

A

RAUNAQ RAM TARA CHAND &amp; ORS. ETC.

v.

THE STATE OF PUNJAB &amp; ORS.

July 14, 1975

[A. ALAGIRISWAMI, P. N. BHAGWATI AND P. K. GOSWAMI, JJ.]

B

*Punjab Agricultural Produce Markets Act, 1961—Sections 6, 10, 23—Punjab Agricultural Produce Markets (General) Rules, 1962—Rules 17, 29 and 31—Whether fees can be levied on persons who are not licensees as contemplated by Section 23 and rule 29.*

C

The appellants sell Gur and Shakkar within the market area notified under Punjab Agricultural Produce Markets Act, 1961. The appellants have obtained licences under section 10 of the Act in Form B as Commission Agents. Since the appellants were selling Gur and Shakkar in their own shops within the notified market area without submitting accounts and without payment of fees they were asked to show cause by the Market Committee why legal action should not be taken against them for violation of rules 29(3) and 31(1) of the Punjab Agricultural Produce Markets (General) Rules, 1962. The appellants disclaimed their liability to pay the fees under the Act. The Administrator of Market Committee levied fees on the appellants on the basis of best judgment assessment and also imposed penalty. The High Court allowed the Writ Petitions filed by the appellants and quashed the order of assessment as arbitrary and violative of the principles of natural justice. The High Court, however, rejected the contention of the appellants questioning the validity of the fees levied.

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Under section 10 of the Act any person may apply for a licence which may be granted on such conditions as may be prescribed. Under section 6(3) after the issue of a notification under section 6(1) no person can purchase or sell any agricultural produce except under a licence granted in accordance with the provisions of the Act. Section 23 authorizes the Committee to levy fees on the agricultural produce bought or sold by the licensees in the notified market area. Rule 29 provides that the Committee shall levy fees on the agricultural produce bought or sold by licensees in the notified market area. Rule 17(1) provides that a person desirous of obtaining a licence under section 10 of the Act shall apply in form A. The licence granted to the appellant is in accordance with form B. No licence has been issued to the appellants for doing the business of buying and selling agricultural produce. Therefore, although the appellants are licensees as required for some of the businesses mentioned in Form B, they have no licence for carrying on business of purchase and sale of agricultural produce within the notified Market Area. Reading section 23 and rule 29 it is clear that the Act authorises levy of fee on the agricultural produce bought or sold by licensees only.

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Allowing the appeal,

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HELD : The appellants have not as a matter of fact been issued licences as contemplated by section 23 and rule 29, and no fees can, therefore, be levied on them in respect of purchase and sale of agricultural produce by them. The appellants are, therefore, not liable to payment of fee under the Act as demanded.

[15B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 299 and 120 to 124 of 1972.

H

From the Judgment and Order dated the 25th March, 1970 of the Punjab & Haryana High Court in Civil Writ No. 325 of 1968, L.P.A. No. 177 of 1969, Civil Writ No. 1534, 1545, 1829 and 2201 of 1969 respectively.

G. L. Sanghi, S. K. Mehta, R. L. Batta and M. Qumaruddin, for the appellants (in Civil Appeal No. 299/72).

*V. C. Mahajan, S. S. Khanduja and R. L. Bata*, for the appellants (In C.As. Nos. 120-124/72)

*D. Mukherjee, Hardev Singh, R. S. Sodhi and G. C. Garg*, for the respondents. (In C.A. No. 299/72).

The Judgment of the Court was delivered by

**GOSWAMI, J.** In these appeals by certificate of the High Court of Punjab and Haryana validity of action taken by the Market Committee, Patiala, under the provisions of the Punjab Agricultural Produce Markets Act, 1961, is under challenge.

The appellants are shop-keepers of Gur Mandi, Patiala, and are licensees under section 10 of the Punjab Agricultural Produce Markets Act, 1961 (briefly the Act) and are also pucca arhtiyas. It is not in dispute that they sell gur and shakkar within the market area notified under the Act. It is also admitted that they have licences under section 10 of the Act in Form 'B' as kacha arhtiyas or commission agents. Since they were found to be selling gur and shakkar in their own shops within the notified market area without submitting accounts and without payment of fees they were asked to show cause by the Market Committee why legal action should not be taken against them for violation of rules 29(3) and 31(1) of the Punjab Agricultural Produce Markets (General) Rules, 1962 (briefly the Rules) and for violation of condition No. 1 of the licence which is to the effect that the licensee shall comply with the provisions of the Act, Rules and Bye-laws framed thereunder and instructions issued from time to time.

The appellants disclaimed liability to pay fee under the Act on various grounds. The Administrator of the Market Committee after some correspondence levied on one of the appellants, M/s Prem Chand Ram Lal, appellants in Civil Appeal No. 120 of 1972, Rs. 5014/- as market fee on the basis of best judgment assessment and imposed equal amount of penalty and a demand notice was issued for payment. M/s Prem Chand Ram Lal filed a writ application before the High Court for quashing the demand notice. The High Court allowed the petition quashing the order of assessment as arbitrary and violative of the principles of natural justice. The High Court, however, rejected the other contentions of the said petitioner questioning the validity of the fee levied. M/s Prem Chand Ram Lal filed a Letters Patent Appeal against the judgment of the learned single Judge rejecting their other substantial points.

The appellants in Civil Appeal No. 299 of 1972 had also filed a writ application under articles 226 and 227 of the Constitution in the High Court questioning the action taken against them as well as the levy under the Act. By a common judgment of March 25, 1970, the Division Bench of the High Court dismissed the Letters Patent Appeal of M/s Prem Chand Ram Lal as also the writ application of the appellants and granted certificates to appeal to this Court.

The question is whether the appellants are liable to payment of fee under the Act.

A Action in this case was taken for violation of rules 29(3) and 31(1) of the Rules. We will read these rules :

R.29(1). "Under section 23 a Committee shall levy fees on the agricultural produce bought or sold by licensees in the notified market area at the rates fixed by the Board from time to time....."

B (3) "The fees shall be paid to the Committee or a paid officer duly authorised to receive such payment on the day of the transaction or on the following day".

C R.31(1). "Every licensed dealer and every dealer exempted under rule 18 from obtaining a licence shall submit to the Committee a return in Form M showing his purchases and sale of each transaction of agricultural produce on each day, on the day on which the transaction takes place or on the following day....."

D The fault of the appellants lies in that they have neither paid fees under rule 29(3) nor have they submitted returns in Form 'M'. A perusal of the above two rules would show that the Committee is authorised to levy fees on agricultural produce brought or sold only by a licensee in the notified market area. Similarly under rule 31(1) only a *licensed dealer* is required to submit a return.

E We have now to take note of the scheme disclosed in a few other relevant provisions which are material for our purpose.

F Under section 10 of the Act "any person may apply to the authority specified in section 9 for a licence which may be granted for such period, in such form, on such conditions and on payment of such fees not exceeding one hundred rupees as may be prescribed". There is a proviso to this sub-section whereby "if any person carrying on any business of the nature specified in sub-section (3) of section 6 in a notified market area on the date of issue of notification under sub-section (1) of that section, fails to apply for licence on or before the date specified therein for obtaining licence, the prescribed authority may, before a licence is issued, impose on him such penalty not exceeding one hundred rupees as may be prescribed". By section 5 of the Act the State Government by notification declares its intention of exercising control over the purchase, sale, storage and processing of specified agricultural produce in a specified area. By section 6(1) the Government by notification notifies a market area for the purpose of the Act. Section 6(3) may be quoted :

H 6(3). "After the date of issue of such notification or from such later date as may be specified therein, no person, unless exempted by rules made under this Act, shall, either for himself or on behalf of another person, or of the State Government within the notified market area, set up, establish or continue or allow to be continued any place for the purchase, sale, storage and processing of the agricultural produce except

under a licence granted in accordance with the provisions of the Act, the rules and by-laws made thereunder and the conditions specified in the licence.....”

As we read the above sub-section it is clear that no person shall, unless exempted by rules, *inter alia*, purchase, sell, store or process the specified agricultural produce except under a licence. It is not the case of the appellants that they belong to the exempted class.

Rule 17(1) provides that “a person desirous of obtaining a licence under section 10 of the Act shall apply in Form A (to be submitted in duplicate) to the Chairman of the Board through the Committee of the area in which he wishes to carry on his business and shall also deposit with the committee the requisite licence fee”. Sub-rule (3) provides that if any person on the specified date fails to apply for a licence, he is liable to penalty in accordance with a certain scale. Under sub-rule (7) “the Chairman may grant a licence to the applicant in Form B. The licence shall be subject to the conditions mentioned therein”.

When we look to Form ‘A’ which is the form for application for a licence under section 10 we find that against entry 8, the applicant has to give the “particulars of the business for which the licence is required” under four heads :

- (1) Kacha Arhtiya
- (2) Commission Agent
- (3) Storage
- (4) Processing

Similarly in Form ‘B’ which is the form of the licence under section 10, against entry 5, the same particulars of the business as against entry 8 in Form ‘A’ appear. As a matter of fact one of the licences of the appellants was shown to us and it was in accordance with Form ‘B’. It is, therefore, clear that no licence has been issued to the appellants for doing business of buying and selling agricultural produce. It is the case of the appellants that they make direct purchases and this fact is not controverted. Although, therefore, the appellants are licensees as required for some of the businesses mentioned in Form ‘B’, they have no licence for carrying on business of purchase and sale of agricultural produce within the notified market area.

Now under section 23 “a Committee may, subject to such rules as may be made by the State Government in this behalf, levy on ad valorem basis fees on the agricultural produce brought or sold by licensees in the notified market area at a rate not exceeding rupee one fifty paise for every one hundred rupees, provided.....” Section 43 provides for rule making power. Rule 24 is referable to section 43(2)(v), but we are not concerned with this rule in this case. Rule 29 provides that under section 23 a Committee shall levy fees on the agricultural produce bought or sold by licensees in the notified market area at the rates fixed by the Board from time to time. Reading section 23 and rule 29 together it is not possible to escape from the conclusion that the Act

- A authorises levy of fee on agricultural produce bought or sold by licensees only. The appellants have licence only in respect of the business of kacha arhtiya and commission agent. While we express no opinion on the point whether the absence of reference to buying and selling of agricultural produce in Form 'A' and Form 'B' disables the Committee to issue licences for that purpose, we are of opinion that the present appeals can be disposed of on the sole ground that the appellants have not as a matter of fact been issued such licences and no fees can, therefore, be levied on them in respect of purchases and sales of agricultural produce by them. The appellants are, therefore, not liable to payment of fee under the Act as demanded.

- C The appellants also contend that since gur and shakkar are manufactured products they cannot come under the definition of agricultural produce with the meaning of section 2(a) of the Act. Section 2(a) defines agricultural produce to mean "all produce whether processed or not, of agriculture, horticulture, animal husbandry or forest as specified in the Schedule to this Act" which mentions 85 items of commodities. These are statutorily agricultural produce under section 2(a). It is not possible to entertain the argument that the Court will undertake a judicial scrutiny of these items in order to come to a conclusion whether these are agricultural produce or not. In view of the definition in section 2(a) such an enquiry is out of place. In this context we may note that under section 38 the State Government may by notification add to the schedule any other item of agricultural produce or amend or omit any such specified item. It is because of this power to add to the schedule items of agricultural produce that the first part of the definition under section 2(a) gives guidance as to what agricultural produce means.
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- E The submissions are, therefore, devoid of substance.

In the result the appeals are allowed. The appellants are not liable for payment of fee with regard to their sales in the notified market area other than in the capacity as kacha arhtiyas or commission agents. In the circumstances of the case there will be no order as to costs.

P.H.P.

*Appeals allowed.*