
(1981) 04 MP CK 0015
In the Madhya Pradesh High Court
Case No : M.P. No. 299 of 1976

Bhanwarlal

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 21-04-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 265

Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 — Section 17, 19, 21

Citation : AIR 1981 MP 220 : (1981) JLJ 612 : (1981) 26 MPLJ 485 : (1981) MPLJ 35

Hon'ble Judges : R.K. Vijayvargiya, J;G.P. Singh, J;G.G. Sohani, J

Bench : Full Bench

Advocate : K.L. Sethi, for the Appellant; J.B. Nirwani and Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sohani, J.

This Full Bench has been constituted to hear this petition under Article 226 of the Constitution on a reference being made by a Division Bench of this Court which initially heard this petition. The Division Bench was of the opinion that there was a conflict between two Division Bench judgments of this Court, one reported in Roopchand v. K. U. M. Samiti, Raipur (1975 MP LJ 326) : (1975 Tax LR 1932) and the other delivered in Girwarlal v. Krishi Upaj Mandi Committee. (MP No. 37 of 1967 decided on 10th April, 1970). The matter was therefore, placed before the Chief Justice for constitution of a Full Bench to hear this petition. That is how this petition came up for hearing before us.

The material facts giving rise to this petition briefly are as follows : The petitioner carried on at the material time, the business of buying and selling agricultural produce at Petlawad, District Jhabua. Under the provisions of the M. P. Agricultural Produce Markets Act, 1960 the State Government constituted a Market Committee by the name of Krishi Upaj Mandi Samiti, Petalawad.

hereinafter referred to as the "Market Committee", for regulating the purchase and sale of agricultural produce in the market established under the provisions of that Act at Petalawad. On 1st June. 1973. M. P. Krishi Upai Mandi Adhinivam. 1972, hereinafter referred to as the "Act" came into force. By Section 82 of the Act the M. P. Attricultural Produce Markets Act. 1960, was repealed, but the Market Committees constituted under that Act were to be deemed to have been constituted under the provisions of the Act. In pursuance of the powers conferred by Section 19 of the Act, the Market Committee. Petalawad. levied market fees, and the petitioner was called upon to produce his account-books for assessing market fees payable by the petitioner. As the petitioner failed to produce the accounts, he was informed by the notice dated 16th April 1976 (annex. F/2) that in the event of his failure to produce accounts within a week of the receipt of that notice, an estimate of his transactions would be made as stated in the notice and market fees would be assessed on the basis of that estimate. The petitioner did not produce any account-books and made a representation (annex. G/3) to the Director of Agriculture that the Market Committee was not empowered to levy any market fees. However, before the respondent Market Committee could proceed to assess the petitioner, he filed the present petition praying for the issuance of a writ to prohibit the respondent Market Committee from making any recovery under the provisions of the Act.

The first contention advanced by Shri Sethi, learned counsel for the petitioner, was that Section 21 of the Act no doubt empowered the Market Committee to make an assessment with regard to fees payable by a person u/s 19 of the Act if that person failed to produce accounts as directed but no manner having been prescribed as contemplated by Section 19 of the Act the Market Committee had no power to proceed to make best judgment assessment u/s 21 of the Act. Reliance was placed on the decision of a Division Bench of this Court in *Girwar-lal v. Krishi Upai Mandi Committee* (M. P. No. 37 of 1967).

To appreciate the contention advanced on behalf of the petitioner, it is necessary to refer to the relevant provisions of the Act. Section 19 (1) of the Act empowers "every market committee to levy market fees on notified agricultural produce brought for sale or bought or sold in the market area." Section 20 confers power on any officer or servant of the market committee empowered by the State Government in this behalf to order any person carrying on business in notified agricultural produce to produce the accounts and to furnish any information relating to the stocks of such agricultural produce or purchase, sale and delivery of such agricultural produce and also to furnish any other information relating to payment of the market fees by such person. The section further confers power to enter or search any place of business, warehouse, office etc. where the accounts, registers etc. relating to notified agricultural produce are kept by a businessman. Power of seizure has also been conferred by Section 20. Section 21 then provides as follows : --

"21. Best judgment assessment of fees : If any person required to produce

accounts or furnish information under Sub-section (1) of Section 20 fails to produce such accounts or to furnish information or knowingly furnishes incomplete or incorrect accounts or information or has not maintained proper accounts of the sales and delivery of the notified agricultural produce, the market committee shall, in the prescribed manner, assess such person for fees levied u/s 19."

As held by this Court in *Shri Ram Rice Trading Co. v. Krishi Upaj Mandi Samiti, Raipur*. (M. P. No. 576 of 1975 decided on 12th March 1976), it would be open to a market committee to delegate its power of making assessment of market fees to any sub-committee appointed u/s 18 of the Act and that such a sub-committee may consist even of one member. The petitioner, however, contends that unless the manner is prescribed as contemplated by Section 21 of the Act the Market Committee has no power to make any assessment u/s 21 of the Act.

Now, it was not disputed before us that rules have not been framed, as contemplated by Section 21 of the Act prescribing the manner in which a Market Committee is required to "proceed" in the matter of assessment in the event of failure by an assessee to produce his accounts. It is significant to note that the Act does not even provide that a Market Committee shall Proceed to make an assessment when account books are produced before it in pursuance of a notice issued in that behalf. No provision of the Act or the rules made thereunder have been brought to our notice containing any express pro-vision for making an assessment. The question then that arises for consideration is whether, in the absence of any manner having been prescribed by the Act or the rules, a Market Committee has power to assess market fees when it has been empowered to levy market fees by the provisions of Section 19 of the Act. A similar question arose for consideration before a Division Bench of this Court in *Roopchand v. K. U. M. Samiti, Raipur* (1975 MP LJ 326) : (1975 Tax LR 1932). The Division Bench observed as follows : (at D. 1934 of Tax LR)

"Article 265 of the Constitution pro-vides that no tax shall be levied or collected except by authority of law. The word "tax" in this article includes any impost such as duties, cesses or fees :

"*Muhammadbhai v. State of Gujarat*, ATR 1962 SC 1517 (Article 367 (18)). The words "levy" and "collection" in the article are also used in a comprehensive sense to cover all steps beginning from imposition and ending with recovery. The word "levy" thus covers not merely imposition but also assessment. A taxing statute has. therefore to provide not only for the imposition of the tax or fees with which it deals, but also for its assessment and collection. Article 265, however, does not lay down that any detailed machinery should be provided for assessment. The procedural provisions for assessment must, of necessity depend upon the nature of the tax or fees which is sought to be imposed by the statute. We have already referred to the material provisions of the Act and Rules. Section 20 of the Act, read with Rule 56, authorises a Market Committee to levy and collect market fees. The word "levy" in these provisions must, in our opinion,

include assessment. It is true that neither the Act nor the Rules expressly lay down any procedure for assessment. The Bye-laws also do not contain any express provision for assessment. We are however, of opinion that the authority to make an assessment in accordance with the principles of natural justice must be implied from the terms of Rule 56 read with bye-law 84. This we say on the principle that an authority to do something essential for the exercise of the powers conferred can be legitimately inferred as a matter of construction."

In arriving at the aforesaid conclusion, the Division Bench relied upon the decision of the Supreme Court in *Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd.*, . The Supreme Court has held in that case that it is a well established rule of construction that a power to do something essential for the proper and effectual performance of the work, which the statute has in contemplation, may be implied. Learned counsel for the petitioner, however relied on another decision of a Division Bench of this Court in *Girwarlal v. The Krishi Upaj Mandi Committee (MP No. 37 of 1967)*. In that decision, it has been held by another Division Bench of this Court that in the absence of any provision for assessment to be made under the M. P. Agricultural Produce Markets Act, 1960, market fees could not be held to be legally due from any trader. This decision, with respect, fails to take into account a well known rule in the construction of statutes that that construction should be preferred which makes the machinery workable. As observed by Lord Dunedin in *Whitney v. Commrs. of Inland Revenue* ((1925) 10 Tax Cas 88), "A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable". In our opinion, therefore, the decision in *Girwarlal v. Krishi Upaj Mandi Committee etc. (supra)* does not lay down correct law. It was rightly held in *Roopchand v. K. U. M. Samitt. Raipur* (1975 MP LJ 326) : (1975 Tax LR 1932) that a power of assessment in accordance with a quasi-judicial procedure is implicit in the power to levy market fees. We, therefore, hold that the respondent Market Committee had power to proceed to assess the petitioner in a quasi-judicial manner under the provisions of Section 21 of the Act as the petitioner failed to produce accounts when called upon to do so.

It was then contended that the assessment proposed by the notice (annex. F/2) would be excessive. The petitioner did not, however, dispute the correctness of the estimate" of his transactions made in the notice (annex. F/2) in the representation made to the Director of Agriculture or in any reply shown to have been sent to the Market Committee. The petitioner never represented to the Market Committee that the estimate made by it was arbitrary or capricious. The petitioner cannot, therefore, be allowed to urge that around when no such around was advanced before the respondent Market Committee.

The next contention advanced on behalf of the petitioner was that the levy of market fees by the respondent Market Committee could not be held to be valid inasmuch as the element of quid pro quo was not established between the payer

of the fee and the authority charging it. Reliance was placed on the decision of the Supreme Court in *Kewal Krishan Puri and Others Vs. State of Punjab and Another*, . In that decision the Supreme Court has laid down the following two amongst other tests for a valid levy of market fees on the agricultural produce bought or sold by licensees in a notified market area :--

(6) That the element of quid proquo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reason-ably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.

(7) At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above."

But the question as to whether the aforesaid tests are or are not satisfied does not really arise in the instant case because the levy of market fees by the respondent Market Committee has not been assailed in the petition on the ground that the aforesaid tests laid down by the Supreme Court were not satisfied. We repeatedly asked learned counsel for the petitioner to point out the specific ground taken in that behalf in the petition, but he was unable to do so. The petitioner cannot therefore, be permitted to assail the validity of the levy of market fees by the respondent Market Committee on a ground not taken in the petition.

It was then contended that the respondent Market Committee was not performing the duties which it was bound to perform under the provisions of Section 17 of the Act, and hence it was not entitled to levy market fees, The allegation that the respondent Market Committee was not performing its statutory duties was denied by the respondents. In the return, reference to Various duties which are being performed by the Market Committee in terms of Section 17 of the Act has been made. This fact was not denied by the petitioner by any counter-affidavit. In these circumstances, the allegation that the respondent Market Committee was not performing its statutory duties is not well founded. Moreover. Section 19 of the Act which empowers a Market Committee to levy market fees does not provide that performance of all the duties, which the Committee has to perform under the provisions of Section 17 of the Act is a condition precedent for levy of market fees. In point of fact, a Market Committee would be able to properly discharge its duties-only when it is able to collect market fees levied by it. If a Market Committee fails to perform any statutory duty, appropriate proceedings for compelling the Market Committee to perform its statutory duties can be taken. However, in this writ petition, the petitioner has not sought that relief. Therefore, the contention advanced on behalf of the petitioner that the levy of market fees is invalid on the ground that the Market

Committee is not performing its duties cannot be upheld.

No other ground in support of the petition was urged before us.

For all these reasons, this petition fails and is accordingly dismissed. In the circumstances of the case parties shall bear their own costs of this petition. The security deposit, if any shall be refunded to the petitioner.