

(2017) 08 BOM CK 0198
In the Bombay High Court
Case No : 3472 of 2006

Cadbury India Limited

APPELLANT

Vs

State of Maharashtra, Ors.

RESPONDENT

Date of Decision : 18-08-2017

Acts Referred:

Constitution of India, Article 226 -
Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963,
Section 31, Section 61, Section 4(1), Section 13(1A), Section 32A, Section 2(m), Sec

Citation : (2017) 08 BOM CK 0198

Hon'ble Judges : S.C.Dharmadhikari, Vibha Kankanwadi

Bench : DIVISON BENCH

Advocate : Abhinav Chandrachud, Henna Daluf, Komal Khushalam, Anuram
Ghoste, Crawford Bayley, B.V. Samant, N.N. Bhadrashete

Judgement

1. By this petition under Article 226 of the Constitution of India, the Petitioner challenges the order dated 12th April 2006, copy of which is at Annexure "Z" to the petition.
2. That order has been passed by the third Respondent to this Writ Petition.
3. The Petitioner is a Company incorporated under the Indian Companies Act, 1956 carrying on its business from the registered office situated at Mumbai and the factory at Thane, District Thane.
4. The Petitioner claims to be manufacturing confectionery and food drinks which is extensively marketed and distributed throughout India. The first Respondent to the Petition is the State of Maharashtra through the department of Cooperation and Textiles.
5. The second Respondent is a Committee under the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short "the APMC Act").
6. The Petitioner does not dispute that the first Respondent has enacted the

APMC Act as also the APMC (Regulation) Rules, 1967. The substantive provisions of the Act enable the Government to set up an Agricultural Produce Market Committee for the market areas of Mumbai and Thane. The second Respondent has been so established under Section 13(1A) of the APMC Act. There are Byelaws of the Mumbai APMC and which are made by the third Respondent under Sections 61 and 61A of the APMC Act read with Rules 120 and 121 of the Rules. The third Respondent is the Authority who has passed the impugned order and the fourth Respondent recovers the sum determined and adjudicated under that order as arrears of land revenue.

7. The Petitioner does not dispute that on 20th June, 1998, the Government of Maharashtra issued a notification which was duly published in the Official Gazette pursuant to the Section 4(1) of the APMC Act and declared that the marketing of the agricultural produce specified in the notification namely food grains, pulses, cereals, oilseeds, condiments, sugar, edible oil, dry fruits etc. shall be regulated under the APMC Act in the Bombay Market Area specified in the notification. Later on, the Government of Maharashtra issued another notification dated 16th January 1995 and duly published it in the Official Gazette, pursuant to Section 13(1A) (a) of the APMC Act and specified that the additional area of the whole of Thane Taluka of Thane District and 30 villages from Uran Taluka of Raigad District as area to be deemed as Bombay Marketing Area for the purpose of the APMC Act. Once the Petitioner does not dispute that the APMC Act confers a power in the State Government to establish a market committee namely the second Respondent and for the market areas specified in the notification, then, the constitution, establishment and powers of the second Respondent to act in accordance with the APMC Act is an issue which need not bother us.

8. It is claimed that from 16th January 1995 to 01st May 2000, Respondent Nos. 2 and 3 did not apply the provisions of the APMC Act, Rules and Byelaws to the Petitioner and no market fee, supervision cost and so called market charges were levied and collected from the Petitioner during that period. However, on or about 02nd May 2000, the road carrier carrying 175 boxes of cashew nuts purchased by the Petitioner in the State of Kerala for delivery therefrom to the Petitioner's factory at Thane was intercepted by the officers, servants of the second Respondent and market fee and supervision cost totaling Rs.6,405.60 was imposed. That amount was deposited and the argument is that it was without prejudice to the rights and contentions of the Petitioner.

9. The claim is that from 01st January 2001, the Petitioner was not subjected to the imposition of any market fee, supervision cost and/or market charges under the Act, Rules and/or Byelaws by the Respondent Nos. 2 and 3.

10. In January, 2001, the Petitioner received from the Respondent No.3 a notice dated 01st January 2001 alleging that the Respondent No.2 found that the Petitioner has been trading in declared agricultural produce from its factory at Thane. That is how the Petitioner was called upon to pay to the second Respondent/the APMC as per Sections 31 and 34A of the APMC Act and Byelaw

13 of the Byelaws, market fee and supervision cost for trading in declared agricultural produce, with retrospective effect from 01st January 1995.

11. It is common ground that in view of receipt of this notice, the Petitioner was once again reminded in March 2001 by a communication dated 20th March 2001 that under Section 32A of the APMC Act, the Petitioner should produce before the third Respondent for inspection at their Thane factory, the accounts, registers, documents etc. in respect of the transactions of the notified commodities made by the Petitioner for the business from 01st October 1999 to 28th February 2001. The inspection was scheduled on 31st March 2001. After receipt of this letter, the Petitioner by a written communication dated 27th March 2001 informed that the agricultural produce is purchased by the Petitioner within and outside of State of Maharashtra from various suppliers/traders for consumption as raw material in the manufacture of confectionery products and food drinks. The agricultural produce purchased by the Petitioner is fully and completely consumed in the manufacturing process and that the Petitioner did not market or deal or trade in such agricultural produce either within or outside the State of Maharashtra. The Petitioner clarified that the suppliers/traders supplying the agricultural produce from within the notified areas of the State of Maharashtra to the Petitioner, had earlier paid the respective market fee and supervision cost on the said agricultural produce to the respective APMCs to which such payment was liable to be made and therefore, the Petitioner was not liable to a further or subsequent levy. It is in these circumstances, the argument was that the provision of APMC Act, Rules and/or Byelaws were not applicable in the case of the Petitioner and requested the Respondent Nos. 2 and 3 to reconsider the matter.

12. The Petitioner annexed to the communication various Purchase Orders and which were placed on traders for purchase of agricultural produce within the Bombay Market Area.

13. The Petitioner states that the Officers of the second Respondent visited their factory at Thane and thereafter, called upon the Petitioner to produce for inspection the audit reports, sale tax returns and documents relating to the receipts of agricultural produce from October 1999 till April 2001. The Petitioner claimed that they produced all these documents and even provided photocopies thereof to the officials of the second Respondent. It is claimed that on 06th May 2001 once again the factory of the Petitioner was visited and at that time additional documents were produced for inspection. This is recorded by the Petitioner in writing. However, despite this clarification the Petitioner was threatened with recovery of the amounts by coercive means. The third Respondent addressed a notice dated 16th June 2001 and served it on Petitioner's office applying the provisions of the Act and called upon the Petitioner to explain as to why the sum quantified in the notice should not be recovered. It was stated that the market fee and supervision cost was charged on the total amount of Rs.9.55 crores towards the purchase of agricultural produce. This was the produce purchased and that time, it was clarified that the

calculation of purchase was provided, but not the requisite documents so as to establish and prove the correctness of the arguments canvassed earlier that the Act, Rules, Byelaws are inapplicable to the Petitioner.

14. Since the Petitioner was served with such a notice and a further notice dated 27th June 2001, the Petitioner once again clarified the matter in writing by a letter dated 24th September 2001 and their Advocate's communication of 04th October 2001.

15. The correspondence continued in this manner and what the Petitioner was called upon to pay is the total sum of Rs.7,64,728.36, then, quantified as market fee and supervision cost. The Petitioner disputed the recovery by arguing that the amount cannot be recovered unless it is established and proved that the Act and Rules are applicable. This whole issue was thus, forming subject matter of the correspondence and culminating eventually in a demand notice of 15th June 2002 quantifying a sum of Rs.8,41,203/-. Since, that was not paid, the Collector was requested to recover it as arrears of land revenue. Further, it was informed that the Petitioner has moved this Court by the earlier Writ Petition being Writ Petition No. 5132 of 2001. That petition was placed before a Division Bench of this Court on 18th December 2003. Earlier, the Petitioner was granted interim relief on a condition of deposit of Rs.13 lacs. Thereafter, that petition was disposed of on 18th December 2003 essentially, on the basis of an alternate equally efficacious remedy available to the Petitioner.

16. Thereafter, the Petitioner was to appear before the Respondent No.3 and for a personal hearing. The communications in that regard are referred to from paragraphs 14 onwards of this petition. Eventually, the Petitioner was served with an order dated 12th April 2006 quantifying the sum of Rs.8,83,829.53 as market fee, supervision cost amounting to Rs.58,921.97 as also interest on both amounts up to March, 2006 totally computed at Rs.6,87,294.85. The total amount was quantified at Rs.16,30,046.35.

17. The amount as quantified above pertains to the purchases from the suppliers within and outside Bombay Market Area between 01st October 1999 to 31st March 2002.

18. It is this order which is challenged in this petition under Article 226 of the Constitution of India on various grounds.

19. Dr. Abhinav Chandrachud, learned Counsel appearing for the Petitioner firstly contended before us that on a perusal of the Section 31 of the APMC Act, it would be evident that it is not applicable to the Petitioner. The Act is applicable provided there is a marketing of the agricultural produce within the market area. It is then, the fee and supervision charges etc. which are leviable and recoverable. The Act is inapplicable in respect of those transactions where the Petitioner may purchase agricultural produce but outside the market area. That such produce is merely brought within the market area and for use and consumption as raw material in the Petitioner's factory at Thane is not enough to

apply the provision of the Act to the Petitioner. The Act applies only when there is a marketing of the agricultural produce within a market area. The bringing of raw materials for use and consumption in the factory and for manufacturing final or end product, thus, does not attract the levy.

20. Alternatively and without prejudice, it is submitted that if there is such agricultural produce and which is purchased within the market area and the market fee would therefore, have to be paid, still, as far as that aspect is concerned, at best there is a power to levy, assess and recover the Market fee. There is no question of payment of any interest or supervision charges.

21. As far as the interest component is concerned, the argument is that assuming there is a power to make Rules and the Rules empower further making of Bye laws, still, so long as there is an absence of a clear stipulation in that, the APMC cannot recover interest. It cannot recover interest on consideration of equity as well. If there is a power to recover penalty that cannot be equated with imposition of the liability to pay interest. As far as interest is concerned, if it is to be recovered under general law there as well, there are preconditions sets out. It is either recoverable as compensation or damages for wrongful deprivation of the claim of the sum due and payable. There is no such finding and therefore, the impugned order to the extent it seeks to recover interest is untenable in law.

22. As far as the supervision charges are concerned, there as well the provision of the APMC Act would permit the recovery of such charges provided there is any material to prove that the supervision was done and as contemplated by law. In that regard, our attention has been invited to the provisions of the Act and particularly, the newly added Chapter IVA titled as "Cost of Supervision". The argument is that by SubSection (1) of Section 34A, it is mandated that there has to be a supervision of the staff appointed by the State Government and which is towards the purchase of agricultural produce, brought in the market area and its marketing, which is regulated by the Act. If the costs of such supervision have to be paid to the State Government and that cost is incurred by the APMC, then proof of such payment has to be produced and so long as that is not produced the cost of supervision cannot be recovered from the purchaser.

23. In support of the above arguments, heavy reliance has been placed on the following judgments of this court as also the Hon"ble Supreme Court.

"1) Devendra Trading Company V/s. State of Maharashtra & Ors. 1974 Mh.LJ. 463.

2) Britannia Industries Ltd. V/s. Bombay Agricultural Produce Marketing Committee, Bombay and Another, 2006(5) Mh. L.J. 266

3) IVP Limited & Ors. V/s. Mumbai Agricultural Produce Market Committee & Ors., 2006(4) Bom. C.R. 592.

4) Mumbai Agricultural Produce Market Committee & Anr. V/s. Hindustan Lever Limited & Anr. (2008) 5 Supreme Court Cases 575

5) India Carbon Limited and Ors. V/s. State of Assam, (1997) 6 Supreme Court Cases 479.

6) V.V.S. Sugars V/s. Government of A.P. And Ors., (1999) 4 Supreme Court Cases 192

7) Consolidated Coffee Ltd. V/s. Agricultural Income Tax Officer, Madikeri & Ors. (2001) 1 Supreme Court Cases 278."

24. The Writ Petition has been contested by the Respondent Nos. 2 and 3. Mr. Bhadrashete appearing on behalf of Respondents would submit that there is no merit in the petition and it deserves to be dismissed. Mr. Bhadrashete invites our attention to the impugned order to submit that purely factual findings have been rendered and these are not perverse at all. It was the Petitioner's case that APMC Act is inapplicable and to the transactions which have been carried out beyond the market area and rather outside the same. However, Mr. Bhadrashete would submit that the Petitioner is not disputing the power of the State Government to enact the APMC Act. Once it is so enacted, then, the provisions of the Act which further empower the State Government to establish for the market area so notified a market committee, then, the second Respondent can safely be termed as the creature of the Statute. As empowered by the Statute, the market fee can be levied, assessed and recovered. The market fee is sought to be levied imposed and recovered on marketing of the agricultural produce within the Bombay Market Committee area. In answer to the demand raised, it is the Petitioner's case that the agricultural produce has not been purchased within the market area but outside area. If that is so procured but is admittedly a agricultural produce, then, it was incumbent upon the Petitioner to provide the relevant details. The transactions in question are from 01.04.2001 to 31.03.2002. The Petitioner has averred at page 47 of the present petition that such details would be provided and with regard to the agricultural produce purchased outside the Bombay Market Area. The Petitioner therefore, should have supplied the relevant documents and providing the relevant details namely the place of the contract, the place of delivery and the place of payment. It is clear that the documents that are produced and relied upon, the copies of which are annexed to the petition from pages 157 to 241 are pertaining to those transactions in agricultural produce which have been carried out from April, 2004. They are not relevant. In the present case, the relevant date is as stated above. For that period no proof is produced. Hence, the market fees are leviable and recoverable.

25. Since that market fee has been not paid, but the APMC is dragged into unnecessary and fruitless litigation, then, even the interest is due and payable. As far as the supervision charges are concerned, there as well, the burden was on the Petitioner for they alleged that there was no staff deployed by the State Government and whose services were availed of by the APMC. Hence, even those charges could be recovered.

26. Mr. Bhadrashete therefore, submits that the impugned order is not vitiated by any error of law apparent on the face of the record or perversity warranting our interference in the writ jurisdiction.

27. For properly appreciating these contentions, we must refer to the APMC Act. The APMC Act has been enacted so as to develop and regulate the marketing of agricultural and certain other produce in market area and markets (including private markets and farmer consumer market) to be established therefore, in the State, to confer powers upon market committees to be constituted in connection with or acting for purposes connected with such markets, to establish market fund for the purposes of market committee and to provide for purposes connected with the matters aforesaid.

28. The law has been made and extensively amended from timetotime. The Act is divided into several Chapters. Chapter 1 contends preliminary provision. Particularly by Section 2 the definitions. It is common ground that agricultural produce is defined in Section 2 (a) "All produce (whether processed or not) of agriculture, horticulture, animal husbandry, apiculture, pisciculture, fisheries and forest specified in the Schedule thereto. There is no dispute that the produce which is alleged to have been marketed is agricultural produce. The word "Byelaw" is defined to mean Byelaws made under Section 61. The word "Market" is defined in section 2(h). Whereas, the "Market Area" is defined in section 2(i) and the word "Market Committee" is defined in Section 2(j). These definitions read as under:

"Section 2(a) "Agricultural Produce" means all produce (whether processed or not) of agriculture, horticulture, animal husbandry, apiculture, pisciculture [fisheries] and forest specified in the Schedule"

"Section 2(h) "Market" means any principal market established for the purposes of this Act and also a subsidiary market.

"Section 2(i) "Market Area" means an area specified in a declaration made under section 4 [and includes the area deemed to be a market area under clause (a) of sub section (1A) of section 13].

"Section 2(j) "Market Committee" or "Committee" means a committee constituted for a market area under Section 11 [and includes [the Bombay Agricultural Produce Market Committee established under clause (a) of subsection (1A)] [and the Divisional or Regional Market Committee declared under clause (a) of subsection (1B)] of section 13 and] a committee or committees constituted as a result of amalgamation of Market Committees or division of a Market Committees under section 44]"

29. A perusal of these definitions together with the substantive provisions namely Sections 3, 4 and Section 13 would denote that in the present case, the second Respondent is a duly constituted market committee for a market area. It can invoke and apply the provisions of the Act. The term "prescribed" is defined

in Section 2(m) to mean prescribed by Rules made under the APMC Act and the term "Rules" is defined in Section 2(p) means Rules under the APMC Act. The term "Secretary" is defined in Section 2(r) to mean Secretary of a Market Committee and includes the Joint, Deputy or Assistant Secretary. A perusal of these definitions would indicate that the third Respondent to this petition was the duly empowered official or Authority to pass the impugned order.

30. We are not concerned with the provisions in relation to the establishment, constitution of the Market Committees, their composition and the election of the office bearers etc.

31. Chapter IV opens with the heading "the Market Committees Powers and Duties". Section 29 thereof enables a Market Committee to exercise the power and perform the duties set out therein. A Market Committee, therefore, has from time to time, direct, do such acts and other acts, as may be required in relation to the superintendence, direction and control of markets or for regulating marketing of agricultural produce in any place in the market area and for the purpose connected with the matters aforesaid. By SubSection 2(xvii) of Section 29, a Market Committee may levy, take, recover and receive charges, fees, rates and other sums of money to which the Market Committee is entitled. By Section 31 there is a power conferred in the Market Committee to levy fees and rates of commission. SubSection 1 of section 31 reads as under:

"31. Power of Market Committee to levy fees [and rates of commission (adat)].

[(1)] It shall be competent to a Market Committee to levy and collect fees in the prescribed manner at such rates as may be decided by it (but subject to the minimum and maximum rates which may be fixed by the State Government by notification in the Official Gazette in that behalf), from every purchaser of agricultural produce marketed in the market area:

Provided that, when any agricultural produce brought in any market area for the purposes of processing only is not processed within thirty days from the date of its arrival therein, it shall, until the contrary is proved, be presumed to have been marketed in the market area, and shall be liable for the levy of fees under this section, as if it had been so marketed:

[Provided further that,

(a) any agricultural produce brought in any market area for the exclusive purpose of export shall be exempted for the payment of fees and supervision cost, if such exporter or his duly authorised agent presents the letter of credit or confirmed order of export or confirmed export order consignment, whichever is relevant or applicable, at the time of entry of such produce in the market area to the officer authorised in this behalf by the market committee concerned along with a declaration in that behalf, in such form as the State Government may, by order from time to time direct;

(b) If such exporter fails to submit a certified copy of the bill of lading or the

airfreight bill or any other documents as may be specified by the State Government as a proof of such export, within ninety days from the date of entry of the agricultural produce in the market area, such agricultural produce shall be deemed to have been marketed within the market area and he shall forthwith pay the market fees under this section and shall also pay the supervision cost under section 34A on such agricultural produce, alongwith eighteen per cent interest on the total amount due and payable as the market fees and supervision cost, from the date of bringing of such produce in the market area.]

[Provided also that, no such fees shall be levied and collected in any market area in relation to agricultural produce in respect of which fees under this section have already been levied and collected by any other Market Committee, private market, farmerconsumer market, special commodity market or under direct marketing in the State or in relation to declared agricultural produce purchased by person engaged in industries carried on without the aid of any machinery or labour in any market area.]"

32. A perusal of this Subsection would reveal that the Market Committee is competent to levy and collect fees in the prescribed manner at such rates as may be decided from every purchasers of agricultural produce marketed in the market area.

33. Since, our attention has been invited to Chapter IVA titled as "Cost of Supervision" we reproduce Section 34A as well.

"34A. Supervision over purchase of agricultural produce in any market or market area and payment of cost of supervision by purchasers(1) The State Government may, by general or special order, direct that the purchase of agricultural produce, the marketing of which is regulated in any market or market area under this Act, shall be under the supervision of such staff appointed by the State Government as it may deem to be necessary; and subject to the provisions of this Chapter, the cost of such supervision shall be paid to the State Government by the person purchasing such produce in such market or market area.

(2) The cost to be paid by a purchaser shall be determined from time to time by the State Government and notified in the market or market area (in such manner as the State Government may deem fit), so however that the amount of the cost does not exceed five paise per hundred rupees of the purchase price of the agricultural produce which is purchased by such purchaser."

34. By Section 60, there is a power in the State Government to make Rules for carrying into effect the purposes of the Act and by Section 61 Byelaws can be made by the Market Committee subject to the conditions stipulated therein. That certain Rules have been made and they are styled as "The Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967". Rule 120 of the same is titled as "Byelaws". Clause (y) of Rule 120 enables making of Byelaws stipulating conditions of trading and marketing in the market area

including any matter for which Byelaws are required to be made under these rules for giving effect to the provisions of the Act and the Rules. The Byelaws enable a rate of fee to be collected from the purchasers under Section 31 and refund thereof. The rates of charges provided under the Act and several matters which have been enlisted in Rule 120 can be taken care of by the Byelaws.

35. The impugned order after referring to the previous history leading to the issuance of the notices and raising of the demand, recites that from June 1995, the second Respondent has been empowered to control, supervise and to perform all the functions and duties in relation to the marketing of an agricultural produce. The order recites as to how the agricultural produce, namely, sugar, dry fruits, edible oils brought within the jurisdiction of Mumbai APMC would attract the market fee and supervision charges under Section 34A of the Act as also interest @ 17.25% on the defaulted amount as per the provision of Byelaw No.14 of Mumbai APMC. It is stated that despite these clear stipulations as far as the Petitioner is concerned, it marketed the agricultural produce, but failed to pay market fee, supervision charges and the interest thereon to the market committee. The correspondence between the parties culminating in the demand, the challenge thereto by filing Writ Petition No. 5132 of 2001, the order therein has been all referred.

36. In pursuance of the order and since a reply was given to the notices and a personal hearing was also granted, the third Respondent is empowered to pass an order. It says that personal hearing was held on several dates and the Petitioner was reminded to produce the relevant documents and equally substantiate its pleas.

37. From the record, it is evident that after the order was passed by this Court the Petitioner received a communication dated 24th March 2004. The Petitioner was specifically informed that the period involved is 01st October 1999 to 31st March 2001. The communication from APMC specifically referred to the Petitioner's stand that they are not liable to pay market fee and supervision charges. The communication from APMC recites that the Petitioner did not give inspection of Registers, documents etc. The Petitioner only provided a statement showing the value of the items purchased amounting to Rs.9.55 crores. Once again the Petitioner was reminded to furnish the relevant documents. The Petitioner reiterated its stand that it is not liable to pay market fee. The Petitioner alleged by its letter dated 24th September 2001 that it has submitted for inspection the original purchase invoices for items which were purchased and for the period October 1999 to March, 2001. The market committee invited the attention of the Petitioner to the letter dated 04th October 2001, pointing out that the inspection of the documents referred to in the correspondence of the Petitioner was not given nor copies thereof are furnished. The Petitioner falsely alleged that such an inspection was given and the copies were furnished. The Petitioner was informed in writing that since the relevant documents and for the period concerned were not provided, the Petitioner would be proceeded against

on the footing that APMC Act is applicable and that it is liable to pay the amount.

38. In response to such a communication from the APMC and also informing the Petitioner that there would be a personal hearing granted on 07th July 2004, the Petitioner responded by a letter dated 01st August 2004. It admitted in this letter that a personal hearing was granted. It also noted that the argument canvassed orally as well as in writing that the market fee and supervision cost are not required to be paid. The agricultural produce was purchased by the Petitioner within and outside the market area and that as far as, the agriculture produce purchased within the market area, it was purchased from licenced suppliers who had already paid necessary market fee and supervision cost thereon. The Petitioner would not be therefore, liable to make any subsequent or further payment. The stand of the Petitioner was that as far as agriculture produce purchased outside the market area, the same was purchased from suppliers outside the market area and was beyond the ambit and scope of the APMC Act. It was argued that the agricultural produce purchased by the Petitioner was utilized for captive consumption and there is no further selling, dealing with or marketing of this produce. From page 146 of the paper book which is an extract of the Petitioner's stand in writing, we have found the following :

"We further submitted that your office, notwithstanding provision of complete and entire inspection of the relevant records by my Client, was harassing my client with arbitrary and malafide demands of inspection of records of my client. We pointed out that complete and entire inspection of the relevant records of my client, including providing copies of Audit Reports of my client for the years 1999 and 2000, Sales Tax Returns from October 1999 till March 2001, Delivery documents relating to receipt of agricultural produce and full statement setting out the Value, Quantum, Supplier and date of receipt of agricultural produce for the period from October 1999 till April 2001 had been provided to your office. However, your office has willfully ignored and obdurately unheeded the inspections of records provided by my client. In any event, my client, pursuant to request made by your goodself during the hearing, has submitted to you, thereafter on 3rd August 2004, photocopies of most of the Invoices for years 2001, 2002 and 2003."

39. Thus, the Petitioner claimed that complete and entire inspection of relevant records was provided including copies of audit report for the years 1999-2000, sales tax returns from October 1999 till April 2001, delivery documents relating to the receipt of agricultural produce and full statement setting out the value, quantum, supplier and the date of receipt of agricultural produce for the period October, 1999 till April 2001. It is claimed that all these had been provided to the second Respondent but it has been willfully ignored. The Petitioner therefore, recorded that despite their stand as above, they have submitted on 03rd August 2004 photocopies of most of the invoices for the years 2001, 2002 and 2003 on 03rd August 2004.

40. From a perusal of page 148 onwards, it is evident that though a statement

was provided enlisting the details, namely, the parties name, invoice number, invoice date, amount for the year 2001, for the year 2002 what is clear from the same is that each of these documents are pertaining to the year 2002 and were not relevant for the issue under consideration. As far as, the invoice for 2001 is concerned, the first invoice is dated 28th May 2001. The period in question was October 1999 to March, 2001.

41. We are therefore, of the view that Mr. Bhadrashete is right in contending that the Petitioner failed to establish and prove its case that the agricultural produce in question was purchased from outside the market area. The Petitioner was obliged to prove its case as the burden is squarely on it. Mr. Bhadrashete therefore, is right in urging that the burden has not been discharged. The impugned order clearly recites that what has been provided are documents subsequent to the period in question and wholly irrelevant for a decision on the issue at hand. This is a factual finding and which is rendered consistent with the materials placed on record. The Petitioner was reminded to produce the relevant records, after the personal hearing and even after its letter of 03rd of August 2004 recording the factum of a personal hearing. Till the date of the impugned order namely 12th April 2006 sufficient opportunity was granted to produce the relevant documents. Mr. Bhadrashete is also right in relying upon the document a copy of which is at page 264 of the paper book which shows that the Petitioner purchased the material from the party at Phaltan, District Satara. It was purchased on the term (cash on delivery), however, no details are provided. Thus the place of the contract, place of the delivery, place of payment which would evidence that a complete transaction, outside the market area was entered into and executed, has not been provided.

42. We are therefore, not in agreement with Dr. Chandrachud that the order itself recites that the agricultural produce was purchased outside the market area and therefore, there was no question of the same being marketed within the market area. We do not think this manner of reading the order can be termed as accurate. The order must be read as a whole and not by picking one or two sentences therefrom. These sentences cannot be read in isolation. The order recites and clearly that it is the Petitioner, who in its oral and written argument contended that the APMC Act was inapplicable for it has purchased sugar, dry fruits and edible oil from outside the market area. If this agricultural produce has not been purchased within the market area, then, there is no question of its marketing within the said area enabling the APMC to recover the market fee. The Petitioner was called upon to produce the names of the suppliers and the place, the transport memo, the evidence of payment of Octroi and the invoices. If that is how the argument of the Petitioner could have been substantiated and its case can be held to be proved and such position in law was known to the Petitioner, then, relying upon a stray sentence or two in the impugned order would not be enough and to get out of the enactment.

43. We are of the clear view that the third Respondent was right in arriving at

the factual conclusion that the burden which the Petitioner took upon itself has not been discharged and therefore, the Petitioner must be held liable to pay the market fees.

44. Pertinently, Dr. Chandrachud does not dispute that if the market fee in relation to such agricultural produce which is marketed within the area of the second Respondent has been paid, then, Petitioner's liability in that behalf is admitted. The Petitioner is therefore, liable to pay that sum and which has been paid. It is liable to pay the market fees because it has not been able to prove its version that a substantial portion of the agricultural produce was purchased outside the market area and was never marketed within the same.

45. Dr. Chandrachud however, would submit that there is no question of payment of interest on the aforesaid amounts and in that regard, he would rely upon the Section 31, as also Section 60 and the Byelaw. Dr. Chandrachud placed reliance upon the ChapterIX which is titled "Penalties".

46. We have no doubt in our mind that there is a distinction carved out by the Act as far as penalty is concerned that is not equated with interest and which is sought to be recovered. Section 60 enables making of Rules. As far as the market fees are concerned, there are specific powers and by Section 61 Byelaws can be made. Section 61 reads as under :

"61. ByeLaws(1) Subject to any rules made by the State Government under section 60 and with the previous sanction of the Director or any other officer specially empowered in this behalf by the State Government, the Market Committee may in respect of the market area under its management make byelaws for determining the quantity of agricultural produce for the purpose of its retail sale, for the regulation of the business (including meeting, quorum and procedure of the Market Committee) and the conditions of trading in the market area, including provision for refund of any fees levied under this Act.

(2) Any byelaw made under this section may provide that any contravention thereof shall, on conviction, be punished with fine which may extend to one hundred rupees."

47. A perusal of Section 61 leaves us in no manner of doubt that market committee may in respect of the market area in its management make Byelaws for determining the Quantity of agricultural produce for the purpose of its retail sale and for the regulation of its business and the conditions of trading in the market area, including provision for refund of any fees levied under this Act.

48. As far as, Byelaws are concerned, Rule 120 of the Rules enables making of Byelaws and one of the aspect or matter on which the Byelaw can be made is the rate of fee to be collected from the purchaser under Section 31 and refund thereof.

49. In the impugned order, a reference is made to the Byelaw No.14 for the claim of interest @ 17.25 %. However, it is evident that the Byelaws can be made

subject to any rules made by the State Government under Section 60 and with the previous sanction of the Director or any other official specially empowered in this behalf by the State Government. Beyond making reference to Byelaw No.14 we have not found any document or record which would enable the second Respondent to levy interest.

50. Dr. Chandrachud is therefore, right in relying upon the judgment of this Court and particularly on the judgment in the case of IVP Limited and a prior judgment as well. The Hon'ble Division Bench of this Court in *Britania Industries (Supra)* construed the provisions of the Act and as far as levy of market fee it held that the APMC cannot levy market fee on the sugar, vanaspati oil, cashew nuts, dry fruits purchased/procured by the Petitioner outside the market area of the committee. Going further in the case of *IVP Limited*, [2006(4) Bom.C.R. 592] , the Division Bench held that the levy of penalty and interest is a matter dealt with by Sections 31 and 34 and Byelaw No.14. In that regard, the Division Bench in the following paras held thus:

"16. Now coming to the issue of charging supervision fees, we have to keep in mind that there is a difference between the power of the Market Committee under Section 31 for levying market fees and under Section 34A for supervision fees. Market fees is conceptually and in deed factually a revenue to the Market Committee so as to support its financial outlay in creating infrastructure and rendering services to the agriculturists, traders, agents, buyers and various other parties in the industry. Such is not the case so far as the supervision charges are concerned. As per Section 34A(1) of the Act the State Government may, by general or special order, direct that the purchase of agricultural produce, the marketing of which is regulated in any market or market area under this Act, shall be under the supervision of such staff appointed by the State Government as it may deem to be necessary and subject to the provisions of Chapter IVA, the cost of such supervision shall be paid to the State Government by the person purchasing such produce in such market or market area. As per Subsection (2) of Section 34A, the cost to be paid by a purchaser shall be determined from time to time by the State Government and notified in the market or market area, in such manner as the State Government may deem fit, so however that the amount of the cost does not exceed five paise per hundred rupees of the purchase price of the agricultural produce which is purchased by the purchaser. Essentially, the State Government in the first instance is required to employ such staff appointed by it to render service in regulating the purchase/marketing of agricultural produce and then recovered the cost of supervision so as to meet the expenditure incurred on such staff in terms of their salary and other benefits etc. The cost to be paid by the purchaser has to be determined from time to time by the State Government and notified in the market or market area but in any case it shall not exceed five paise per hundred rupees of the purchase price of the agricultural produce. This means that from market to market the supervision charges may differ, as fixed by the State Government or in terms of its total quantum for recovery as it varies as per the number of staff employed. The

scheme of Chapter VA as inserted by Act No. 26 of 1972, in the Act thus shows that cost of supervision is an incidental charge to be recovered and paid to the Government and in respect of the staff employed by it. It is not an absolute power of the Committee to recover the levy for its supervision or they are not the supervision charges paid to the Market Committee. As a condition precedent it must be shown that the Government had employed staff in rendering service either at the petitioners' premises or in the market area in regulating the sale/distribution of vanaspati and unless such staff is employed on whom the Government is required to spend by way of their salary and other benefits, the Market Committee is not required to reimburse to the State Government supervision charges and, therefore, it cannot claim recovery from the petitioners per se. The scheme of Rule 34A of the Rules is clear and it supports these conclusions. The impugned orders which have been passed either during the pendency of the petition or before the petition was filed are silent on the quantum of supervision charges paid by the respondent No. 1 Committee to the State Government in respect of the sale/distribution of Vanaspati produced by the petitioners and marketed in the market area of respondent No. 1, though not from the market yard. In the absence of the petitioners having an outlet or a depot or a trading centre in the market yard of respondent No. 1, the other place is only the premises of the petitioners as admittedly the respondent No. 1 has not established any other collection centres or subsidiary markets by exercising powers under Section and Section 30A of the Act. We are, therefore, of the considered view that the respondent No. 1 Committee has no powers to cause recovery of supervision charges from the petitioners as at present and the impugned orders to that extent are unsustainable.

17. Now coming to the issue of the Market Committee's power to charge interest either at 12% or 21% or any rate between 12% to 21%, is concerned, the Committee has relied upon byelaw No. 14(A) which states that on failure to remit the market fees and supervision charges etc. in the succeeding month to the month for which they were payable are not paid, it is entitled to charge interest at the rate of 21% per annum on the amount of recovery. The official translation of the said Byelaw No. 14(A) reads as under:

14(A) As per the provisions of the Maharashtra Agricultural Produce Market (Regulation) Act, 1963 and Rules 1967 and the Bylaws framed in pursuance thereof, the concerned Commission Agents, Traders Importers or any other persons shall have to pay to the Market Committee the amounts viz. Market Fee, Supervision Fee, Weighing Charges, Levy etc. dues up to the end of next month from the month in which such amounts become due. If they fail to pay the same within the prescribed time limit, then interest at the rate of 21% per annum shall be charged on the total amount due.

As against this under Section 31(3) of the Act, failure to pay the market fees, the Market Committee has the power to levy penal charges as prescribed over and above the recovery of fees. Under Section 34B of the Act, the cost of supervision

shall be collected by the Market Committee in the same manner in which the fee levied by it under Section 31 is collected and under Subsection (2) therein the cost of supervision collected by the Market Committee shall be paid to the State Government in the prescribed manner within a period of 15 days from the close of the month in which such cost is collected. As per Section 34C of the Act, if a Market Committee makes a default in the collection or payment to the State Government of any sum or part thereof due in respect of the cost of supervision, the director may direct that the said sum or part thereof, as the case may be, together with penalty equal to 1% of such sum or part shall be recovered from the Market Committee as an arrear of land revenue under Section 57. Thus, the penal charges at 1% have been prescribed to be recovered from the Market Committee, in case the default for payment of supervision fees to the State Government. Byelaws are framed under Section 61 of the Act, which states that subject to the Rules made by the State Government under Section 60, the Market Committee may in respect of the market area under its management make byelaws for determining the quantity of agricultural produce for the purpose of its retail sale for the regulation of business including meeting, quorum and procedure of the Market Committee and the conditions of trading in the market area, including provision for refund of any fees levied under the Act, with the previous sanction of the Director or any other officer specially empowered in that behalf by the State Government. Rule 120 of the Rules pertains to framing of the byelaws and it states that subject to the provisions of Section 61 and the Rules, a Market Committee may make byelaws in respect of all or any of the matters thereunder i.e. (a) to (y), levying interest does not find place thereunder. It is the case of the Market Committee that such a power falls within the ambit of Clause (y) of Rule 120 which reads as under :

" "Conditions of trading and marketing in the market area including any matter for which byelaws are required to be made under these rules or for giving effect to the provisions of the Act and the Rules."

We are afraid Clause (y) below Rule 120 does not come to the rescue of the Market Committee in support of its case that it has the power to charge interest varying from 12% to 21% on the delayed dues of market fees and supervision charges under byelaw No. 14(A). Section 31 as well as Sections 34A to 34C clearly provide for only penal charges and byelaw No. 14 cannot be termed so as to cover condition of trading and marketing in the market area. We have also noticed that on issuance of the notice by the Market Committee, the petitioners have taken due steps and during the pendency of the petitions or before the impugned orders for recovery were passed, they have deposited certain sums. In both the petitions it is not a case of inordinate delay in responding to the demands and, in fact, the demands have been substantially met within few months. No reasons have been given in the impugned orders as to why the Market Committee felt it appropriate to recover interest and not the penal charges from the petitioners. We, therefore, hold that the respondent No. 1 has no powers to charge interest at the rate of 12% or any higher rate upto 21% on

the delayed payment of market fees and supervision charges and it was not even otherwise justified to levy such charges in the instant cases."

51. From a perusal of these paragraphs and the observations as above which find approval from a two judge bench judgment of the Hon''ble Supreme court in the case of Mumbai APMC and Anr. V/s. Hindustan Lever Ltd & Ors., reported in (2008)5 SCC 575 that payment of interest must be referable to the Statute. In the present case absent the statutory provision or carrying anything a similar force, which could not be a mere Regulation or Byelaw on broad consideration of equity or otherwise the interest could not be recovered. Dr. Chandrachud therefore, is right in his contention that the Petitioner cannot be called upon to pay interest as quantified or at the rate stipulated in the impugned order.

52. Even as far as the supervision charges are concerned, the provision is clear. In both the judgments, namely, Britania Industries, IVP Limited and Hindustan Lever (supra), the Hon''ble Supreme Court referring to Section 34A and 34B held that supervision charges cannot be levied or calculated in such a manner so as to cause unjust enrichment in favour of the State. So long as there is no specific order by the State Government appointing staff to supervise buying and selling of agricultural produce in the market, there is no basis for calculating the supervision cost and seeking to recover it.

53. To that extent as well, we find the contentions of the Petitioner to be well founded.

54. As a result of the above discussion, the Writ Petition succeeds partly. Rule is made absolute to the extent that the Petitioner shall be liable to pay the market fee and in the sum quantified but it cannot be called upon to pay interest and supervision cost. The interest is quantified at Rs.6,87,294.85 and the supervision charges are Rs.58,921.97. Barring these two sums and under these two heads the rest of the amounts can be recovered by the APMC from the Petitioner in terms of the impugned order. That is maintained accordingly.

55. It is stated that the Petitioner has deposited a sum of Rs.12,65,105/in this Court and which is lying invested. The Registry is directed to compute the amount in terms of our direction and release the sums by encashing the fixed deposit with accrued interest. However, the balance amount after compliance with our order and direction shall be made over and paid to the Petitioner.

56. Needless to clarify that the second Respondent would be entitled to interest only on the component of the market fees. Whereas, the balance interest which accrued on the fixed deposit and to the extent of the excluded sum shall be made over and paid to the Petitioner. There will be no order as to costs.