

(1969) 05 P&H CK 0001

High Court Of Punjab And Haryana At Chandigarh

Case No: Letters Patent Appeal No. 432 of 1964

Messrs Ch. Surja Ram and
Anothers

APPELLANT

Vs

The Punjab State

RESPONDENT

Date of Decision: May 13, 1969

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Hon'ble Judges: Prem Chand Jain, J; Mehar Singh, J

Bench: Division Bench

Advocate: R.C. Dogra and Mr. H.L. Sibal, for the Appellant; N.K. Sodhi for Respondent No. 3 and Mr. S.K. Jain for Advocate General (Punjab), for the Respondent

Final Decision: Dismissed

Judgement

P.C. Jain, J.

Messrs Surja Ram and Sons through Prahlad Kumar partner, filed a petition under Articles 226 and 227 of the Constitution of India praying that, an appropriate writ, direction or order or declaration be issued against State of Punjab, respondent No. 1, declaring:

- (i) the proviso to section 30 of the Punjab Agricultural Produce Markets Act as void and ultra vires the Constitution;
- (ii) rule 2, sub-rule (6) of the Rules and bye-law No. 28 of the bye-laws ultra vires of the Act and void and unconstitutional;
- (iii) section 23 of the Act void and ultra vires of the Constitution;
- (iv) rule 29 sub-rule (2) of the Rules void and ultra vires of the Act and the Constitution;

(v) the bye-laws in respect of the auction of the Agricultural Produce are void and ultra vires of the Act, Rules and Constitution;

(vi) prohibiting the respondents from charging or permitting to be charged the market charges and market fees under the above mentioned provisions of the law, and cancelling the notice issued by the market committee. Malout, on 31st December, 1963 and

(vii) prohibiting the respondents from enforcing the bye-law No. 11 sub-clause (2) relating to auction of the agricultural produce according to which the difference between two bids must not be less than 20 Naya Paise in the case of cotton and not less than 10 Naya Paise in the case of other produce.

2. The learned Single Judge, with regard to reliefs (ii), (v), (vi) and (vii), held that the same were concluded by a Division Bench decision of this Court in Mukhtiar Chand and another v. Marketing Committee, Malout Mandi (1964) 66 P. L. R. 836 in respect of reliefs (iii) and (iv), it was observed that they stood concluded by another unreported decision of this Court in Piara Ram v. State C. W. 308 of 1963 Civil Writ No, 308 of 1963, decided by Falshaw C.J. and Harbans Singh J, on 5th November 1963. In view of the decision of this Court in Mukhtiar Chand's case, the petition was allowed qua relief's (ii), (v), (vi) and (vii) while relief was refused with regard to items (iii) and (iv) following Piara Ram's case. In respect of relief No. (i), it was observed that this question would arise only after proper bye-laws had been framed. Consequently the learned Single Judge allowed the petition partially. Feeling aggrieved from the judgment and order of the learned Single Judge dated the 11th November, 1964, the present appeal has been filed under clause 10 of the Letters Patent by Messrs Surja Ram and sons.

3. Mr. Sibal, learned counsel appearing on behalf of the appellant contended that section 23 of the Punjab Agricultural Produce Markets Act, 1961, (Punjab Act No. 23 of 1961 hereinafter referred to as the Act" provides levy of a market fee on ad valorem basis at a rate not exceeding fifty naya Paise for every one hundred rupees by the Committee payable on agricultural produce brought or sold by the licensees and, according to sub-clause (b) of the section fee is leviable on the parties to a transaction but rule 29, sub-rule (2) the Punjab Agricultural Produce Markets (General) Rules 1962 (hereinafter referred to as Rules) provides that market fee in all cases is to be paid by the buyer only. According to the learned counsel, under the proviso to section 23, the market fee is leviable only on the "parties to a transaction", meaning thereby that the intention of the Legislature was to burden the buyer as well as the seller with the lev of the fees and that under rule 29 the buyer alone has been made liable to pay the fees and thus the rule being contrary to section 23 is ultra vires and deserves to be struck down. In order to appreciate the contention of the learned counsel it is necessary to reproduce section 23 and the relevant portion of rule 29 which reads as under :

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 bought or sold by licensees in the notified market area at a rate not exceeding fifty Paise for every one hundred rupees :

Provided that-

(a) No fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made; and

(b) A fee shall be leviable only on the parties to a transaction in which delivery is actually made.

29. Levy and collection of fees on the sale and purchase of agricultural produce. -(1) u/s 13 a Committee shall levy fees on the agricultural produce bought or sold by licencees in the notified market area at the rates fixed by the Board from time to time :

Provided that no such fees shall be levied on the same agricultural produce more than once in the same notified market area. A list of such fees shall be exhibited in some conspicuous place at the office of the Committee concerned.

(2) The responsibility of paying the fees prescribed under sub rule (1) shall be of the buyer and if he is not a licensee then of the seller who may realise the same from the buyer. Such fees shall be lieviable as soon as an agricultural produce is bought or sold by a licensee.

* * *

Under section 23 the Committee has been empowered to levy on ad valorem basis, fees on the agricultural produce bought or sold by licensees in the notified market area at a rate not exceeding fifty Paise for every one hundred rupees subject to such rules as may be made by the State Government in this behalf. Section 23 authorises the framing of rules by the State Government in the matter of levy of market fees subject to the limitations contained in the proviso of that section, which is divided into two parts. Under (a) it is provided that no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made. Under (b) it is provided that a fee shall be leviable only on the "parties to a transaction" in which delivery is actually made. In sub rule (2) of rule 28 it is provided that the responsibility of paying the fees shall be of the buyer and if he is not a licensee, then of the seller who may realise the same from the buyer. The main stress which was laid by the learned counsel in support of his contention was on the words "parties to a transaction" used in part (b) of the proviso. According to him, the words "parties to a transaction" would mean both buyer and seller jointly. I am afraid I am unable to accept the contention of the learned counsel. It appears that the words "parties to a transaction" in the proviso have been purposely used by the Legislature with an idea to draw a distinction

between parties to a transaction and functionaries through whom the transaction takes place such as brokers, katcha arhtias, etc., referred to in the Act and obviously it is for this reason that the word "only" has been added to the words "parties to a transaction" in the said proviso. The Legislature has not used the word "jointly" after the words "parties to a transaction" and, in my view, it was left to the rule-making authority to determine the manner in which the fees were to be realised from the parties to a transaction. From sub-rule (2) of rule 29 it is clear that the responsibility of paying the fees prescribed under sub-rule (1) is of the buyer and if he is not a licensee, then of the seller and in this manner the liability of the parties to a transaction has been determined. Moreover, as provided in section 11 of the Punjab General Clauses Act, the words in the singular include plural and vice versa and thus the words "parties to a transaction" used in proviso to section 23 of the Act would also mean party to a transaction, and in this view also, by determining the liability of the buyer sub-rule (2) of rule 29 does not go beyond what section 23 contemplates. Thus looking at the matter from any angle, the rule impugned is in no way repugnant to and is in consonance with the spirit of section 23 of the Act.

4. It was next contended by the learned counsel for the appellant that section 23 of the Act was void and ultra vires of the Constitution. The precise argument of the learned counsel was as follows :

That the levy under the Rules of a market fee is strictly speaking not a "fee" which could be levied under Item No. 66 of List II or Item No. 47 of the List III of the Constitution of India. It is in fact a tax levied to augment the general revenue of the Committee as is evident from the excessive and high rate at which it is levied. This imposition of tax by the Committee by whatever name called and the collection thereof is without authority of law and unconstitutional and void.

5. The decision of the Division Bench of this Court in Piara Ram's case which was later on followed in another unreported Division Bench Decision *Murari Lal Sharma v. The State of Punjab and others* C.W. 1444 of 1963 Civil Writ No. 1444 of 1963 decided on the 24th August, 1966 is a complete answer to this contention of the learned counsel. We see no reason to accept the contention of the learned counsel that the decision in Piara Ram's case does not lay down correct law. No other point was urged.

5. For the reasons recorded above, the appeal fails and is dismissed with costs. Counsel's fee Rs. 100/-

Mehar Singh, C.J.

6. I agree.