market fees under S. 17 of the Act.

13. While interpreting the provisions of similar Act enacted by the Punjab Legislature, the Full Bench of Punjab and Haryana High Court in M/s. Harnam Dass Lakhi Ram, Bhatinda v. The State of Punjab, AIR 1978 Punj and Har 53, observed that it is immaterial whether the said sales or purchases take place in the principal market yard or sub-market yard or even outside such yards. The provisions of the Act regulate the sales and purchases of the agricultural produce alike without discrimination.

14. In State v. Moolchand, 1983 WLN 412 : (1984 Cri LJ 794), this Court has held that exemption is only in case of the purchaser, if the purchase is for his own private use and he purchases by way of retail sale and thus made it quite clear that if a trader purchasing it for the purpose of further processing, the exemption of market fee and the provisions of the Act etc. will not be available to him. Rule 64 of the Rules specifically provides that the agricultural produce brought into the market shall pass through the principal market yard or sub-market yard or yards. It has been provided to have the complete control and regulate the business activities. If a particular provision is interpreted that it is not mandatory for the trader to take the goods through the market yard, the provisions of the Act would not be effectively enforced and the purpose of enacting the Act itself would be frustrated.

15. In Tinsukhia Electric Supply Co. Ltd. v. State of Assam, 1989 (3) SCC 709 : (AIR 1990 SC 123), the Constitution Bench of the Apex Court observed as under (at page 152 of AIR):

"The courts strongly lean against any construction which tends to reduce a Statute to futility. The provision of a Statute must be so construed as to make it effective and operative, on the principle 'ut res magis valeat quam pereat'. It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the Statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Art. 14; but what a court of construction, dealing with the language of a Statute, does in order to ascertain from, and accord to, the Statute the meaning and purpose which the legislature intended for it . . . . . . . . .

It is, therefore, the court's duty to make what it can of the Statute, knowing that the Statutes are meant to be operative and not inept and the nothing short of impossibility should allow a court to declare a Statute unworkable. In Whitney v. IRC (1926 AC 37), Lord Dunedin, said (AC p. 52):

"A Statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable".

16. The language of R. 64 is crystal clear, which cannot be said to be vague or ambiguous and it requires no interpretation at all. Even if it is required, it is to be given as to make provisions of the statute effective and workable. Therefore, the direction of the learned single Judge that the appellant-Samiti shall not force the respondent No.1/petitioner to take the goods through the principal market yard or yard is inconsistent with the purpose for which the statute has been enacted.

17. Moreover, the Court cannot pass an order contrary to the statutory rules nor it can issue direction restraining the authorities to give effect to legal provisions (vide Union of India v. Kirloskar Pneumatic Co. Ltd., 1996 (4) SCC 453 : (AIR 1996 SC 3285) and State of U.P. v. Harish Kumar, 1996 (9) SCC 309 : (AIR 1996 SC 2173). Similarly in A. P. Christian Medical Educational Society v. Govt. of Andhra Pradesh, AIR 1986 SC 1490, the Hon'ble Supreme Court observed as under:

"Direction in clear transgression of the statutory provisions cannot be given. The court cannot direct an authority to disobey the statute to which it owes its existence. There cannot be anything more destructive of the rule of law than a direction by the court to disobey the laws."

Thus, in view of the above, we are of the considered opinion that the provisions of R. 64 of

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the Rules have to be given effect to regulate and control the trading activities of the traders and, thus, the appeal is liable to be allowed and direction issued by the learned single Judge to the effect that the respondent No. 1/petitioner shall not be forced to take the goods through the principal market yard is liable to be set aside otherwise the statute would be rendered unworkable.

In view of the above, the appeal succeeds and is allowed. The aforesaid direction that the appellant-Samiti shall not force the respondent No. 1 to take his goods through the market yard is set aside. However, there shall be no order as to costs.

Appeal allowed.

**AIR 1966 RAJASTHAN 142 (Vol. 53, C. 34) "Bhikam Chand v. State"**

**RAJASTHAN HIGH COURT**

Coram : 2 D. S. DAVE, C.J. AND KAN SINGH, J. ( Division Bench )

Bhikam Chand and others, Petitioners v. The State and others, Respondents.

Civil Misc. Writ Petn. No. 1570 of 1964; Civil Writ Petns. Nos. 1603, 1736, 1755, 1779, 1786 and 1791 of 1964 and 72 of 1965, D/- 14 -5 -1965.

(A) Constitution of India, Art.19(1)(g) - Rajasthan Agricultural Produce Markets Act (38 of 1961), S.1 - FREEDOM OF TRADE - AGRICULTURAL PRODUCE - OBJECT OF AN ACT - Restrictions under, to carry on trade in agricultural commodities - Restrictions have rational relation to object of Act and do not go in excess of that object - Restrictions are reasonable - Act held valid.

AIR 1959 SC 300, Rel. on. (Paras 28 and 30)

(B) Constitution of India, Art.348(3) - Rajasthan Official Language Act (47 of 1956), S.3 and S.4 - STATE LEGISLATURE - JUDICIAL DISCIPLINE - OFFICIAL LANGUAGE - Hindi permitted to be official language for hills and statutory orders - Yet English has not been done away with - Notification published in English and in Hindi - English version alone bas to be treated as authorised version.

AIR 1962 All 240 (FB), Rel. on. (Para 34)

(C) Rajasthan General Clauses Act (8 of 1955), S.32(48) - GENERAL CLAUSES - Government order when becomes notification.

The term 'notification' has to be considered in the light of the statutory dictionary of words provided by the Rajasthan General Clauses Act and a Government order will, in law, become a notification when it fulfills the two requisite conditions, namely : (i) its publication in the gazette, and (ii) its publication under proper authority. These conditions can be fulfilled only when the notification is published and not when it is drafted and approved in the Secretariat, hidden from public gazette and when the date is put by some officer of Government. (Para 39)

(D) Rajasthan Agricultural Produce Markets Act (38 of 1961), S.3(2) - AGRICULTURAL PRODUCE - WORDS AND PHRASES - Expression 'within a period of not less than one month' - Meaning - Notification u/S.3, permitting filing of objections 'within one month' - Expressions 'not less than one month and within one month' mean same thing - Requirement u/S.3 is amply met if period for filing objection is exactly one month. (Words and Phrases - Expression 'within a period of not less than one mouth' - Meaning.

(S) AIR 1957 SC 271 and AIR 1957 Pepsu 14 and AIR 1964 All 416, Rel. on.

Civil Writ Petn. No. 893 of 1964, D/- 18-08-1964 (Raj) and AIR 1957 Raj 388, Disting. (Para 45)

(E) Rajasthan Agricultural Produce Markets Act (38 of 1961), S.37 - AGRICULTURAL PRODUCE - Bye-laws under made by market committees - Requirement of previous sanction of Director - Director sending approved Mode) Bye-laws to market committees - Requirement of previous sanction is not fulfilled - Each committee must consider model by-laws in the light of its requirements, seek sanction of Director before passing them, and again when they are passed.

AIR 1959 Raj 75 and 1955 Raj LW 454, Rel. on. (Para 52)

(F) Rajasthan Agricultural Produce Markets Act (38 of 1961), S.37 and S.36(2)(f) - Rajasthan Agricultural Produce Markets Rules (1963), R.69 - AGRICULTURAL PRODUCE - LICENSE - Levy of licence fee by market committee by its bye law - Bye law is not ultra vires market committee - Rule making authority fixing maximum fee and leaving each market committee with discretion to fix fees below that maximum - No case of excessive delegation.

Obiter. (Para 53)

(G) Rajasthan Agricultural Produce Markets Act (38 of 1961), S.14, S.4(2) and S.37 - AGRICULTURAL PRODUCE - LICENSE - Licences for operating in market - Market committee's bye-laws not valid - Market committee cannot be asked to issue licences - Machinery envisaged by Act for issue of licences not completed - It is mandatory for State Government to make suitable arrangements for issue of licences for interim period. (Para 54)

(H) Rajasthan Agricultural Produce Markets Act (38 of 1961), S.7(2)(b) and S.7(1)(i) - AGRICULTURAL PRODUCE - Constitution of market committee for first time - Nomination of members by Government - No particular limitation as to qualification of members is laid down - S.7(2) is exception to S.7(1)(i). (Para 56)

(I) Rajasthan Agricultural Produce Markets Act (38 of 1961), S.7(2)(b) - AGRICULTURAL PRODUCE - WRITS - NATURAL JUSTICE - Constitution of market committee for first time - Nomination of certain members by Government - Grievance of writ-petitioners that members were not properly qualified - Members not impleaded as parties to writ-petition - Decree about validity of their nomination would not be justified.

Constitution of India, Art.226.

Natural Justice. (Para 56)

Cases Referred : Chronological Paras

(1995) AIR 1965 All 151 (V 52), Baij Nath Singh v. State of U.P. 34

(1964) AIR 1964 All 416 (V 51) : 1963 All WR (HC) 555, Shri Nath v. Gopi Chand 43

(1964) Civil Writ Petn. No. 893 of 1964, D/- 18-08-1964 (Raj), Birdhi Chand v. State of Rajasthan 48

(1962) AIR 1962 All 240 (V 49) : ILR (1982) 1 All 601 (FB), Jaswant Sugar Mills Ltd., Meerut v. Presiding Officer, Industrial Tribunal (III) U.P. Allahabad 34

(1959) AIR 1959 SC 300 (V 46) : (1959) Supp (1) SCR 92, Arunachala Nadar v. State of Madras 28

(1959) AIR 1959 Raj 75 (V 48) : 1958 Raj LW 448, Jethmal v. State of Rajasthan 49

(1957) (S) AIR 1957 SC 271 (V 44) : 1957 SCR 208, Harinder Singh v. Karnail Singh 40

(1957) AIR 1957 Pepsu 14 (V 44), Badri Nath L. Tirtha Ram v. State of Pepsu 42

(1957) AIR 1957 Raj 388 (V 44) : ILR (1956) 8 Raj 1044, Anokmal v. Chief Panchayat Officer, Rajasthan 48

(1955) 1955 Raj LW 454 : ILR (1955) 5 Raj 818, Jainarain v. Rajasthan State 51

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M. Mridul, Hastimal Parekh, M.B.L. Bhargava, C.L. Agrawal, G.M Lodha, R.K. Rastogi, J.S. Rastogi and B.R. Arora, for Petitioners; G.C. Kasliwal, Advocate-General and M.M. Vyas, Govt. Advocate, for Respondents.

Judgement

KAN SINGH, J. :- We have before us a group of nine writ petitions whereby the several petitioners, who are carrying on business in agricultural commodities in what were recently constituted as Market Areas, under the Rajasthan Agricultural Produce Markets Act, 1961, (No. 38 of 1961), hereinafter to be referred as the "Act", seek writs in the nature of prohibition against the State and other respondents restraining them from making any interference with their right to carry on their business unhampered as before. They also ask for a writ or an appropriate direction for quashing the various provisions of the Act, Rules and Bye-laws framed thereunder on the ground that they were null and void. As the writ petitions present some common features, they can conveniently be disposed of together.

2. Before we come to enumerate the several grounds of attack taken in the various writ petitions we think it convenient to refer to the salient features of the Act.

3. The Act which was passed by the State Assembly received the assent of the President on 3-11-61, and is designed to provide for the better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Rajasthan. The Act is divided in five chapters.

4. Chapter 1 is the preliminary Chapter and Section 2 thereof contains the various definitions. The following definitions may be noted :

"Section 2(1)(i) - "agricultural produce" includes all produce whether of agriculture, horticulture, animal husbandry or otherwise as specified in the Schedule."

"Section 2(1)(iv) - "bye-laws" means bye-laws made under Section 37 or Section 38."

"Section 2(1)(vii) - "market" means a regulated market established under and for the purposes of this Act for a market area and includes a market proper as well as a principal market yard or a sub-market yard."

"Section 2(1)(viii) - "market area" means any area declared to be a market area under Section 4."

"Section 2(1)(ix) - "market committee" means a market committee established under Section 6."

"Section 2(1)(x) -"market proper" means the area, including all lands with the building thereon, within such distance of a principal market yard or a sub-market yard as the State Government may declare to be a market proper."

"Section 2(1)(xiii) - "principal market yard" means an enclosure, building or locality declared to be a principal market yard under Section 5."

"Section 2(1)(xvii) - "sub-market yard" means an enclosure, building or locality declared to be a sub-market yard under Section 5."

5. Chapter II provides for constitution of markets. For this two necessary steps are required to be taken. Section 3 provides for the issuing of a notification of the intention of the State Government of regulating purchase and sale of agricultural produce in an area as may be specified in the notification, and it also provides for inviting objections which when received are required to be considered by the Government. This Section runs as under :

"Section 3. Notification of intention of exercising control over purchase and sale of agricultural produce in specified area -

(1) The State Government may, by notification in the official Gazette, declare its intention of regulating the purchase and sale of such agricultural produce and in such area as may be specified in the notification :

Provided that no area within the limits of a municipality shall be included in the area specified in such notification except after consultation with the Municipal Board or Municipal Council concerned, as the case may be.

(2) A notification under Sub-Section (1) shall state that any objection or suggestion which may be received by the State Government within a period of not less than one month, to be specified in the notification, shall be considered by the State Government."

6. Section 4 provides for declaration of a market area and this has to be done in accordance with the-provisions of that Section, which runs as follows :

"Section 4. Declaration of market area :

(1) After the expiry of the period specified in the notification issued under Section 3 and after considering such objections and suggestions as may be received before such expiry and after holding such inquiry as may be necessary the State Government may, by notification in the official Gazette, declare the area specified in the notification under Section 3 or any portion thereof to be a market area for the purposes of this Act in respect of all or any of the kinds of agricultural produce specified in the said notification.

(2) On and after the date on which any area is declared to be a market area under Sub-Section (1), no place in the said area shall, subject to the provisions of Section 14, be used for the purchase or sale on any agricultural produce specified in the notification issued thereunder :

Provided that, pending the establishment of a market in such area under Section 9, the State Government may grant, subject to such terms and conditions as may be prescribed, a licence to any person to use any place in the said area for the purchase or sale of any such agricultural produce.

(3) On and after the date of the notification issued under Sub-Section (1) or such later date as may be specified therein, no local authority, notwithstanding anything contained in any law, and no other person, shall within the market area or within a distance thereof to be notified in the official Gazette in this behalf in each case by the State Government, set up, establish or continue or allow to beset up, established or continued any place for the purchase or sale of any agricultural produce so notified.

(4) The State Government may, on the report of the Collector or of the Director or of the Market Committee or an officer appointed in this behalf and after such inquiry as it deems fit to make, suspend or cancel any licence granted under Sub-Section (2).

(5) The State Government may, at any time by notification in the official Gazette, exclude from a market area any area or include in any market area any other area."

7. Section 5 makes provision for dividing a market into yards and it runs as under :-

"Section 5. Division of market into yards :-

(1) For each market area there shall be one principal market yard and one or more sub-market yards as may be necessary.

(2) The State Government may, by notification in the official -Gazette, declare any enclosure, building or locality in any market area to be a principal

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market yard for the area and other enclosures, buildings or localities to be one or more sub-market yards."

8. Chapter III of the Act provides for constitution of market committees (Krishi Upaj Mandi Samitis) which are the principal administrative instruments for giving effect to the scheme of marketing as adumbrated in the Act. Section 8 runs as under :-

"Section 6. Establishment of market committees. -

The State Government shall establish a market committee for every market area in respect of the agricultural produce for which it is declared to be a market area under S. 4."

(9) Section 7 provides for the manner of constituting market committees and the material portions thereof run as follows :

"Section 7, Constitution of market committees. -

(1) Every market committee shall be constituted as prescribed and shall consist of the following 15 members, namely :

(i) Seven shall be persons elected by such recognised organisation of agriculturists in the market area for which it is established as the State Government may prescribe and, where no such organisations exist, by the agriculturists paying not less than ten rupees per year by way of rent or revenue and residing in the market area, in the manner prescribed;

(ii) two shall be persons elected by the traders licensed by the market committee in the prescribed manner;

(iii) two shall be representatives of the Co-operative Marketing Societies and Co-operative Central Financing Agency in the market area for which it is established as the State Government may prescribe;

(iv) elected by local authorities as follows :

(a) one person shall be elected from amongst its own members by the Panchayat Samiti having jurisdiction over the largest portion of the market area;

(b) If in a market area the principal market yard is wholly situated within the limits of a municipal council or a municipal board or a panchayat, one person shall be elected by the councilors of such municipal council or by the members of such municipal board or by the panchas (including the sarpanch) of such panchayat, as the case may be;

(c) if in a market area the principal market yard and the sub-market yard or yards are situated within the limits of more than one municipal council or municipal board or of more than one panchayat, one person shall be elected by the councilors of the municipal council or members of the municipal board or panchas (including the sarpanch) of the panchayat, as the case may be, within the local limits of which the major portion of the principal market yard is situated and one person shall be elected in the prescribed manner by the other municipal councils or boards or by the other panchayats, as the case may be, within the local limits of which the remaining portion of the principal market yard and sub-market yard is situated;

Provided that a person to whom a licence has been granted under Sub-Section (2) of Section 4 or under Section 14 shall not be eligible to become a member of the market committee under cl. (iii) or clause (iv);

(v) nominated as follows :

(a) where in the circumstances mentioned in cl. (iv) the number of persons to be elected by local authorities is two, two persons shall be nominated by the State Government;

(b) where in the circumstances mentioned in cl. (iv) the number of persons to be so elected is three, one person shall be nominated by the State Government :

Provided that the State Government may, at any time, reduce the number of nominated members for any market committee and in their place increase the number of members to be elected under cl. (i) or cl. (ii), as it thinks fit."

(2) to (8)..................................................

9. No act done by a market committee shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the committee."

10. The market committee is a body corporate and has a perpetual succession and a common seal and may sue and may be sued in its corporate name and is competent to acquire and hold property. Section 9 enumerates the several functions and duties of a market committee and it runs as follows :

"Section 9. Functions and duties of a market committee. - (1) A market committee shall -

(a) manage the market proper, the principal market yard and sub-market yards in the market area for which it is constituted;

(b) control and regulate -

(i) the running of the market in the interest of agriculturists and traders operating in the market;

(ii) the making of transactions in the market;

(iii) the admission and entry of persons to the market and the use thereof; and

(iv) the behaviour of those who enter the market for transacting business;

(c) take steps for the prevention of adulteration of agricultural produce;

(d) provide for the grading and standardisation of agricultural produce;

(e) act as a mediator or arbitrator in all matters of differences and disputes between licensees inter se or between them and agriculturists making use of the market as sellers of agricultural produce;

(f) bring prosecute or defend or aid in bringing, prosecuting or defending any suit, action, proceeding, application or arbitration on behalf of the market committee or otherwise, when so directed by the State Government or the Director; and

(g) do such other things as might be required for the purpose of achieving the objects and requirements of this Act and the rules and bye-laws made thereunder and facilitating the working of the market committee.

(2) It shall be the duty of the market committee -

(a) enforce the provisions of this Act, the rules and bye-law made thereunder and the terms and conditions of a licence granted under Sub-Section (2) of Section 4 in the market area for which such committee is constituted and within the distance thereof notified under Sub-Section (3) of S, 4, and

(b) when so required by the State Government to establish a market in such market area providing for such facilities as the State Government may direct from time to time in connection with the purchase and sale of the agricultural produce concerned :

Provided that the State Government may, on the application of a co-operative marketing society made through the registrar of Co-operative Societies for the State, permit such society to establish such a market in any market area."

11. Section 14 makes provision for issuing of licences by a market committee and it originally stood as follows :

"Section 14. Power of market committee to issue licences. - Where a market is established under (Section 6) the market committee may issue and renew licences, in accordance with rules and bye-laws, to traders, brokers, weighmen, measurers, surveyors, warehousemen and other persons to operate in the market on payment of the prescribed fees :

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Provided that no such licence shall be necessary in the case of a person to whom a licecee has been granted under Sub-Section (2) of S. 4."

12. This provision was, however, amended by the Rajasthan Laws Repealing and Amending Act, 1962, published in the Rajasthan Gazette dated 15-12-62, and in the above Section for the word and figure "Section 6", the words letter figures and brackets "clause (b) of Sub-Section (2) of Section 9" were substituted.

13. Then, there are provisions about suspension or cancellation of licences granted under Section 14, and with them we are not concerned at the moment.

14. Section 17 empowers a market committee to levy cess and it runs as under :

"Section 17, Power to levy cess. - The market committee may, subject to the provisions of rules and subject to such maxima as may be prescribed, levy a cess on the agricultural produce bought and sold by the licencees in the market."

15. Section 18 provides that all moneys received by a market committee shall be paid into a fund to be called "market committee fund" and all expenditure incurred by the market committee under or for the purposes of this Act shall be defrayed out of the said fund. It is authorised to invest the surplus in such manner as may be prescribed.

16. Section 19 provides for the several purposes for which the fund is to be expended and it runs as under :

"Section 19 Purposes for which the fund shall be expended. Subject to the provisions of S. 18, the market committee fund shall be expended for the following purposes, namely :

(1) the acquisition of a site or sites for the market;

(2) the maintenance and improvement of the market ;

(3) the construction and repair of buildings necessary for the purposes of such market and for the health, convenience and safety of the persons using it ;

(4) the provision and maintenance of standard weights and measures ;

(5) the pay, pensions, leave allowances, gratuities, compensation for injuries resulting from accident, compassionate allowance and contributions towards leave allowances, pensions or provident funds of the officers and servants employed by it ;

(6) the expenses of and incidental to elections ;

(7) the payment of interest on the loans that may foe raised for the purposes of the market committee and the provision of sinking fund in respect of such loans;

(8) the collection and dissemination of information regarding matters relating to crop statistics and marketing in respect of the agricultural produce notified under S. 4 ;

(9) the payment of the cost referred to in Sub-Sections (3l and (4) of S. 18 ;

(10) any propaganda in favour of agricultural improvement; and

(11) the carrying out of the purposes and provisions of this Act and the rules and bye laws made thereunder."

17. Section 36 provides for making of rules by the Government and the relevant portions thereof run as under :

"Section 36 Rules. - (1) The State Government may, either generally or specially for any market area or market areas make rules for the purpose of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision such rules provide for or regulate -

. . . . . . . . . . . .

(f) the issue of licences to traders, brokers, weighmen, measurers, surveyors, warehousemen and other persons operating in the market, the form in which and the conditions subject to which such licences shall be issued or renewed and the fee to be charged therefor.

\* \* \* \* \*"

18. Section 37 enacts how bye-laws are to be framed by the market committee and Section 38 contains the power of the Director to make the bya-laws. Sections 37 and 38 run as under :

"Section 37 Bye-laws. - (1) subject to any rules made by the State Government under S. 36 and with the previous sanction of the Director or any other officer specially empowered in this behalf by the State Government, the market Committee may, in respect of the market area under its management, make bye-laws for the regulation of business and conditions of trading therein.

(2) Any bye-law made under this Section may provide that any contravention thereof shall, on conviction, be punishable with line which may extend to fifty rupees."

"Section 38. Power of Director to make bye-laws. - (1) If a market committee fails to make, in respect of the market area under its management, the necessary bye-laws under S. 37 within a period of six months from the date of its constitution, the Director may make such bye-laws and may also provide punishment for the contravention thereof in accordance with Sub-Section (2) of S. 37.

(2) Such bye-laws shall remain in force until superseded by fresh bye-laws made by the market committee under S 37."

19. In exercise of the powers conferred on the Government, the Government framed the Rajasthan Agricultural Produce Markets Rules, 1963, hereinafter to be referred as the "Rules". These rules provide for various matters Rule 58 provides for market cess and runs as under :

"Rule - 58 Market Cess. - (1) A market committee shall levy and collect cess on agricultural produce bought and sold in market at such rates as may be specified in the bye-laws of the committee so however that the amount of cess levied as aforesaid does not exceed two rupees per head :of cattle, sheep or goat and 0.50 nP. at the maximum for every Rs. 100/- worth of any other agricultural produce.

Explanation - (a) For the purpose of this rule a sale of agricultural produce shall be deemed to have taken place in a market if it has been weighed or measured or surveyed by a licensed weighman, measurer or surveyor in the market for the purpose of sale, notwithstanding the fact that the property in the agricultural produce has by reason of such sale, passed to a person in a place outside the market.

(b) Further for the purpose of this rule, all notified agricultural produce taken out or proposed to be taken out of the market shall, unless the contrary is proved be presumed to be bought and sold within such market.

(2) The cess levied as per sub-rule (I) shall not be levied more than once on agricultural produce bought or sold in the market.

(3) The market committee shall also levy and collect licence fee from traders, brokers, weighmen, measurers, surveyors, warehousemen and other persons operating in the market as provided in the bye-laws.

(4) No cess shall be levied on agricultural produce brought from outside the market into the market for use therein by the industrial concerns

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situated in the market or for export and in respect of which a declaration has been made and a certificate has been obtained in Form - V :

Provided that if such agricultural produce brought into the market for export is not exported or removed therefrom before the expiry of twenty days from the date on which it was so brought, the market committee shall levy and collect cess on such agricultural produce from the person bringing the produce into the market at such rates as may be specified in the bye-laws :

Provided further that if the industrial concerns that brought the agricultural produce from outside the market into the market for the purpose of use by them, and who do not make any declaration and do not obtain a certificate in Form-V as prescribed above, shall be deemed to be responsible for the contravention of this rule, and shall, on conviction be punished under Sub-Section (3) of Section 36 of the Act with a fine which may extend to Rupees two hundred.

(5) The seller who is himself the producer of the Agricultural produce offered for sale and the buyer who buys such produce for his own private and/or household use, shall be exempted from payment of any cess under this rule."

20. Rule 59 provides for recovery of cess and fees and runs as under :

"Rule 59. Recovery of Cess and Fees, (1). The cess on agricultural produce shall be payable as soon as it is bought and sold in the market as maybe specified in the bye-laws.

(2) The cess referred to in sub-rule (1) of rule 58 shall be paid by the purchaser of the notified agricultural produce concerned :

Provided that where the purchaser of a notified agricultural produce cannot be identified, the cess shall be paid by the seller.

(3) (a) At any time, when so required by any officer or servant of market committee the driver or any other person in charge of any vehicle, boat or other conveyance, shall not remove such vehicle, boat or other conveyance, as the case may be, and keep it stationary as long as may reasonably be necessary, and allow the officer, servant empowered as aforesaid to examine the contents in vehicle, boat or other conveyance and inspect all records relating the notified agricultural produce carried, which are in possession of such driver or other person-in-charge, who shall, if so required, give his name and address and name and address of the owner of the vehicle, or other conveyance.

(b) The officer or servant of the market committee empowered as aforesaid shall keep any notified agricultural produce stationary which is taken or proposed to be taken out of the market in any vehicle, boat or other conveyance, if such officer, or servant has reason to believe that any cess, fee or other amount clue under this Act and rules in respect of such notified agricultural produce has not been paid; he shall allow the produce to be taken out after making enquiry, and shall report the matter to the market committee, which will proceed to take action against the concerned licenced trader or broker or any other such licenced functionary who has tried to evade the market cess. Such a trader or broker or licenced functionary shall be punished as prescribed under rule 63.

(4) The licence fees shall be paid along with the application for licence but incase the market committee refuses the grant of a licence, the fees recovered shall be refunded to the applicant.

(5) The market committee may levy a subscription for collecting and disseminating among the subscribers, information as to any matter relating to statistics or marketing in respect of the notified agricultural produce."

21. Rule 69 provides for taking of licences by traders and brokers and runs as under :

"Rule 69. Licenced Traders and 'A' class brokers. - (1) No person shall do business as a trader or an 'A' class broker in agricultural produce except under a licence granted by market committee under this rule.

(2) Any person desiring to hold such licence shall make a written application for a licence to the market committee and shall pay such a fee as may be specified in the bye-laws subject to the maximum of Rs. 100.

(3) On receipt of such application together with the proper amount of the fee the market committee may, after making such enquiries as may be considered necessary for the efficient conduct of the market grant him the licence applied for. On the grant of such licence the applicant shall execute as agreement in such form as the market committee may determine in accordance with the rules and bye-laws and such other conditions as may be laid down by the market committee for holding the licence.

(4) Notwithstanding anything contained in sub-rule (3), the market committee may refuse to grant a licence to any person, who in its opinion, is not solvent or in the case of renewal of licence whose operations in the market area are not likely to further efficient working of a market under the control of the market committee or who directly or indirectly or indirectly participated in strikes and boycotts.

(5) The licence shall remain in force from the date on which it is granted until the 31st of March following and may be renewed for each succeeding, year on a written application and after such enquiries as are referred to in sub-rule (3), as may be considered necessary and on payment of fees specified in the bye-laws.

(6) The names of all such traders and 'A' class, brokers shall be entered in a register to be maintained for the purpose.

(7) Whoever does business as a trader or as 'A' class broker in agricultural produce in any market without a licence granted under this rule or otherwise contravenes any of the provisions of this, rule shall on conviction be punishable with fine, which may extend to Rs. 200/- and in case of a continued contravention with a further fine which may extend to Rs. 50/- for every day during which the contravention continues after the date of the first conviction."

22. Rule 72 provides for licences to 'B' class brokers and is a replica of Rule 69, already quoted, and it only makes a change in the fee.

23. Then, we are told that the Director of Agriculture sent mode bye-laws of identical nature to all the Krishi Upaj Mandi Samitis (Market Committees) by a circular letter which is reproduced hereunder :

"Model Bye-laws are sent herewith as approved by me. You will please frame bye-laws of the Krishi Upaj Mandi Samiti accordingly."

The letter purports to have been signed by somebody on behalf of the Director. The model bye-laws were-then considered by the various market committees and they purported to pass them accordingly and then sought the approval of the Government. A survey of the relevant provisions of the Act, the Rules and bye-laws shows that a scheme of marketing in agricultural commodities specified in the Act is sought to be operated for better regulation of the trade of buying and selling of agricultural commodities

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by introducing control of the various trading activities in specified areas and by introduction of compulsory licencing of the trade in the commodities. The broad features of the Act are that, as a first step the Government is required to declare any area to be a market area and this is to be done by first issuing a preliminary notification under S. 3 of the Act and inviting objections after the issuing of the preliminary notification and the objections that may be received are required to be considered by the Government and then a notification under S. 4 is issued. As soon as a notification under S. 4, declaring a specified area to be a market area is issued, no place within the area is to be used for the purchase or sale of any agricultural produce specified in the notification and this prohibition is subject to the provisions of S. 14 of the Act. Then for the transition period pending constitution of market committees Government have been authorised to grant the licences. Then the next step is about the establishment of market committees who are the chief administrative organs created for the purpose of implementing the scheme operated by the statute. The first committee is to be nominated by the Government and thereafter this body has to be elected, in the manner, laid down in the Rules. The market committee is to be a body corporate and has been assigned certain functions for managing the market proper, the principal market yard and sub-market yards, in the market area for which it is constituted. It has been given the powers to control and regulate the trading activities both in the interests of agriculturists and the traders operating in the market. It is authorised to establish markets in the market area, but when it is required to do so by the Government it is bound to establish the markets. The market committee is empowered to impose a cess, subject to the maxima prescribed by the Rules on the agricultural produce bought and sold by the licensees in the market. Section 19 enumerates the several purposes for which the funds of the committee can be expended. Then, we have the Rules made by the Government and the bye-laws framed by the market committees to find out, how the scheme of control and regulation of trade is to be carried out.

24-25. Now, we may briefly enumerate the several grounds taken in the various writ petitions.

(1) That the Act was violative of the fundamental rights of the petitioners as enshrined in Art. 19(1)(g) of the Constitution to carry on their trade in the agricultural commodities in the market areas unhampered in any manner;

(2) That the preliminary notifications that were issued by the Government under S. 3 of the Act suffer from two fatal defects :

(i) That the proper opportunity to make objections against the notification was wholly denied to the petitioners for the simple reason that while the objections were required to be filed within one month from the date of the notification, the notification itself was published after the expiry of the period fixed for filing objections;

(ii) That whereas under S. 3 of the Act, a period of not less than one month was to be specified in the notification for the filing of objections, the notification fixed a period which was "within one month from the date of the notification." It is contended that what was provided in the notification was thus materially different from the requirement of the notification.

(3) The bye laws framed by the committees were bad, as they were not made with the previous sanction of the Director of Agriculture as required by S. 37 of the Act;

(4) Market was not declared in accordance with S. 9(2)(b) of the Act, with the result that the market Committee could not have issued any licence. It is submitted that the creation of a proper market and a market area was a condition precedent for the issuance of licences;

(5) Under S. 36(2)(f) the fee has to be prescribed by the Government in the Rules and it is not to be left to the market committee to prescribe any fee in bye-laws. The Government having not done this, the fee imposed by the market committees by their bye-laws was bad. It is contended that S. 37 of the Act did not contain the power to fix the fee for the licences. If at all, this has got to be done by the Government in the Rules under S. 36(2) of the Act;

(6) There was excessive delegation by the Government of its powers to impose licence fee to the marketing committee;

(7) The Collector was implementing S. 4(2) of the Act and he had asked the marketing committee to entertain applications for licences and this he was not entitled to do;

(8) The cess imposed by the market committees on sale of cotton and oilseeds was in contravention of S. 14 of the Central Sales Tax Act and Art. 286(3) of the Constitution as they were essential commodities declared by the Parliament for purposes of the Central sales tax and, as the State had already imposed a sales tax of 2 per cent, under the Rajasthan Sales Tax Act on these commodities, and for that matter the market committees could not subject these two commodities to a further levy by way of cess, as it could not exceed the maximum of 2 per cent prescribed by Central Sales Tax Act; and

(9) About the nomination of two members on the Gajsinghpur marketing committee grievance is made in Civil Writ Petn. No. 1791 of 1964 Messrs. Hansraj Satishkumar v. State, that the nomination of Servashri Harbans Singh and Prem Chand was bad, as they were not qualified to be members of the market committees for want of the requisite qualification about residence.

26. The writ petitions have been contested by the State. We propose to deal with the reply of the State, to the several contentions raised, at appropriate place in the judgment in the course of our discussion. We immediately proceed to deal with the several grounds narrated above in a serial order.

27. Re : (1) Though the petitioners raised this contention in their writ petitions, they did not press this ground in their arguments and this was rightly done, as to our mind, the matter stands concluded by two decisions of the Supreme Court dealing with similar pieces of legislation.

28. In Arunachala Nadar v. State of Madras, AIR 1959 S C 300, their Lordships of the Supreme Court had occasion to examine the validity of the Madras Commercial Crops Markets Act, in the light of the alleged infringement of fundamental right of the traders under Art. 19(1)(g) of the Constitution. Their Lordships observed that in order to be reasonable, a restriction must have a rational relation to the object which the Legislature seeks to achieve and must not go in excess of that object. As regards the test of reasonableness, however their Lordships observed that no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into judicial verdict. Having adverted to this test their Lordships observed as follows :-

"The Madras Commercial Crops Markets Act, 20 of 1933, was the result of, a long exploratory investigation by experts in the field, conceived and enacted to

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regulate the buying and selling of commercial crops by providing suitable and regulated market by eliminating middlemen and bringing face to face the producer and the buyer so that they may meet on equal terms, thereby eradicating or at any rate reducing the scope for exploitation in dealings. Such a statute cannot be said to create unreasonable restrictions on the citizens right to do business unless it is clearly established that the provisions are too drastic, unnecessarily harsh and overreach the scope of the object to achieve which it is enacted."

"The Act, Rules and the Bye-laws framed thereunder have a long-term target of providing a net work of markets wherein facilities for correct weighment are ensured, storage accommodation is provided, and equal powers of bargaining ensured, so that the growers may bring their commercial crops to the market and sell them at reasonable prices. Till such markets are established, the said provisions, by imposing licensing restrictions, enable the buyers and sellers to meet in licenced premises, ensure correct weighment, make available to them reliable market information and provide for them a simple machinery for settlement of disputes. After the markets are built or opened by the marketing committees, within a reasonable radius from the market, as prescribed by the Rules, no licence is issued; thereafter all growers will have to resort to the market for vending their goods. The result of the implementation of the Act would be to eliminate, as far as possible, the middlemen and to give reasonable facilities for the growers of commercial crops to secure best prices for their commodities."

"Having regard to the entire scheme of the Act, the provisions of the Act including S. 5 constitute reasonable restrictions on a citizen's right to do business, and therefore, they are valid."

29. Their Lordships took the same view in examining the validity of the Bombay Agricultural Produce Markets Act, 1939, and came to the conclusion that the Act was valid.

30. Thus, we do not find any force in the first ground.

31. Turning now to the second ground of attack we may reproduce the notification issued in one case, by way of illustration in dealing with the contention, as the notification about other market areas are featured similarly.

"Jaipur, August 9, 1963.

No. F. 10 (19) Agr.V/63 -In exercise of the powers conferred by Section 3 of the Rajasthan Agricultural Produce Markets Act. 1961, the Government of Rajasthan hereby declares its intention to regulate the purchase and sale of the following Agricultural produce in the area falling within the limits of 22 Panchayats of Panchayat Samiti, Karanpur (District Ganganagar) as shown in Appendix 'A\* including the Municipal limits of Karanpur Municipal Board :-

1. Cereals : Wheat and Barley

2. Legumes: Gram

3. Oilseeds : Sarson and Tararnira

4. Fibres : Cotton (Ginned and Unginned)

5. Special : Sugarcane and Gur.

Any objection or suggestion which may be received by the State Government, within one month from the date of notification, shall be considered by the State Government."

32. The above notification, though dated 9-8-63, was published in the Rajasthan Rajpatra dated 28-9-63, that is long after a period of one month from 9-8-63. As already observed by us, the attack on the validity of this notification is twofold : (1) that the notification was just a bare farce and it did not afford any real opportunity to the petitioners to file their objection as they were required to be filed "within one month from the date of the notification", which date had already passed when the notification saw the light of the day on 26-9-63; and (2). That, whereas Section 3 required that the period during which objections are to be filed is to be "not less than one month to be specified in the notification", it is submitted, that the words ''within one month from the date of the notification", as contained in the notification, do not conform to the language of the Section namely, "not less than one month".

33. The learned Advocate General has contested the correctness of the submission on both these grounds. He submits that the term "date of the notification" according to Section 32(48) of the Rajasthan General Clauses Act, will mean the date when a Government order becomes, in the eye of law, a notification and this it so becomes only when it is published in the gazette under proper authority. He also invited our attention to the Hindi notification which was simultaneously published with the English version of the notification and in the notification, as published in Hindi, the words are that the objections are to be filed within one month of the date of the publication. In answer to the submission of the learned Advocate-General about the Hindi version of the notification, which, if it is authoritative in law, would meet the requirements of S. 3, the learned counsel for the petitioners pointed out that under the relevant constitutional provisions and the Rajasthan Official Language Act, it is only the English version of the notification that has to be taken to be authoritative. Before embarking on the consideration of the legal aspect we would like to refer to the factual aspect as to which was the notification issued, as a matter of fact, by the Government.

As the reply of the State was not clear on the point, we called upon the learned Advocate-General to obtain the necessary files and then make his submission before us. The learned Advocate-General candidly submitted that while the Marketing Officer had sent to the Government two separate drafts of the notification, one in English and. another in Hindi, and in the two there was no discrepancy, the notification that was signed by the Secretary to the Government was the same as we have reproduced already and indeed the Hindi version had not been signed by the Secretary or any other duly authorised officer at all. Consequently Hindi version can only be taken to be a translation of the English version and even the authorship of the Hindi translation is not at all free from doubt. Apart from this, according to the provisions of Art. 348 of the Constitution, the authoritative text of all orders, rules, regulations and bye-laws issued under the Constitution or under any law made by Parliament of the Legislature of a State, shall be in the English language. This Article is reproduced below for ready reference :

"Article 348. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc. - (1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides -

(a) all proceedings in the Supreme Court and in every High Court,

(b) the authoritative texts -

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor of a State, and

(iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State, shall be in the English language.

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(2) Notwithstanding anything in sub-clause (a) of clause (1), the Governor of a State may, with the previous consent of the President, authorise the use of the Hindi language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in that State :

Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court.

(3) Notwithstanding anything in sub-clause (b) of clause (1), where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by the Legislature of the State or in Ordinances promulgated by the Governor of the State or in any order, rule, regulation or bye-law referred to in para (iii) of that sub-clause, a translation of the same in the English language published under the authority of the Governor of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this article." Clause (3) of this Article permits the State Legislature to introduce in other language an Act, but in that event a translation of the same in the English language published under the authority of the Governor in the State Gazette shall be deemed to be the authoritative text thereof in the English language under this article. Thus, where a notification is published in English, whether as originally made in that language or by way of an authorised translation it alone is to rank as authoritative text of the notification.

34. The Rajasthan Official Language Act, 1956 (Act No. 47 of 1956), provides as to what is to be the language to be used for various official purposes of the State of Rajasthan. Section declares that Hindi shall be the official language for certain purposes of the State, and S. 4 enacts that :

"Subject to the provisions of Art. 348 of the Constitution of India and notwithstanding anything contained in S. 3, the language of :

(i) all Bills introduced in the State Legislative Assembly,

(ii) all Acts passed by the State Legislature,

(iii) all Ordinances promulgated under Art. 213 of the Constitution of India, and

(iv) all orders, rules, regulations and bye-laws issued by the State Government under the Constitution of India or under any Central or State law, shall be either Hindi written in Devnagri script or English :

Provided that in every such case where the English language is used, there shall be published, under the authority of the State Government, as soon as may be, a translation thereof in the Hindi language written in Devnagri script."

Thus, S. 4 again shows that while Hindi has been permitted to be the official language for bills and statutory orders, English has not been done away with the official language. The only requirement, when English is used, as language, is that the State Government is required to publish a translation of the notification in the Hindi language written in Devnagri script. Consequently, we have no doubt that English version of the notification alone has to be treated as the authorised version of the notification. We are fortified in the view that we are taking by a Full Bench decision of the Allahabad High Court reported as Jaswant Sugar Mills Ltd., Meerut v. The Presiding Officer, Industrial Tribunal (III) U.P., Allahabad, AIR 1962 All 240 (FB), cited by Shri M.B.L. Bhargava, learned counsel for one of the petitioners The Allahabad High Court followed this view in a later decision reported as Baij Nath Singh v. State of U.P., AIR 1965 All 151. We have therefore, to consider the matter further on this footing.

35. On first blush we were inclined to accept the contention made by the learned counsel of the petitioner that, as the notification is dated 9-8-1963, and was published more than a mouth thereafter, proper opportunity of making objections cannot be held to have been given to the concerning people. The learned Advocate General, taking his stand on the plain language of the Rajasthan General Clauses Act, 1955 (Act No. 8 of 1955), however submitted that this Act will apply for the construction of all Rajasthan laws (vide Section 4 of this Act). Section 32, which contains the general definitions, provides that unless there be anything repugnant in the subject or context or unless the contrary intention appears, the following expressions shall have the meanings respectively assigned to them hereby, namely. -

" ............. (48) "notification" or "public notification" shall mean a notification published under proper authority in the Gazette; ........."

36. On the language of this clause it is argued that there is a marked distinction between a Government order simpliciter and a Government order which matures into a notification on publication. It is strenuously contended that a Government order matures into a notification within the meaning of the Act, only on its first publication and prior to that, in law, it is not a notification, but only a Government order. Thus, it is pointed out that an order of the Government to become a notification requires : (i) that it is published in the gazette, and (ii) that it is so published under proper authority. Accordingly it is argued that the so-called notification dated 9-8-63, extracted above, became a notification only on 26-9-63, and not on an earlier date and since the petitioners were free to file objections within a period of one month commencing from 26-9-63, it cannot be said that there has been any non-compliance of the law.

37. The learned counsel for the petitioners, however, submit that the interpretation suggested by the learned Advocate General and supported by the learned Government Advocate goes counter to the language of the notification itself. It is dated 9 8-63, and we must take that as the date of the commencement of the period, according to the learned counsel for the petitioners. It is also urged on behalf of the petitioners that in construing a notification which results in putting letters on the fundamental rights of a citizen, we should prefer an interpretation which will advance the right of making objections rather than one which would result in contraction of that right. As in the first instance we ourselves were inclined to accept the submission advanced by the petitioners we have naturally devoted anxious considerations to both the points of view. To our mind, taking the date of publication of the notification as the dale of a notification will enlarge the scope for filing objections rather than narrow it down. Let us take an illustration.

38. Supposing this notification were published, say 15 days after 9-8-63, then, if the construction suggested by the petitioners were to be accepted, the objections could be filed within a period of not less than one month from 9 8-63. In other words, the period will stand curtailed by 15 days, because prior to the publication of the notification the prospective objectors may not be in a position to know about the notification.

39. Now, if we prefer the interpretation suggested by the petitioners then, the period would stand reduced by 15 days, that is the lag between the date on which the Government passed the order, and the date when that under was published in the gazette. We asked ourselves the question as to whether in a case like that taken by us for illustration a certain

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objector were to file his objections within one month from the date of the publication of the notification, could the Government legitimately refute to consider those objections and supposing they were to do so, could not the objector ask for a writ of mandamus from this Court to compel the Government to consider the objections ? Our answer to that question which we have put to ourselves is that every thing being equal we will be inclined to issue a writ of mandamus against the Government. What is of substance in the matter of inviting objections is the period that the objector should get i.e. the minimum period prescribed by the statute has to be ensured. If we take the interpretation that is suggested on behalf of the petitioners then, we are afraid that in some cases it is bound to result in the reduction of that period which could not possibly be the intention of the law makers or the authors of the notification.

Having considered the matter pro and con we 'are induced to hold that the term "notification" has to be considered in the light of the statutory dictionary of words provided by the Rajasthan General Clauses Act and a Government order will, in law, become a notification when it fulfils the two requisite conditions, namely : (i) its publication in the gazette, and (ii) its publication under proper authority. These conditions can be fulfilled only when the notification is published and not when it is drafted and approved in the Secretariat, hidden from public gazette and when the date is put by some officer of the Government. In these circumstances we are not inclined to accept the criticism of the learned counsel for the petitioners and we hold that in the facts and circumstances of the case the date of the notification should be taken to be 26 9-63, when it was published in the gazette for the first time. What we have said above applies to other cases in which there is only the difference about the date of the so-called notification and the date of its publication.

40. Turning now to the second ground under this head : Their Lordships of the Supreme Court had occasion to construe the words "not later than 14 days" as occurring in Rule 119 of the Rules framed under the Representation of the People Act, 1951, in Harinder Singh v. Karnail Singh, (S) AIR 1957 SC 271. Rule 119 runs as under :

"Rule 119. Time within which an election petition shall be presented : An election petition calling in question an election may. -

(a) in the case where such petition is against a returned candidate, be presented under S. 81 at any time after the date of publication of the name of such candidate under S. 67 but not later than fourteen days from the date of publication of the notice in the Official Gazette under R. 113 that the return of election expenses of such candidate and the declaration made in respect thereof have been lodged with the Returning Officer."

41. In construing these words their Lordships resorted to the provisions of Section 10 of the General Clauses Act. The argument that fell for consideration was as to, what was the period which can be said to be 'not later that 14 days from the date of the publication' of the notice. When the Election Commission examined the matter it noted as follows :

"The petition was filed on 18-5-54. But for the fact that 16-5-54 and 17-5-54 were holidays, the petition would have been time-barred. Admit."

The argument of the non-petitioners in that case was that the petition was not filed "not later than 14 days." The Election Tribunal overruled this plea. Their Lordships examined the difference between the words "not later than 14 days" and the words "within a period of 14 days", and their Lordships were pleased to hold that they mean the same thing. We may reproduce the observations made by their Lordships in this behalf :

"This argument proceeds on an interpretation of S. 10 of the General Clauses Act which, in our opinion, is erroneous. Broadly stated, the object of the Section is, to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a Court or office, and that period expires on a holiday, then according to the Section the act should be considered to nave been done within that period, if it is done on the next day on which the Court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday. Now, it cannot be denied that the period of fourteen days provided in R. 119(a) for presentation of an election petition is a period prescribed, and that is its true character, whether the words used are "within fourteen days" or "not later than fourteen days". That the distinction sought to be made by the appellant between these two expressions is without substance will be clear beyond all doubt, when regard is had to S. 81 of the Act. Section 81(1) enacts that the election petition may be presented "within such time as may be prescribed", and it is under this Section that R. 119 has been framed. It is obvious that the rule making authority could not have intended to go further thin what the Section itself had enacted, and if the language of the Rule is construed in conjunction with and under the coverage of the Section under which it is framed, the words "not later than fourteen days" must be held to mean the same thing as "within a period of fourteen days". Reference in this connection should be made to the heading of R. 119 which is, "Time within which an election petition shall be presented." We entertain no doubt that the Legislature has used both the expressions as meaning the same thing, and there are accordingly no grounds for 'holding that S. 10 is not applicable to petitions falling within R. 119."

42. In Badri Nath L. Tirath Ram v. State of Pepsu, AIR 1957 Pepsu 14, the question was about the payment of court-fee in pursuance of the order of a Court dated 15-5-53, wherein the payment of court-fee was required to be paid within a month of that date. The question that fell -for consideration was whether in computing the time of one month, 15-5-53 was or was not to be excluded. Applying Section 9 of the General Clauses Act, the learned Judges held that the day on which the order was made, that is, 15-5-53 had to be excluded.

43. In Shri Nath v. Gopi Chand, AIR 1994 All 416 a learned Judge of the Allahabad High Court, is construing the words "within 30 days" in contradistinction to the words "thirty days time is given" held that they mean the same thing.

44. Since we have a Supreme Court decision to guide us, it is not necessary to deal with the other cases on the subject. Their Lordships considered the relevant provisions of the statute, in the first instance, and then reached the conclusion that in the context of the statute the expressions "not less than 14 days" and "within 14 days" did not make any difference.

45. In the present case the requirement of the expression "within a period of not less than One month" as used in Section 3(2) of the Act, will be amply met, in our view, if the period for filing objections is exactly one month. In other words, the discretion was left with the Government to fix a period, for the inviting of objections which could be one month or more, but it could not be less than one month. But, where the period provided is exactly one month it cannot be said to be less than one month within the meaning of Section 3(2) of the Act,

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46. Now, turning to the language of the notification reproduced above, it permitted the filing of objections within one month. One would exclude the first day, according to Section 10 of the Rajasthan General Clauses Act, which corresponds to Section 9 of the General Clauses Act of the Central Legislature. It is further evident that the first day, that is, the date of the notification has alone to be excluded. Viewed thus, and particularly in the 'coverage' of the parent provision of the Act, namely, Section 3, we are unable to hold that the notification that was issued suffered on the around urged by the petitioners. Thus, we are unable to accept any of the two aforementioned contentions about the invalidity of the notification issued under Section 3 of the Act.

47. The cases of this Court dealing with the provisions of Panchayat Act and Rules, cited by learned counsel for the petitioners, are, to our mind, distinguishable and we may make a brief reference to.

48. The first case is Birthi Chand v. State of Rajasthan, Civil Writ Petn. No. 893 of 1964, D/- 18-8-1964 (Raj). The judgment in that case was based on an earlier Bench decision of this Court reported as Anokh Mal v. Chief Panchayat Officer, Rajasthan, ILR (1958)6 Raj 1044 : (AIR 1957 Raj 388). The provisions of Rule 4 of the Panchayat Rules, which fell for consideration, were to the following effect :

"The Returning Officer shall, at least seven days before the date of election, announce for the information of the Panchayat Circle by notice and in such other manner as the Chief Panchayat Officer may direct the number and names of wards, if any, the number of panchas to be elected from each ward and from the entire Panchayat Circle and the date, time and place of election."

49. The words used "at least seven days before the date of election" were held to mean that seven clear days should intervene between the date of the notification and the date of the election. The words of the Act 'not less than one month' and the words 'at least seven days', as used in the above passage, are of exactly alike. The cases are thus of no help in considering the present matter.

50. Re. No. 3. - As we have already observed, Section 37 of the Act requires that the marketing committee can frame bye-laws "with the previous sanction of the Director or any other officer specially empowered in this behalf by the State Government. As to what is the requirement of a previous sanction has been dealt with by this Court exhaustively in Jethmal v. State of Rajasthan, 1958 Raj LW 448 : 4 AIR 1959 Raj 75) Wanchoo, C.J., as he then was, dealt with the provisions of Section 64(j) of the Rajasthan Panchayats Act, which were quite similar to the provisions of Section 37 of the Act, in this behalf, and observed as follows :

"There is a well understood distinction in law between cases where a tax is imposed with the "'sanction" of Government and cases where the tax has to be imposed with "previous sanction". Where the imposition of the tax is with the "sanction" of Government, all that is required is that after the necessary procedure has been followed by the body imposing the tax, it sends the final proposal to Government for sanction. Where, however, "previous sanction" is required for the imposition of a tax, the matter has to be submitted to Government twice for sanction. In the first instance, the body, as soon as it wishes to impose a tax which requires "previous sanction", communicates its wishes to Government and must get the sanction of Government to proceed to take steps for the imposition of the tax and follow the procedure provided for such imposition. It is only when this sanction of Government is received that the body imposing the tax is authorised to take steps for publication of the tax intended to be imposed and for inviting objections to the tax. Thereafter it has to consider the objections and finally decide whether it would impose the tax and at what rate. When this is decided, the final proposal is again submitted to Government, for sanction and on receipt of the second sanction, the tax can be imposed from such date as may be fixed under the law."

"Whatever may be said as to the imposition of tax from cls. (a) to (i) of S. 64(1), so far as a tax included in clause (j) is concerned, the procedure relating to previous sanction is absolutely essential. Under clause (j), the Panchayat selects a tax which it is not specifically empowered to impose under cls. (a) to (i). In such a case, the repetition of the words "previous sanction' of the State Government in that clause makes it clear that before the Panchayat goes forward to notify its intention to impose such a tax on the inhabitants and calls for their objections, it must obtain the sanction of the Government, to impose the tax which is not within its specific power to impose."

51. On an earlier occasion too a question arose whether in framing bye-laws under the Rajasthan Town Municipalities Act, 1951, only final sanction of such bye-laws will meet the requirements of that law and in that case reported as Jainarain v. State of Rajasthan, 1955 Raj LW 454 to which one of us was a party, it was held by this Court that the previous sanction of the Government must be obtained to the very introduction of the consideration of the bye-laws, that is before they are moved in and considered by the Hoard. It was also observed in that case that the obtaining of the previous sanction of the Government is a condition precedent to the passing of bye-laws in question and the law is well established that such a condition must strictly be fulfilled before the bye-laws can be held to have been duly passed.

52. In the present case the letter of the Director of Agriculture, quoted by us above, only purports to send the Model Bye-laws to the various Krishi Upaj Mandi Samitis and the model bye-laws had been, approved by the Director, This, to our mind, will not do away with the necessity on the part of the several marketing committees to first apply their mind to the model bye-laws and, after making changes wherever they considered it necessary, to seek the previous sanction of the competent authority for the consideration of the bye-laws. Thereafter, on receipt of the sanction, it was for the marketing committees to again consider and pass the bye-laws in the light of, the previous sanction that they might have received. Thereafter, the bye-laws, as passed, have again to be submitted to the competent authority for approval. What was done in the present case by the Director of Agriculture does not fulfil the requirements of law. There is an obvious purpose in insisting upon the requirements of a previous sanction. Each marketing committee will consider the bye-laws in the light of its own requirements and those that may differ from area to area. After they have applied their mind and framed the draft bye-laws they are to receive a proper attention at the hands of the competent authority before it gives the sanction to the introduction of the bye-laws. It is then that the bye-laws have to be passed by the marketing committee concerned and they will acquire the force of law only after they are approved by the competent authority the second time. This obviously having not been done in any of the cases before us we have no choice, but to hold that the bye-laws made are null and void.

52A. Re. No. 4 : To our mind, this submission has no substance, as notification Ex. 3, produced in writ petition No. 1603 of 1964 at page 38 of the paper-book shows that the Government of Rajasthan

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called upon the Krishi Upaj Mandi Samiti, Sri Karanpur to establish a market for the market area already declared and in consequence of that the market committee had established a market for the said market area. It was in the light of the action taken by the market committee that the Government issued a notification under S 5 of the Act, which was published in Rajasthan Gazette dated 23-7-64, at page 454(2). There are analogous notifications in other cases. In the circumstances we are unable to find any substance in this contention.

53. Re Nos. 5 and 6; It is not necessary to give any decision on these points, as we have already held that the bye-laws were invalid for want of previous sanction as enjoined by S. 57 of the Act. Suttee it to say that a maximum fee is prescribed by the Rules framed under S. 36(2)(f) of the Act, vide Rule 69 and kindred rules referred to above. Since the rule making authority, namely, the Government has fixed the maximum fee that could be charged by the marketing committees, there is no excessive delegation if thereby each market committee is left with the discretion to fix the fees at a lower figure in each individual case. This, therefore, cannot amount to any excessive delegation as may impinge on the validity of the relevant rules. We are unable to accept the argument that Section 37 of the Act does not contain any authority for the marketing committees to prescribe the proper fee within the maximum limit indicated by the Government in the Rules. In the very nature of things the bye-laws have been made, subject to the Rules make by the Government under Section 36 of the Act and, if any bye-law is framed about the levy of fees within the framework of the Rules, that will not be ultra vires of the powers of the market committee.

54. Re. No. 7. Now, so far as the issuing of licences is concerned, after a market is established it is the market committee who is to issue and renew licences in accordance with Rules and bye laws (vide Section 14 of the Act). As we have already held that the bye-laws are not valid, it will not be competent for the committee to issue any licences. Section 4(2) permits the State Government to grant licences, subject to such terms and conditions as may be prescribed, to use any place in the market area for the purchase and sale of any agricultural produce. Section 35 of the Act permits the State Government to delegate to any officer, any of the powers conferred on it, by or under this Act, except the powers exercisable by it under clause (v) of Sub-Section (1), or under Sub-Section (2) of Section 7 or under Section 86 or under Section 40 of the Act. The orders of delegation of powers under Section 4(2) proviso has not been placed before us. It is not right on the part of the Collector to ask the marketing committee to issue licences, as the latter had failed to frame bye-laws which can be said to be valid in the eye of law. In these circumstances it is mandatory for the State Government to make suitable arrangements for the issue of licences for the interim period pending completion of the machinery envisaged by the Act for the issuing of licences. As soon after the declaration of a market area under sub Section (1) of Section 4, no place in the said area could be used for the purchase and sale of any agricultural produce specified in the notification, except in accordance with the provisions of Section 14 or the proviso to Section 4 (2), it is the bounden duty of the Government to provide a machinery for the issuance of licences for the interim period.

55. Re. No. 8 : We are not persuaded to go into this question, as the cess has been prescribed by the bye-laws which we have already held to be invalid for want of fulfilment with the requirements of Section 37 of the Act.

56. Re. No. 9 : We are not persuaded to accept the contention raised by the petitioners as valid for more than one reason. In the first instance, the Government had issued a corrigendum on 21-4-65, whereby the name of Harbans Singh which was stated to be as son of Shri Mehar Singh was changed. Secondly, these the two persons, about whose nomination grievance is made, have not been impleaded as parties to the writ petition and we do not think we will be justified in, making a declaration about their nomination in their absence. Lastly, Sub-Section (2) of Section 7, which enables the Government to constitute a market committee, for the first time, does not lay down any particular limitation for the nomination of a particular person. Sub-Section (1) lays down the qualification for members of the marketing committee, but Sub-Section (2) is in the nature of an exception for the nomination of the first marketing committee by the Government and it reads like this :-

"Section 7(2). Notwithstanding anything contained in Sub-Section (1) -

(a) on the failure of any organisation, persons or authority to elect a member under Sub-Section (1) within a period of three months from the date of the occurrence of the vacancy, the State Government shall give notice in writing to the organisation, persons or authority conceded to elect a member within a month from the date of such notice and, on the failure of the organisation, persons or authority again to elect a member within the said period, the State Government shall nominate a person on behalf of such organisation, persons or authority as a member of the market committee; and

(b) when a market committee is constituted for the first time all the members of the market committee shall be persons nominated by the State Government." Thus, we are unable to accept this last contention as one of any substance.

57. In the fight of our discussion we declare :

(1) That the bye-laws framed by the various market committees in the cases before us are invalid;

(2) That the respondents are hereby restrained from giving effect to the bye-laws as framed ;

(3) That they are further restrained from realising any cess or fee from the petitioners under the bye-laws; and

(4) We hereby direct the State Government to provide a proper machinery for the issuance of licences in accordance with Section 4(2) of the Act, till the market committees are in a position to issue licences in accordance with the rules and bye-laws. In that event it will be for the Government to prescribe by Rules a definite fee to be charged for each market area pending completion of the machinery for the issuance of licences under Section 14 of the Act.

58. The result is that we hereby allow the writ petitions in part in the above terms and order parties to bear their own costs.

Petitions partly allowed.

**AIR 1962 RAJASTHAN 82 (V 49 C 14) "Bhabhoot Singh v. Ghanshyam"**

**RAJASTHAN HIGH COURT**

Coram : 1 JAGAT NARAYAN, J. ( Single Bench )

Bhabhoot Singh, Petitioner v. Ghanshyam Durga Prasad, Respondent.

Civil Revn. No.542 of 1960, D/- 25 -7 -1961, against judgment and decree of Sr. Civil J. Sirohi D/- 29 -8 -1960.

Civil P.C. (5 of 1908), O.38, R.12 and O.21, R.43 and R.44 - AGRICULTURAL PRODUCE - WORDS AND PHRASES - ATTACHMENT - "Agricultural produce" - Meaning of.

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The term "agricultural produce" as used in the Code is confined to growing crop standing on the land on which it has grown or cut crop lying on the threshing-floor or fodder-stack. Once the grain is separated from the chaff it ceases to remain "agricultural produce" and there is no protection against its attachment under R.12 of O.38. The grain as well as the straw can both be attached. (Para 3)

Guman Mal, for Petitioner; Basti Chand, for Respondent.

Judgement

ORDER:- This is a defendant's revision application against an appellate order of the Senior Civil Judge, Sirohi.

2. The plaintiff got the cut crop of the defendant lying on the threshing-floor as well as the grain lying in a cart near the threshing-floor attached under O.38, R.1, Code of Civil Procedure. An objection was filed under O.38, R.12 which provides that the plaintiff cannot apply for the attachment before judgment of any agricultural produce in the possession of an agriculturist. The learned Senior Civil Judge held that the cut crop lying on the threshing-floor was agricultural produce, but the grain lying in the cart near the threshing-floor was not such produce within the meaning of R.12 of O.38. In my opinion his decision is correct.

3. The term "agricultural produce" has been used in the Code of Civil Procedure in a special sense and not in the comprehensive sense in which the term is generally used. Rule 43 of Order 21 provides for the attachment of movable property other than agricultural produce in possession of the judgment-debtor. Rule 44 of that Order provides for the attachment of agricultural produce. A perusal of these two rules shows that the term "agricultural produce" as used in the Code is confined to growing crop standing on the land on which it has grown and cut crop lying on the threshing-floor or fodder-stack. Agricultural produce whether standing crop or severed from the soil is movable property. Unlike other movable property agricultural produce of either description cannot be attached by actual seizure as provided in Rule 43. It can only be attached in the manner provided in R.44.

Protection is given to the agriculturists only with regard to the agricultural produce in unfinished state either standing on the field or lying in the threshing-floor or fodder-stack after being cut. Once the grain is separated from the chaff it ceases to remain "agricultural produce" and there is no protection against its attachment under R.12 of O.38. The grain as well as the straw can both be attached.

4. I accordingly dismiss the revision application. In the circumstances of the case, I direct that parties shall bear their own costs.

Revision application dismissed.

**AIR 2005 UTTARANCHAL 68 "Krishi Utpadan Mandi Samiti v. Pagia Enterprises"**

**UTTARANCHAL HIGH COURT**

Coram : 2 P. C. VERMA AND PRAFULLA C. PANT, JJ. ( Division Bench )

Krishi Utpadan Mandi Samiti, Appellant v. Pagia Enterprises, Respondent.

F.A. No. 1072 of 2001, D/- 7 -7 -2005.

U.P. Krishi Utpadan Mandi Adhiniyam (25 of 1964), S.2(a) - AGRICULTURAL PRODUCE - Mandi fee on agricultural produce - Levy of - Purchase of food grains by licensed dealer of seeds from farmers for processing same into seeds - Demand of mandi fee on unprocessed seeds - Is proper - What is exempted is dealing with processed seeds and not unprocessed seeds. (Paras 6, 7)

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J. C. Belwal, for Appellant; Jagdish Prasad, for Respondent.

Judgement

PRAFULLA C. PANT, J. :- These two Appeals, preferred under Section 96 of Code of Civil Procedure, 1908, are directed against the judgment and decree, dated 24-7-2001 and 25-7-2001, passed by learned Civil Judge (Senior Division), Nainital, in Civil Suit No. 115 of 1998 and Civil Suit No. 114 of 1998, respectively.

2. Brief facts of the case are that the plaintiffs (present respondents) instituted the aforementioned suits, with the pleading that the plaintiffs are the licensed dealer of seeds. They are registered under U.P. Scheduled Commodities Dealers Order, 1989. They have also alleged that Mandi fee under the U.P. Krishi Utpadan Mandi Adhiniyam, 1964, can be levied only on the agricultural produce and not on the seeds, as the seeds do not come under the definition of agricultural produces as these undergo certain chemical processes. It is also alleged that Allahabad High Court in Writ Petition No. 13795 of 1988 has held on 31-8-1988, that the seeds are not covered under the definition of agricultural produce. On the aforesaid ground, the plaintiffs (respondents) have challenged the imposed fee, by filing the aforesaid suits. Demand notices of defendant (appellant), for realizing the Mandi fee on the aforesaid seeds, has been questioned and an injunction has been sought not to recover the Mandi fee, as mentioned in the impugned demand notices. The defendant (appellant), contested the suits before the Trial Court and filed the written statements in which it has been stated that it is only the processed seeds which are exempted from the Mandi fee. Admitting the principle of law held in Writ Petition No. 13795 of 1988 by the Allahabad High Court, it is pleaded by the defendant (appellant) that the Supreme Court while dismissing the leave to appeal, against said order dated 31-8-1988 of the Allahabad High Court, clarified that the unprocessed seeds, cannot be kept under the category of the processed seeds. The Mandi Samiti, in their written statement, alleged that it is only the unprocessed seeds, on which the Mandi fee has been levied. It is also pleaded that since the plaintiffs failed to file a revision against the demand notices, as provided under Section 25 of U.P. Krishi Utpadan Samiti Adhiniyam, 1964, as such the suits are not maintainable. Learned Trial Court, framed the necessary issues, arising out of the pleadings and came to the conclusion that the seeds in which the plaintiffs deal are not subject matter of levy under the aforesaid Act of 1964 and accordingly decreed the suits for injunction, directing the defendant, not to realize Mandi fee, as mentioned in the demand notices in question. Aggrieved by said judgments and decrees, passed in Civil Suit No. 114 of 1998 and Civil Suit No. 115 of 1998, these two appeals have been filed by the defendants.

3. We heard learned Counsel for he parties and perused the entire record.

4. Learned Counsel for the appellant, argued before us that the learned trial Court has committed an error in not noticing the fact that Mandi fee was demanded from the plaintiffs on the purchase of food grains from the farmers for processing the same into the seeds and not on the sale of the processed seeds. In the circumstances, the burden lies on the plaintiffs to prove that he was dealing with processed seeds and not other grains. P.W. 1 Ram Narayan Agarwal, in Civil Suit No. 114 of 1998 and P.W. 1 Pramod Kumar Agarwal, in Civil Suit No. 115 of 1998, have stated that they are dealing in the certified seeds. On the other hand, D.W. 1 Maya Dutt Joshi, on behalf of the defendant, in both the suits, has stated that the Mandi fee is being levied on the plaintiffs only on those agricultural produces, which the plaintiffs purchase for preparing the seeds and not the processed seeds. The plaintiffs, if they purchase the agricultural produce, get the grading done after the germination tests and those grain, which are rejected by in the test, such agricultural produce is re-sold in the market and not the seeds which pass the germination tests and go though the chemical process. According to the appellant, the Mandi Samiti fee is exempted only on the processed seeds.

5. Before going further, it is pertinent to mention here the relevant provisions of law. Section 2 (a) of U.P. Krishi Utpadan Mandi Adhiniyam, 1964, defines the agricultural produce as under :-

"Agricultural produce" means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandry, or forest as are

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specified in the Schedule, and includes admixture of two or more of such items, and also includes any such item in processed form, and further includes gur, rab, shakar, khandsari and jaggary.

From the Schedule of the aforesaid Act, it is also clear that the following cereals find place within the caption 'Agriculture' :-

A-Agriculture.

I. Cereals -

1. Wheat.

2. Barley.

3. Paddy.

4. Rice.

5. Jowar.

6. Bajra.

7. Maize.

8. Bejhar.

9. Manduwa.

10. Oats.

11. Kakun.

12. Kodon.

13. Kutki.

14. Sawan.

6. Paper No. 7-C/3 in the lower Court record, shows that un-processed seeds are the raw material for the processed seeds. In said paper, which is the copy of the minutes of the meeting of Secretary - Agriculture, Government of U.P. with Director Mandi Parishad, shows that on the processed seeds, no Mandi fee can be levied as the processed seeds, after getting processed, with the chemical, cannot be used for the human consumption. In the present case, defendant's-appellant's stand is that no Mandi fee has been levied on processed seeds, rather it is only cereals purchased by the plaintiffs from the agriculturists, which at that stage, cannot be said to be processed article. Statements of plaintiffs witness, in both the cases, do not show if they are not purchasing the cereals from agriculturist or market, for germinating or processing them. Though it has been stated by witnesses of the plaintiffs, in both the cases that the unused cereals are returned to the sellers but it does not appear to be true from the evidence on record. When the cereals are purchased from someone, fail germination test, it must have been sold in the market. Learned Trial Court has erred in law by holding that Mandi fee cannot be imposed on the dealers, dealing with the certified seeds, for the reason that there is no provision which exempts levy of Mandi fee in the purchase of food grains by the plaintiffs, out of which after germination test, they process the seeds. What is exempted is dealing with the processed seeds.

7. Therefore, we are of the view that the learned Trial Court, has wrongly decreed the suits for injunction, restraining the defendants from realizing Mandi fee from the plaintiffs on unprocessed seeds. Had the impugned fee been imposed, after the seeds are processed, it would have been a different story. But that is not the case here, as such the appeals deserve to be allowed.

8. Accordingly, both the appeals are allowed. The impugned judgments and decree, passed in Civil Suit No. 114 of 1998 and 115 of 1998, are set aside. Both the suits shall stand dismissed. No order as to costs.

Appeals allowed.