

(1991) 02 AHC CK 0091

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 6202, 9579 and 18983 of 1987, 11805, 11810, 12674, 13665, 15820, 16643 of 1988 and 1145, 9660 and 13637 of 1989

Hind Rice Mill and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-02-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 19
Essential Commodities Act, 1955 — Section 2, 3, 3(3)
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17

Citation : (1991) 1 AWC 462

Hon'ble Judges : B.P. Jeevan Reddy, C.J.; R.A. Sharma, J

Bench : Division Bench

Advocate : Sunil Ambwani, for the Appellant;

Final Decision : Disposed Of

Judgement

B.P. Jeevan Reddy, C.J.—A common question arises in this batch of 12 writ petitions. They can be disposed of under a common order. For the sake of convenience, we shall refer to the facts in C.M.W.P. No. 9579 of 1987. The 15 Petitioners in this writ petition are licensed traders within the Market Area, Bareilly. For Bareilly District, a market Committee has been constituted under the U.P. Krishi Utpadan Mandi Adhiniyam, 1964. All the Petitioners also happen to be millers. They purchase paddy both within the Bareilly Market area and from outside Bareilly Market Area, which they mill in their respective rice mills.

2. u/s 3 of the Essential Commodities Act, the State of U.P. issued the U.P. Rice and Paddy (Levy and Regulation of Trade) Order, 1981 which was replaced in the year 1985 by another similar order. Under the aforesaid Control Orders, Rice Mills are obliged to deliver 60 per cent of the rice milled by them to the State by way of levy. The remaining 40 per cent they are free to sell in open Market. The levy rice has to be delivered, to the State on the price notified by the State

Government.

3. The U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (for short, Mandi Adhiniyam) provides for levy of Market fee on all transactions taking place in the market Area. The charging provision is contained in Clause (iii) of Section 17. Section 17 deals with the powers of the Committee. In so far as it is relevant, it reads as follows:

17. Powers of the Committee-

A Committee shall, for the purposes of this Act, have the power to-

(1)...

(ii)...

(iii) Levy and Collect:

(a) such fees as may be prescribed for the issue or renewal of licences, and

(b) market fee, which shall be payable on transactions of sale of specified agricultural produce in the market area at such rates, being not less than one percentum and not more than one and half percentum of the price of the agricultural produce so sold, as the State Government may specify by notification, and such fee shall be realised in the following manner-

(1) if the produce is sold through a commission agent, the commission agent may realise the market fee from the purchaser and shall be liable to pay the same to the Committee;

(2) if the produce is purchased directly by a trader from a producer the trader shall be liable to pay the market fee to the committee;

(3) if the produce is purchased by a trader from another trader, the trader selling the produce may realise it from the purchaser and shall be liable to pay the market fee to the Committee, and

(4) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee to the Committee;

Provided that no market fee shall be levied or collected on the retail sale of any specified agricultural produce where such sale is made to the consumer;

A reading of Clause (iii) discloses that the market fee is levied upon transactions of sale (of specified agricultural produce) taking place in the market area. (The expression "Market Area" is defined in Clause (k) of Section 2 to mean an area notified as such u/s 6 or as modified u/s 8). The person liable to pay the market fee is identified in the four sub-clauses of Clause (iii)(b) of Section 17. Clauses (1) (2), (3) and (4) of Clause (iii)(b) are mutually exclusive. In each case, one has to see under which of the said sub-clauses does a transaction fall and then determine the person liable to pay the fee;

4. In the year 1986, the Market Committee issued notices to the Petitioners calling upon them to remit the market fee in respect of levy-rice-sales effected by them. According to the Committee, the sales effected by the Petitioners fell under Sub-clause (3) and hence they being the selling traders, are liable to pay the market fee. This demand was questioned by the Petitioners in a batch of writ petitions in this Court. Two contentions were mainly urged by the Petitioners in those writ petitions, namely;

(i) That delivery of levy rice in pursuance of the statutory order (levy order) does not amount to a "transaction of sale" within the meaning of Section 17(iii)(b);

(ii) That the State Government is not a trader and, if so, the transaction of sale (assuming that delivery of levy rice to the State amounts to a transaction of sale) does not fall under Sub-clause (3), but under Sub-clause (4), in which event the levy is upon the purchaser.

Both these contentions were repelled by a Division Bench of this Court and the writ petitions dismissed. The judgment of the Division Bench is *Mahalaxmi Rice Mills, Nainital Road, Bareilly v. State of U.P.* 1987 UP LB EC 749. The Division Bench held that the delivery of levy rice in pursuance of the levy order does amount to a transaction of sale within the meaning of Section 17(iii)(b) of the *Mandi Adhiniyam*. It also found that the Government is a trader and, whether such trader is licenced or not, the transaction falls under Sub-clause (3), and hence the liability to pay the market fee lies upon the selling trader, namely, the writ Petitioners. The attention of the Division Bench was also drawn to the letter dated 5-2-1986 written by the Assistant Secretary Food and Civil Supplies Department, Government of U.P. to the Regional Food Controllers asking them to pay the market fee on the said transactions to the concerned Market Committee. Dealing with this submission, the Court made the following observations, which constitute the sheet anchor of the Petitioners' case in the present batch of the writ petitions:

28. The last contention raised then by Sri Ambwani that the liability to pay the market fee to the Mandi Samiti would be of the State Government as purchaser and not the sellers i.e., the Petitioners need not detain us long. To take this view is unwarranted on the plain and unambiguous language of Section 17(iii)(b)(3) already reproduced above. The words are "the trader selling the produce...shall be liable to pay the market fee to the Committee." In Clause (1) also, it will be observed, the commission Agent who sells is liable to pay the fee to the Committee. True, the seller may both under Clauses (3) and (1) realise from the purchaser, but then vis-a-vis the Committee, the liability is of the seller squarely. Clause (4) is residuary and of no avail in the case unless Clause (3) is ruled out. The Committee can recover market fee only from such person on whom the liability to pay the same has been fixed by Section 17(iii)(b). This was also the view taken in *Agra Roller Flour Mills etc. v. Krishi Utpadan Mandi Samiti* 1981 ALJ 76 (DB).

There the Petitioners-traders purchased the produce from the Food Corporation of India and it was held that the liability under Clause (3) for payment of market fees in respect of such transaction could only be that of the Food Corporation of India and not of the Petitioners,

29. Our attention was invited on Petitioners" behalf to the directive which the State Government issued to the Regional Food Controllers in general on 5th February, 86 (Annexure 1) wherein the latter were directed to clear of the Mandi fee in accordance with the rules. This suggests that the State Government did not refute its liability to re-imburse the sellers in respect of the market fee. Strangely enough in the counter affidavit filed for the State, though there could be nothing stated to explain this directive, the stand taken is that the price of rice paid to the seller is inclusive of market fee. This is believed clearly from the note appended to the notification No. 8168/XXIX Food-4 dated 6th November, 1985 (published in the Gazette of the same date) under Clause 16 of the Levy Order, 1985 specifying the prices for the different varieties. The note reads as under:

Note-Prices of rice are inclusive of Mandi Tax on Paddy and depreciation on Gunny used for packing paddy but exclusive of Gunny charges for Rice and purchase or sales tax levied after the ex-mill stage on rice. Above mentioned prices are subject to revision if there is any change in the rate of Mandi or any change in other statutory charges.

30. Included within the prices of rice, therefore, is Mandi tax on paddy and significantly not rice. Before us is the question of market fee payable on rice supplied to the State Government under the Levy Order, 1985 milled of paddy purchased from outside the market area. The price thereof is not inclusive of market fee. It indeed does not behove the State Government not to carry out the statutory liability imposed upon it u/s 17(iii)(b)(3). This litigation may have been averted if only the State Government had duly paid off the market fee to the Mandi Samiti. We hope and trust that there would be no daily delaying further on part of the State Government in paying off its dues to the trader-sellers who are placed under the liability vis-a-vis the Mandi Samiti.

5. Aggrieved by the judgment of the Division Bench, some of the Petitioners herein went to Supreme Court and in SLP No. 8772-74 of 1987 (AN), the Supreme Court on 9-5-1988 passed the following interim order.

Our attention is drawn by Dr. Y.S. Chitambar, learned Counsel for the Petitioners to the observations made by the High Court that primarily it is the liability of the State Government to pay the market fee fixed under Clause 16 of the U.P. Rice and Paddy (Levy and Regulation of Trade) Order, 1985, on the quantity of the levy rice procured by the Government under the said Order. The learned Counsel relies upon the Circular (?) dated 5th February, 1986 issued by the State Government directing the Regional Food Controllers to make payment of such market-fee on the quantity of the rice purchased in terms of the Order. In view of

this, we direct stay of recovery of the market-fee from the Petitioners.

Shri Anil Dev Singh, learned Counsel appearing for the Respondents submits that the State Government merely acts as an agent for the Food Corporation of India and the levy rice lifted by it is supplied to the Corporation and therefore it is primarily liable to pay such market fee to the Corporation.

In view of the rival contentions based on the findings arrived at by the High Court, we think it desirable to direct the Petitioners to implead the Food Corporation of India as a party. Let a notice be issued to the Corporation after it is impleaded for a hearing of the case on merits. In the meanwhile, the State Government should endeavour due compliance of its aforesaid circular to ensure payment of the market-fees due and payable.

Let this matter be listed for hearing on October 4, 1988 subject to overnight part-heard. Parties shall have liberty to mention before Hon"ble the Chief Justice of India if for any reason the matter is not taken up on the day so fixed.

A large majority of the Petitioners in the earlier batch of writ petitions, however, did not choose to approach the Supreme Court, against the judgment of the Division Bench, but after the Supreme Court passed the aforesaid order, they filed this batch of writ petitions. Indeed, even those Petitioners who had gone to the Supreme Court by way of SLP aforesaid, have also filed a writ petition and joined this batch. These writ petitions were entertained and the following interim order was passed by a Division Bench of this Court on 22-7-1988:

List for admission after two months. Petitioners who are manufacturers of rice seek a direction to State Government to pay the market fee in view of circular issued on 5th February 1986 and observations made by this Court in writ petition No. 10355 of 1986. Reliance has also been placed on stay order granted by the Hon"ble Supreme Court in SLP filed against writ petition No. 10355 of 1986. Having heard counsel for Petitioners, Mandi Samiti and State and gone through the provisions, specially the circular issued by the State Government it appears that liability to pay market fee on levy rice is of State Government. In these circumstances its recovery from Petitioners cannot be said to be just and fair. Learned Counsel for Mandi Samiti however, is right that liability being undisputed they are entitled to get the payment. To adjust the balance of convenience amongst the parties, therefore, we are of opinion that the opposite party No. 2 the Regional Food Controller may pay the market fee to the opposite party No. 3 Krishi Utpadan mandi Samiti within a period of two months from the date a copy of this order is produced. If there is any difficulty the State Government may issue necessary orders directing payment in view of 1986 circular. We are further of opinion that no recovery of market fee may be made from Petitioners on supply of levy rice. Therefore, recovery proceedings and any consequences ensuing due to non-payment shall remain stayed.

The writ petitions have now come before us for admission. However, since the affidavits have been exchanged and the matter is ripe for final hearing, we

dispose of the writ petitions finally at this stage itself.

6. Sri S. Ambwani, learned Counsel for the Petitioner, urged the following contentions:

(1) Under Sub-clause (3) of Clause (iii)(b) of Section 17 of the Mandi Adhiniyam, the primary liability to pay market fee is cast upon the purchasing trader. The selling trader is only made liable to collect it from him and pay over to the market Committee. The State Government is, therefore, under a statutory liability to pay the market fee to the Petitioners so as to enable the Petitioners to remit the same to the Market Committee.

(2) That the word "may" occurring in Sub-clause (3) should in the context and having regard to the scheme of the enactment, be construed as "shall". If it is not so done, not only the notification fixing the price of levy rice becomes unreasonable and arbitrary, but it would also lead to the ruin of the rice millers. The State Government has itself admitted its liability to pay the market fee, as would be evident from the letter of the Assistant Secretary, Food and Civil Supplies, Government of U.P. to Regional Food Controllers referred to in the Division Bench judgment of this Court. The said statutory liability was also been expressly affirmed by the Division Bench in paragraph 30 of its judgment. It is also affirmed in the interim order passed by the Supreme Court as well as the interim orders passed by this Court in this batch of writ petitions. This principle is also recognised by the Supreme Court in an earlier decision in *Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another*, . The observations relied upon read as follows:

In a given case and in a given situation the retrospective operation may be hit by Article 19. But in the present case we are inclined to take the view that the retrospectively of the law as such is not bad and the only safeguard which we want to point out is this. If market fee has been realised by any Market Committee in respect of transactions of sale of agricultural produce taking place between 12-6-1973 and coming into force of U.P. Act 7 of 1973, in accordance with the law as it prevailed then, no market fee under the amended law can be realised again. But if in respect of any transaction aforesaid market fee has not yet been realised then it can be realised in accordance with the amended provision of the law. The only hardship will be to persons covered by Sub-clause (1) and (3) wherein a provision has been made to pass on the burden of fee to others. In the case of Sub-clause (1) the Commission agent can realise the market fee from the purchaser and the seller-trader under Sub-Clause (3) can realise it from the purchaser. If market fees are realised from such persons in accordance with the amended provision of the law then in turn they may be able to realise it from persons on whom they could pass on the burden. We are not disposed to hold the law bad only on that account.

These observations were made while dealing with the attack upon validity of the retrospective effect given to the provision amending Section 17(iii)(b) contained

in U.P. Act 7 of 1978.

7. On other hand, it is contended by the learned Standing Counsel for the State of U.P. that the present writ petitions are misconceived and are liable to be dismissed. Since they seek to re-agitate the questions which are already concluded by the decision of the Division Bench of this Court in *Mahalaxmi Rice Mills v. State of U.P.* 1987 UP LB EC 749. He submitted that the proper remedy for the Petitioners was to approach the Supreme Court against the Division Bench judgment, and not to file a second round of writ petitions in this very Court. He denied that the liability to pay market fee is cast upon the purchasing trader by Sub-clause (3) of Clause (iii)(b) of Section 17. He also submitted that the present arguments must and ought to have been urged in the previous batch of writ petitions and that not having been done the present contentions are barred by the principle of constructive res-judicata. He submitted that the notified price of the rice includes the market fee on paddy and that no further amount is payable to the Petitioners either by the State Government or by the Food Corporation of India, which actually receives the rice on behalf of the State Government.

8. Sri B.D. Madhyan, learned Counsel for the Market Committee, submitted that the Petitioners' liability to pay the market fee to the Market Committee has already been affirmed by a Division Bench judgment of this Court and whatever may be the Petitioners' claim against the State Government, they cannot refuse to pay the market fee to the Committee. It is open to the Petitioners to work out their remedies, if any, against the State Government, but they must first pay the market fee to the Market Committee.

9. Before we deal with the contentions, it is necessary to set out a few facts by way of clarification. The Mandi Adhiniyam treats paddy and rice as two different produce. While paddy is mentioned at serial No. 3, rice is at serial No. 4 in the schedule to the Act. Strictly speaking when paddy is purchased by the miller-trader from say a producer, he is liable to pay the market fee under Sub-clause (2) of Section 17(iii)(b) and if he converts the said paddy into rice and sells the rice to another trader again, he is liable to pay the market fee under Sub-clause (3) of Section 17(iii)(b). This position was, however, explained by the Supreme Court in *Ram Chandra Kailash Kumar* (supra) to mean that where a trader purchases paddy in a market area, mills the said paddy and sells the resultant rice in the same market area, he is not liable to pay market fee on the sale of rice. If, however, the paddy is purchased in another market area, the said exemption, it was held, did not operate. It would be appropriate to set out the relevant observations:

Point No. 7

It is clear and it was expressly conceded on behalf of the Market Committees and the State that there cannot be any multi-point levy of market fee in the same market area. The reason is obvious. Section 17(iii)(b) as amended by U.P. Act 7

of 1978 reads as follows:

(unnecessary portions deleted)

(Para 19) We would, therefore, like to clarify the position of law in this regard. If paddy is purchased in a particular market area by a rice miller and the same paddy is converted into rice and sold then the rice miller will be liable to pay market fee on his purchase of paddy from the apiculturist producer under Sub-clause (2) of Section 17(iii)(b). He cannot be asked to pay market fee over again under Sub-clause (3) in relation to the transaction of rice. Nor will it be open to the Market Committee to choose between either of the two in the example just given. Market fee has to be levied and collected in relation to the transaction of paddy alone. Otherwise, there will be a risk of violation of Article 14 if it is left to the sweet will of the Market Committee in the case of some rice millers to charge market fee on the transaction of paddy and in case of others to charge when the sale of rice takes place. If, however paddy is brought by the rice miller from another market area, then the market Committee of the area where paddy is converted into rice and sold will be entitled to charge market fee on the transaction of sale in accordance with Sub-clause (V).

It is, of course, brought to our notice that in a subsequent decision in *Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others*, the Supreme Court characterised the said observations as based upon a concession, but that, in our opinion, does not, in any manner, detract from the binding nature of the aforesaid observations. In any event, the said question does not arise in this batch of writ petitions. All the parties proceeded on the assumption that the said observations of the Supreme Court are binding on all the parties and determine the levy of market fee.

10. Now coming to the contentions urged by Sri Ambwani, learned Counsel for the Petitioners, it is not possible for us to agree that Sub-clause (3) of Section 17(iii)(b) casts the primary liability upon the purchasing trader. If it were so, nothing would have been simpler for the Legislature than to say that in case of such transaction, the market fee shall be remitted by the purchasing trader. In any event, this very contention was urged before, and negatived by the Division Bench in *Mahalaxmi Rice Mills (supra)*. The Division Bench refers to an earlier case where dealing with a transaction of sale of wheat by the State Government/Food Corporation of India to a Roller Flour Mill, this Court held that since both are traders, the liability to pay market fee rests upon the selling trader. The Division Bench judgment of this Court is binding upon us. Following it, we hold that vis-a-vis the Market Committee, the liability to pay market fee lies upon the selling trader, which means the Petitioners in these cases.

11. Now, the question is whether a writ of mandamus can be issued by this Court compelling the State Government to pay the market fee to the Petitioners. The Petitioners rely upon the words "the trader selling the produce may realise it from the purchaser" occurring in Sub-clause (3) of Section 17(iii)(b). It is these

words couched in rather ambiguous terms that have given rise to the controversy. In short, what does this sub-clause mean? Does this sub-clause create a statutory obligation upon the purchasing trader to pay market fee to the selling trader and, if it does create such an obligation, whether it can be enforced by way of a writ of mandamus or by way of a suit as the case may be? We have not, been able to appreciate the reason for which the said sub-clause was worded in this manner, nor could any of the Counsel appearing before us explain it. There is no distinction between a selling trader and a purchasing trader in the Act or the Rules. In this situation, we must say that we see no reason to construe the word "may" as "shall". Placing such an interpretation would result in creating two statutory enforceable obligations, namely (1) the obligation of the selling trader to pay the market fee to the committee and (ii) the obligation of the purchasing trader to pay the said fee to the selling trader. If this were the intention, why did the Legislature not use the expression "shall"? Why did it use "may"? It is not without significance that the same sub-clause uses both the expressions "shall" and "may". Regarding the selling trader's liability to pay the Market fees to the Market Committee, the Legislature has used the expression "shall" but when it came to his right to collect the same from the purchasing trader, it used the expression "may". We must presume that this must have been done with a purpose and a meaning. And above all, if the real levy is upon the purchasing trader, he could himself have been made responsible to pay the fees to the Market Committee directly. Why was this round-about method adopted? Indeed, this unusual feature has led the earlier Division Bench to say (in para 28 of the judgment in Mahalaxmi Rice Mills (supra) "the Commission Agent who sells is liable to pay the fees to the Committee" and again say (in para 30) "this litigation may have been averted if only the State Government had duly paid off the market fees to the Mandi Samiti." Question naturally arises, if the liability to pay the fees to the Market Committee is upon the selling trader, how can the purchasing trader be asked to pay it to the Committee? And if he can be so asked, why was not a direction given to the State Government straight way to pay the fees directly to the Market Committee in that writ petition itself? Our problem is, when the earlier Division Bench did not choose to give such a direction in spite of its observations in para 30 of its judgment, can we grant such a direction in this second round of litigation? (The direction sought by the Petitioners, it may be noted, in effect amounts to that. If indeed a mandamus can be issued to the purchasing trader to pay the Market fees to the selling trader, it is better to grant a mandamus to him to pay it directly to the Market Committee; there is no point in asking him to pay it to the selling trader and then asking the selling trader to pay it to the Market Committee. In these cases, it may be noted, the market fees still remain unpaid and the Market Committee has been saying that the Petitioners (selling traders) cannot withhold its payment on the ground that the purchasing trader is not paying it to him. This Stand of the Market Committee cannot be said to be untenable.) We find it difficult to do so. At this stage, we feel impelled to say another thing. It is doubtful whether such an obligation can be inferred from the letter of the State

Government dated 5-2-1986, which is merely in the nature of internal correspondence. A legal obligation, which can constitute a basis for a mandamus, must arise from a statutory provision; it cannot be inferred from a letter written by State Government or one of its officers to other officials. We must clarify what we mean by saying so; all that we say is that we cannot issue a writ of mandamus; whether the Petitioners can recover the said amount by way of a suit, we express no opinion.

12. There is another aspect to which we must advert. A person can be made liable for a sum of money in two situations either there must be an agreement/contract between the parties or by operation of law. We have said that Section 17(iii)(b)(3) of the Mandi Adhiniyam does not create such a statutory liability as can be enforced by a Mandamus, And there is no contract. Mr. Ambwani says that there was no room or occasion for any agreement or contract between the parties in this case, since it was a case of compulsory levy and the price was also notified. If that were so, the Petitioners ought to have questioned the notification fixing the price. The notification has been issued by the Government u/s 3(3-B) of the Essential Commodities Act. Faced with this situation, Sri Ambwani sought to shift his argument to the validity of the notification fixing the prices. The said notification is hide as Annexure 2 to C.M.P.W. No. 6202 of 1987. It is dated 1-10-1985 and is published in the Gazette 16-10-1985. It fixes different prices for different varieties of rice, namely, common variety of rice, fine variety of rice and super-fine variety of rice. It says that the price of rice shall include the market fee on paddy among others. It does not, however, say that it includes the market fee payable on rice. Mr. Ambwani explains that this omission probably was for the reason that the Government contemplated only a situation where a miller purchased paddy and sold the resultant rice with the same market area and that it did not take into account a situation where a trader-miller purchased paddy from outside the Market area but sold the rice within the Market area. He also submits that providing for inclusion of market fee on paddy but not providing for inclusion of market fee on rice, where payable, makes the notification discriminatory. We, however, find that this notification has not been directly challenged in these writ petitions. The writ petitions are based on Sub-clause (3) of Section 17(iii)(b) of the Mandi Adhiniyam. There is no direct attack upon the notification fixing the price of levy rice on the ground that it fails to take into consideration one of the relevant factors, namely, levy of market fee on rice. All though the Petitioners have been relying upon the Division Bench judgment and the interim orders of the Supreme Court and this Court made with reference to Section 17(iii)(b)(3) and not upon the invalidity of the notification fixing the price of rice. The Respondents did not have a proper opportunity of meeting and explaining this point. Without a full and proper pleadings and discussion, we do not wish to express any opinion on this contention.

13. Even so, having regard to the observations contained in paragraphs 29 and 30 of the Division Bench judgment in Mahalaxmi Rice Mills (*supra*) and the observations contained in paragraph 18 of the judgment of the Supreme Court in

Ram Chandra Kailash Kumar (supra), quoted hereinabove, we are of the opinion that this is an appropriate case where the Government ought to consider whether it would not be appropriate to revise the said prices so as to provide for reimbursement of market fee on rice where it is payable? Of course, this observation does not appear to be free of difficulty in implementation, it would result in two sets of prices-one payable where no fees is paid on rice (since the paddy from which it is derived is purchased in the same market area) and the other payable where such fees is paid (because the paddy from which it is derived is purchased from outside the market area). It would involve an enquiry in each case to find out the said factual aspect. All the same, we are sure that some equitable and workable formula can be evolved by the Government if necessary, in consultation with millers keeping in view, and to give effect to the observations of this Court in Mahalaxmi Rice Mills and of the Supreme Court in Ram Chandra Kailash Kumar, quoted hereinabove. The Petitioners may also consider the desirability of raising this issue before the Supreme Court in the matters pending before it for any decision by the apex Court would put an end to the controversy once for all.

14. With these observations, petitions are disposed of. No costs.