

(1992) 12 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8017 of 1992

Bohra Mills

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 10-12-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 301, 302, 303
Punjab Agricultural Produce Markets Act, 1961 — Section 23

Citation : (1993) 104 PLR 51

Hon'ble Judges : Ashok Bhan, J;A.L. Bahri, J

Bench : Division Bench

Advocate : O.P. Goyal, for the Appellant; Ravi Kapoor and Vinod Kumar for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

A.L. Bahri, J.—Vide this judgment a bunch of writ petitions (C.W.P. Nos. 504 J, 8412 to 8417, 7340, 7643, 7646, 8005 to 8006, 8017, 8407 to 841], 12887, 12261, 12347, 12578, 12594, 12888, 13091, 13399, 13092, 14683 and 14684 of 1992) are being disposed of as the questions debated are common. The judgment is being prepared in C W P. No. 8017 of 1992.

2. The challenge in these writ petitions is to the charging of the market fee by different Market Committees in the State of Haryana and Punjab on the agricultural produce brought by the petitioners within the notified area of the respective Market Committees from places outside State of Haryana and such agricultural produce is consumed in the factory premises of the respective petitioners. The , petitioners brought these articles after paying market fees in the respective States and since no sale transaction was to take place within the notified areas of the respective Market Committees, the petitioners were not liable to pay market fee as the finished goods were being taken outside the State of Punjab In some of the writ petitions the challenge is also to the collection of fund under the Rural Development Act as applicable in the State of Haryana.

3. The State of Haryana has contested the writ petitions inter alia alleging that the questions raised in the present writ petitions have already been decided by the Full Bench, rather some of the petitioners had earlier filed writ petitions on similar grounds which were dismissed one of them being C.W.P. No. 12614 of 1990, M/s. Bindra Feed Mills v. State of Haryana and Ors., C. W. P. No. 12614 of 1990. decided on October 11, 1991. The present writ petitions would be barred by the principle of res judicata. On merits also the writ petitions have been opposed. We have heard counsel for the parties.

4. It is not considered necessary to refer to the pleadings in detail or the position of law as the matter has already been considered by the Full Bench as well as by the Division Bench in detail earlier, to which reference would be made hereunder.

5. Learned counsel for the writ petitioners have raised the following questions in support of their contentions :-

(i) Since no sale takes place within., the notified area of the respective Market Committees, no fee can be charged from the petitioners on the agriculture produce brought to the premises of the petitioners.

(ii) That the provisions of Section 23 of the Punjab Agricultural Produce Markets Act acts as restriction on the free movement of the goods which violates Articles 301 to 304 of the Constitution and thus the provision is ultra vires

(iii) That charging of market fee from the petitioners on the agricultural produce brought within the notified area of the respective Market Committees would be discriminatory as the State has exempted charging of market fee on maize and cotton lint brought within the notified area of the respective Market Committees.

6. Likewise another argument has been addressed in this very respect that in respect of agricultural produce brought from notified areas of other Market Committees where market fee has already been paid in the State of Haryana is also exempted whereas when the petitioners brought agricultural produce within their factory premises they are being charged the market fee which is again discriminatory. After giving due consideration to these respective arguments we are of the view that there is no merit in these writ petitions.

7. The challenge on the question of charging Rural Development Fund under the provisions of Haryana Development Fund, 1980 is without any substance as the Division Bench of this Court in C.W.P. No. 1.614 of 1990, M/s, Bindra Feed Mills v. State of Haryana and Ors., C.W.P. No. 1.614 of 1990, decided on October 11, 1991, had repelled the contention in this respect.

8. It has been argued by the learned counsel for the petitioners that no market fee could be charged from the petitioners on the different items of agricultural produce to their factories as no transaction of sale or purchase takes place within the notified area of the Committee. The Market fee is charged u/s 23 of the Punjab Agricultural Produce Markets Act (hereinafter called as "the Act"), 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 or brought for processing by dealers in the notified area at a rate not exceeding two rupees for every hundred rupees, (in Punjab Rs. three). Provided that, except in the case of agricultural produce brought for processing.

"(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."

9. The underlined words were substituted by Haryana Act 10 of 1979. If the agricultural produce is bought or sold or brought for processing by dealers the same would be subject to charging of market fee. The word "processing" has been defined u/s 2(nn) as under :- "

"Processing" means giving a treatment or a series of treatment to an agricultural produce in order to make it fit for use or consumption and includes manufacturing out of an agricultural produce ;"

10. It is not disputed that whatever articles of agricultural produce are brought by the petitioners in factories they are subject to processing as defined above. The provisions of Section 2(nn) and Section 23 were under consideration of the Division Bench in Bindra Feed Mills" case (supra). Dealing with the different contentions raised it was held as under : -

"By no stretch of interpretation by reading the scheme of the Act, it can be assumed that manufactured goods out of agricultural produce must be an agricultural produce, before market fee can be levied on it. The instance of levy of market fees is not an event of manufacturing. The event for levy of market fee is the agricultural produce brought for processing by a dealer or licensee and not by a consumer. Thus, in our considered view it is not a manufactured article on which market fee is levied. It is the agricultural produce brought to the notified market committee area on which market fee is levied."

It was further observed as under :-

"Thus, in our considered view once an agricultural produce is brought and is subjected to processing though ultimately used for manufacturing of some other item, it incurs the liability of market fee."

Repelling the contention that market fee was a levy on manufacturing it was observed as under :-

"The argument advanced that the market fee is a levy on manufacturing, is an obvious attempt at rendering, the legislative meaning totally obscure. The irresistible conclusion is that the levy of market fee does not fall within the entries of 7th Schedule entries 84 or 96. It is fee on the agricultural produce

which falls within the four corners of the State Legislative Competence Resultantly, Section 2(nn) of the Act is intra vires."

11. We fully agree with the view expressed by the Division Bench in Bindra Feed Mills" case and repel the contentions of the counsel for the petitioners urged in this respect.

12. It was also argued that no advantage was being taken by the petitioners of the different facilities provided by the respective Market Committees as in the case of the petitioners no sale transaction takes place within the area of the Market Committee i.e. there was absence of quid pro quo. This contention was repelled by the Full Bench, in M/s. Subhash Chander Kamlesh Kumar Vs. State of Punjab and others, a case under the Punjab Agricultural Produce Markets Act. That was a case where the petitioners alleged that their shops were situated outside the market yard or the sub market yard though they were within the notified market area but they were not enjoying the facilities provided by the Market Committee and thus there was no quid pro quo between the fees charged, and the services envisaged the Act. In para 43 of the judgment it was observed as under :-

"The correct statement of law is that the additional view of quid pro quo has undergone a transformation. The true test for a valid fee is whether the primary and essential purpose is to render specific services to a specified area or class, it being of no consequence that the State may ultimately and indirectly benefit by it. Quid pro quo is not always a sine qua non of a valid fee and what required to be shown is that by and large there is quid pro quo. The relationship between services expected is of a general character and a broad, reasonable and casual relationship is enough to satisfy the requirement of law. The payer of the fee represents collectively the class of persons i.e. users of the market, including growers and these engaged in business to whom the benefit is directly intended by the establishment of a regulated market and not the actual individual i.e. the trader. If there is quid pro quo in the sense explained above for such a class of persons, the rest of valid fee is satisfied."

13. In view of the rule of law laid down above, there is no scope left for holding that there was no quid pro quo between the fees to be charged from the petitioners and the facilities to be rendered by the Market Committee in the respective notified areas.

14. It has been further argued that imposition of market fee would amount to restricting the free movement of goods and thus "violating of the provisions of Articles 301 to 304 of the Constitution. A perusal of the aforesaid provisions itself indicates that a State Legislature can by law impose reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State. However, the State is required to take a previous sanction of the President while enacting such law. There is no force in the contention raised. Section 23 of the Act levies a fee for the facilities to be provided by the Market Committees It goes

without saying that fee is not a tax, particularly in the present case. Article 304(a)" of the Constitution talks of imposing tax and when such law is made, previous sanction of the President would be required. A perusal of the provision of the Act in dispute would show that no restrictions are being imposed on the movement of goods etc. (agricultural produce). It is only when the agricultural produce is brought within the notified area for being sold or being processed that a market fee is to be charged. Such charging of market fee for the facilities visualised under the Act cannot be treated as a tax or to attract the provisions of Articles 301 to 304 of the Constitution. The contention is repelled.

15. The other argument raised is with respect to the discrimination on two counts ; firstly, the collection of market fee on maize and cotton lint has been exempted, whereas the petitioners bring other articles of agricultural produce would be a class by itself and if the State has exempted certain items from charging market fee there would be no case of discrimination. The other limb of the argument is that when articles of agricultural produce are brought from other Market Committee areas in the State of Haryana where also market fee is paid, exemption is granted when such articles are brought within the notified area of the Market Committee whereas in the case of the petitioners who bring articles of agricultural produce from outside the State of Haryana, they are being charged the market fee. This contention again cannot be/accepted. It has been rightly pointed out by the counsel for the Market Committees that in the State of Haryana when market fee is charged once on the same article for sale, it is not considered appropriate that on subsequent sale in another Market Committee area there should be again charge on the produce, whereas in the case of articles brought from outside the State of Haryana no market fee is charged by the Market Committees of Haryana and if market fee is charged when articles are brought within the notified area of the respective Market Committees, there would be no discrimination. There is force in this contention. A reasonable rationale appears to be there that when sale, transactions take place in the different notified areas of the Market Committees only once market fee be charged by one market Committee in the State of Haryana. Likewise when articles are brought within the notified area of any of the Market Committee in the State of Haryana from outside the State of Haryana, only one market fee would be charged. We find no substance in this argument.

16. Learned counsel for the respondents has argued that since earlier writ petitions were dismissed, the present writ petitions are barred by the principle of res judicata. This point as such cannot be accepted. Some of the petitioners did not file the earlier writ petitions which were dismissed and if legally the view had been otherwise, all could take benefit such a decision.

17. For the reasons recorded above, these writ petitions are dismissed with costs which are quantified at Rs. 1000/- in each writ petition.