

(1964) 03 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No's. 1353, 1406, 1501, 1615 and 1826 of 1963

Mukhtiar Chand and Another

APPELLANT

Vs

Marketing Committee and Others

RESPONDENT

Date of Decision : 25-03-1964

Acts Referred:

Punjab Agricultural Produce Markets (General) Rules, 1962 — Rule 25, 26

Citation : AIR 1965 P&H 33 : (1964) 2 ILR (P&H) 523

Hon'ble Judges : I.D. Dua, J;H.R. Khanna, J

Bench : Division Bench

Judgement

Dua, J.

(1) These writ petitions (Civil Writs Nos. 1353, 1406, 1501, 1615 and 1826 of 1963) raise the same question of law and are, therefore, being disposed of by one judgment.

(2) In Civil Writ No.1353 of 1963, Shri Mukhtiar Chand, Petitioner No. 1 claims to be an ordinary resident of Malout Mandi, District Ferozepore and is by profession a Tolla (weighman) being also a member of the Tolla Mazdoor Union, Malout Mandi (petitioner No. 2). He has been earning his livelihood by his profession for the last 8 years. Weighing by hand-scale, according to his allegations, requires "a special kind of skill and adeptness" which he has been working as a weighmen. The Punjab Agricultural Produce Markets Act of 1939 (hereinafter called the 1939 Act) "provided for taking out a licensee for carrying out an occupation of a weighman" and the petitioner accordingly took out such licence which has been renewed every year every since. The petitioner has been carrying out his profession as a weighmen with the aid of hand scales (Takri). The remuneration fixed by the Market Committee under the 1939 Act for the petitioner No. 1 and for 2 paledars who assisted him in weighing was fixed at 81/2 annas on an out-turn of Rs.100/- It was split as under:

1. 31/2 annas for the weighman like the petitioner, and

2. 21/2 annas for each Paledar.

The petitioner and his two Paledars used to weigh on an average between 700 and 800 maunds per day, with the result that petitioner No. 1 was in a position to earn about Rs. 11/- per day ; each Paledar earning about Rs. 7/- per day. The season for such work of weighman and Paledar lasts for about 5 months in a year, 3 months after Rabi and 2 months after Kharif crops. The Punjab Legislature has now enacted the Punjab Agricultural Produce Markets Act of 1961 (hereinafter called the Act) which has repealed the 1939 Act. Since the enforcement of the Act, petitioner No. 1 and other under this Act for working as a weighmen in the notified market area. The petitioner has a valid and subsisting licence to work as a weighman with hand-scales at the old rates but the Marketing Committee the State Agricultural Board and interfering with his work and are not permitting which are not warranted by law. The petitioner has from 18-7-1963 been stopped by the Marketing committee, respondent No.1, from carrying on his business as a weighman with hand-scales at old rates and even prosecution has been launched against the dealer at whose shop the petitioner works. this has resulted in complete stoppage of the petitioner's business with the result that he is unable to earn his livelihood. As a matter of fact, the whole of the market has been paralysed by this illegal action on the part of the respondents.

The State Agricultural Marketing Board, respondent No. 2, has, it is averred sent a circular to respondent No. 1 and other Marketing Committees permit any further use of hand-scales (Takri) by weighmen and they should be allowed to work only on the following remuneration:

- (a) 6 Naye Paisa for a weighman,
- (b) 19 Naye Paisa for Paledars.

In clause (b) just mentioned, it has been averred that there will be at least five Paledars if beam-scale alone as demanded by the respondents is to be used. On this rate, the daily remuneration of petitioner No. 1 would be reduced to Rs. 2.50 NP. per day whereas the remuneration of a Paledar would be reduced to Rs. 1.25 NP per day. This reduction in their earnings is attributed by the petitioner to low rates as also the lesser quantity which can be weighed by petitioner No. 1 by working with beam-scales for he would only be able to weigh about 400 maunds by means of beam-scales as against 700 and 800 maunds which he can weigh with the help of hand-scales (Takri).

It has been pleaded that the disparity in weighing with the two different kinds of scales has actually been demonstrated by weighmen at the markets of Kurali and Chandigarh in the presence of respondent No. 2, and the minister for Agriculture, Punjab Government. It is on these allegations that the present petition has been filed and the main challenge has been based on the argument that there is no reasonable basis or argument that excluding the use of hand-scales and thereby depriving petitioner No. 1 of his means of livelihood the existence of rational

relation of the object of the impugned Act with the absolute prohibition of the use of hand-scales has also been emphatically questioned.

(3) In the reply, on behalf of the respondents it has been pleaded that weighing by hand-scales is an old crude method unsuited to modern progressive and changed conditions of markets established for the pushes and sales of agricultural produce. Experience has also shown that weighing by hand-scales leans to malpractices corruption inconvenience and wastage of item. A producer who is generally an illiterate person coming from rural areas to sell his produce in the market is more likely to fall a prey to deceitful weighing by hand-scales with the result that for has been considered in the interest of the producer to introducer an improved method of weighing by beam-scales. The remuneration according to the reply have been fixed under the bye-laws framed under the statue and the suggestion that there must be more than one Paledar in every case has controvert. the petitioner has also been alleged to be hardly weighing more than 150-200 maunds per day and an average weighman according to the reply is estimated to be earning about Rs. 5/- or 6/- per day in peak season and lesser amount in slack season by hand-scales. The petitioner has been admitted to have taken out a licence to work as a weighman subject to the provisions of the Act but the licence does not carry any particular type of scales. The rates of remuneration were originally fixed under the bye-laws framed under the Act 1939.

The Act of 1916 was enforced on 26-5-1961 but he rules made thereunder were enforced from 11-7-1962. it is undoubtedly a condition of the licnce that the licensee would comply with provision of the Act and the Rules and the bye-laws framed thereunder. Under Rule 26 in transaction of sale and purchase of agricultural produce in principal market yards sub-market yards of the notified market area only beam-scales or platform scales can be used ; it is accordingly incumbent on the petitioner to use a beam-scale or a platform scales from 11-7-1962 onwards. The rates of remuneration for weighmen and other functionaries have also been modified to suit the prevailing conditions and circumstances. It is also admitted that the petitioner has been asked not to use hand scales or charge old rates because he is bound under the law to use beam or platform scales only and also to charge in accordance with the new rates. No prosecution have however been launched so far against the petitioner had been asked he is bound under the law to use beam or platform scales only and also to charge in accordance with the new rates. No prosecution have however been launched so far against the petitioner or the dealer for non-use of beam-scales or for charging old rates though the petitioner has rendered himself liable to such prosecution. According to the reply 76 weighmen had started using the beam-scales but after the stay order obtained by the petitioners in these proceedings others have also taken again to weighing by hand-scales. Even before the enforcement of the rules mentioned above-, beam-seeks were used for weighing all agricultural produce like weighmen of the produce was also conducted by beam-scales or platform scales. The new rates of remuneration have it is

pleaded, been fixed at Government level after mutual agreement between the representatives of different functionaries in market areas and the Government.

According to the reply not only there is a saving of time of adoption beam-scales but chances of malpractices, inter alia in counting have also been reduced. The remuneration fixed has been claimed to be reasonable and equitable and its justifiable character is challenged. The right of the petitioner to use only hand-scales has been questioned and the system of licence to regulate the conduct of the petitioner's trade or occupation has been held to be lawful and in accordance with the Constitution. The principal market yards and sub-market yards are also claimed to have since been notified.

(4) The learned counsel for the petitioners has, to begin with, questioned the right of the State to exclude the use of hand-scales and it is contended that the Act does not authorise such exclusion. The counsel has for this purpose emphasised that the Act has been enacted for the purpose of consolidating and amending the law relating to the better regulation of the purchase sale storage and processing of agricultural produce and also for the establishment of markets for agricultural products in the State of Punjab. This purpose, according to the learned counsel, does not extend to a direction to the weighmen to use only hand-scales. (sic). He has taken us through the scheme of the Act and has contended that provision relating to the use of hand-scales (sic) is outside the statute. I am unable to sustain this broad contention. Section 43(1) empowers the State Government by notification to make rules for carrying out the purposes of this Act and sub-section (2) without prejudice to the generality of the power contained in subsection (1) illustrates what such rules may provide for ; clause (x) of this sub-section shows that such rules may provide for the place or places at which agricultural produce shall be weighed, the kind and description of produce to be used and the quantity of the produce to be filled and of the scales not being hand-scales (Takri), weights and measures which alone may be used in transactions in agricultural produce in a notified market area. This provision in my opinion fully discloses the legislative intent in that it expressly prohibits the use of hand-scales even from the subject matter of rules which State may frame for carrying out the purposes of the Act.

Our attention has not been invited to any provision of the statute not to any principle of law which would lend support to the contention that the exclusion of the use of hand-scales from the markets is hit by or is obnoxious to the statutory scheme. The preamble of the Act on which reliance has been placed by the petitioners learned counsel for supporting the contention that the object and purpose of the Act does not extend to the exclusion of the use of hand-scales is on the language of the preamble itself untenable though. I should like to make it clear that preamble of a statute cannot be used for limiting the clear and unambiguous language of the enacting provision. It is a recognised rule that a preamble cannot affect the meaning of the enacting except for a compelling reason and it is not a compelling reason that the enacting words go somewhat

further than the preamble indicates. Better regulations of purchase and sale of agricultural produce in my opinion, clearly embraces with in its fold regulation of the method of weighing the produce which would necessarily cover the exclusion of the use of hand-scales. It is therefore not inconsistent with the statutory object and purpose as disclosed with the statutory object and purpose as disclosed in the preamble. The authorities cited by the petition do not go against this view as therefore need not be discussed in detail.

(5) The next attack is levelled against the vires of this provision and it has been eloquently urged that the exclusion of the use of hand-scales is not a reasonable restrictions on the profession trade business or occupation of petitioners. Reliance has been placed on Chintaman Rao Vs. The State of Madhya Pradesh, and it has been argued by reference to some observations at p. 119 that the impugned provision is so drastic scope that it goes much in excess of the statutory object. The reported decision in my opinion is clearly distinguishable and is of little or no assistance to the petitioners. This would be clear from the following observations at p. 119:

"Such a prohibition on the face of it is of an arbitrary nature inasmuch as it has no relation whatsoever the object which the legislation seeks to achieve as such cannot be said to be a reasonable restriction on the exercise of the right."

Thus said Maharani J, (as he then was) in the reported case:-

"The phrase "reasonable restriction" connotes that the limitations imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation that is the choice of a course which reason dictates. Legislation of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality."

Abdul Hakim Quraishi and Others Vs. The State of Bihar, is equally unavailing to the petitioners. It is stated in the reported case that the test of reasonableness should be applied to each individual statute impugned and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed the underlying purpose of the of the restrictions imposed the extent and urgency of the evil sought to be remedied thereby the disproportion of the imposition the prevailing conditions at the time should all enter into the judicial verdict. After this test the Court approved the passage quoted above from Chintaman Rao Vs. The State of Madhya Pradesh, . Applying the recognised test to the present case in my view-, experience has shown to the authorities concerned that weighing by hand-scales has led to malpractice-, corruption-, wastage of time and inconvenience then it

would seem to me to be somewhat difficult to hold that the impugned provision does not fall within Article 19(6), it is essential to bear in mind the political social and economic philosophy underlying the provision in question and this must from its very nature, involve the adoption of a liberal rather than a literal and mechanical approach to the problem. In *M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others*, the Madras Commercial Crops Markets Act, 20 Of 1963 was held to be result of a long exploratory investigation by experts in the field conceived and enacted to regulate the buying and selling of commercial crops which was held to be constitutional. It is true that the question of using hand-scales did not arise there but that would be a matter of detail rather than of substance.

(6) The broad object of the legislation like that present is mainly to protect the producers of agricultural produce from being exploited by middlemen and profiteers and to enable them to secure a fair return for their produce. The legislation like the present has its roots in the attempt on the part of the nation to provide a fair deal to the growers of crops and also to find a market for its sale at proper rates without reasonable chances of exploitation. Rules 25 and 26 of the Punjab Agricultural Produce Markets (General) Rules, 1962 framed for this purpose clearly illustrate their usefulness and reasonableness. Looked at in this background prescribing under Rule 26, the use of only beam-scales (Kundas) is likely to reduce the chances of exploitation and constitutes a reasonable restriction on the right of trade or profession of weighmen.

(7) Shri Sachar very forcefully urged that use of hand-scales by weighmen is a specialized one involving long training and these weighmen may not be able easily to take to the beam-scales which are also no great improvement on hand-scales for purposes of exact weighing. On the material before us on the present record, I do not think it is possible to agree with the learned counsel. I am also inclined to take the view changing over from hand-scales to beam-scales is not so difficult or so serious a hardship as would justify the provision being struck down as unconstitutional. While determining the reasonableness of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed. But clause (6) of Article 19, sub-clause (g) of clause (1) would perhaps suggest an absolute right, it being expressed in general language. The person whose right is restricted may thus feel every restriction to be irksome treating it as unreasonable. The question however cannot be decided exclusively from his point of view. It is to be considered whether the restriction is reasonable in the interests of the general public meaning thereby for achieving the object in the interests of the community. One has to remember that the task of declaring a legislative provision to be unconstitutional is a delicate task and involving as it does a reflection on the wisdom of the legislative wing, it has to be undertaken with a sense of responsibility and after a sufficiently deep probe into the challenge. The Legislature is normally presumed to know as to what is good for the community by whose suffrage has come into existence; though I do not for moment doubt that the ultimate responsibility is with the Court and the Court

cannot and must not shirk that solemn duty case on it is unreasonable. The impugned provision excluding the use of hand-scales would thus seem to me to be constitutional and valid.

(8) The next challenge has been directed to the fixation of rates to be paid to the weighmen. In order to appreciate this challenge it is necessary to reproduce section 44 of the Act which empowers the

Committee to make bye-laws inter alia, for the remuneration of different functionaries:

"44. (1) subject to any rules made by the State Government under S. 43 a Committee may in respect of notified market area make bye-laws for-

(i) the regulations of its business ;

(ii) the conditions of trading;

(iii) the appointment and punishment of its employees;

(iv) the payment of salaries, gratuities and leave allowances touch employees;

(v) the delegation of powers or duties to the Sub-Committee or Joint Committee or ad hoc Committee any one or more of its members under S. 19 ; and

vi) the remuneration of different functionaries not specifically mentioned in this Act, working in the notified market area and rendering any services in connection with the sale, purchase, storage and processing of agricultural produce; and may provide that contravention to any of such bye-laws shall be punishable on conviction with a fine which may extend to fifty rupees.

(2) Where a Committee fails to make bye-laws under this section within six months from the date of its establishment or the date on which this Act comes into force whichever is later the Board may make such bye-laws as it may think fit and the bye-laws as it may think fit the bye-laws so made shall remain in operation in that Committee.

(3) (a) Notwithstanding anything contained in this Act or the rules or bye-laws made thereunder if the Chairman of the Board considers that amendment alteration rescission or adoption of a new bye-law is necessary or desirable in the interests of such Committee he may by an order in writing require to be served on the Committee by registered post require the Committee to make such amendment alteration rescissions or adopt a new bye-law within such time as may be specified in such order.

(b) If the Committee fails to make any such amendment alteration or rescission or to adopt the new bye-law within the time specified by the Chairman of the Board in his order under cl (a), the Chairman of the Board may after giving the such amendment alteration rescission or such new bye-laws and issue a certified copy thereof to such Committee.

(c) Where an appeal is presented within one month from the date of the issue of an order under

clause (b) shall subject to there result of an appeal if any under clause (c) be conclusive and such amendments alteration rescission or a new bye-law shall be deemed to have been made by the Committee.

(4) No bye-law or rescission of a bye-law or its alteration amendment shall take effect until it has been confirmed by the Chairman of the Board and notified in the official gazette."

If as contemplated by sub-section (1) of this section the Committee fails to make rules within the time prescribed by sub-section (2), the Board constituted under S. 3 is authorised to make bye-laws as it may think fit. Sub-section (3) lays down the manner of amending altering rescinding or adopting a new bye-law takes effect only when confirmed by the Chairman of the Board. Such a bye-law takes effect only when confirmed by the Chairman and notified in the official gazette. Section 3(14) also empowers the Board with the approval of the State Government to frame bye-laws for regulating its business at meetings and for assignment of duties to its Chairman and Secretary etc. and also for such other matters as may be prescribed but this provision not having been relied upon by the respondents need not detain us. Rule 5 confers full power on the Board for framing bye-laws on certain matters specified therein including the subject of better marketing of agricultural produce etc. but this too is inconsequential for our purpose having not been relied upon as a provision independently of S. 44 constituting as a source validating the bye-laws in question.

(9) The contention raised by the petitioners briefly is that no bye-laws have been framed by the Committee nor have any bye-laws been framed by the Board in accordance with the law and therefore the direction regarding remuneration of weighmen is not valid and hence not binding. Bye-laws being delegated legislation must be made strictly in accordance with S. 44 and if they are not shown to have been so made they must be struck down a ultra vires says Shri Sachar.

(10) In reply the respondents learned counsel has referred us to bye-laws No. 28(R-1) and has submitted that the bye-laws in order to be valid have merely to be confirmed by the Chairman as provided by s. 44(4) and the bye-laws to the various Market Committees in the State and after their adoption by the Committee to confirm them and thereafter to enforce them.

(11) It may be pointed out at this stage that since the position has not been fully clarified in the return after hearing the arguments for some time we desired the counsel for the respondents to let us have fuller information as to the procedure adopted for framing the bye-laws in question. The respondents learned counsel has as a result produced the relevant correspondence and the resolutions passed by the various Committees. From the material produced it is clear that on 22-7-1963 the Chairmen of Market Committees in the Punjab State whereby

amendments and additions in Punjab State whereby amendments and addition in the new bye-laws were forwarded to them with a the new bye-laws were forwarded to them with a direction to adopt the same and intimate by 3-8-1963 without fail. It was recited therein that if it was not received within the specified period. It shall be deemed to have been adopted by the Market Committee as circulated and the bye-laws would be notified in the gazette accordingly. Any amendment or suggestions according to this circular could be considered later on after the bye-laws had once been notified and enforced.

The Market Committee Malout adopted unanimously a resolution on 7-9-1963. The Market Committee-, Karnal did so on 22-8-1963. The Market Committee-, Rayya sanctioned them on 8-8-1963 and the Tarn Taran Committee did so on 19-8-1963 forwarding the same on 7-9-1963. The Market Committee Patti however was more prompt and adopted unanimously the said bye-laws on 27-7-1963. In the resolution of this Committee it also stated that the Board be informed that these bye-laws be notified immediately. The said bye-laws as is clear from a copy of the gazette notification are the subject-matter of a notification shows that the bye-laws were confirmed and notified by the Chairman of the Board under the powers conferred by S.44 and all other powers enabling him in his behalf.

(12) What is stated above makes it crystal clear that the Chairman merely complied with the provisions of S. 44(3)(a) and sub-sections (b),(c), (d) and (e) appear to have been clearly ignored by him. Bye-laws having been made under the delegated power of legislation under S. 44, in order to be valid and to have the force of law must be made strictly in accordance with the said section and in pursuance of the authority delegated thereby. In case of failure of the Committee to amend alter-, rescind or adopt a new bye-law within the time specified by the Chairman of the Board the Chairman could register such amendment. alteration rescission or such new bye-law only after giving the Committee an opportunity of being heard and even then had to issue a certified copy thereof to the Committee in default so as to enable it to preferred by the Committee from an order registering the amendments-, such amendment could not come into force till the order is confirmed by the State Government.

(13) From what has been stated above it is clear that the bye-laws bear the date 9-8-1963 and were actually published on 30-8-1963 long before they were adopted by the Malout Market Committee. They were also issued about 13 days before they were e approved by the Karnal Market Committee. The Rayya Market Committee sanctioned the bye-laws on 8-8-1963 and were apparently forwarded on 13-8-1963 as appears to be suggested from its attestation by the Secretary of this Market Committee. It is the Market Committee of Patti alone which adopted the bye-laws on 27-7-1963 and which may be assumed to have been received by the Chairman of the Board before 9-8-1963-, the date on which they were sent to the press for publication the Tarn Taran Committee having also adopted the bye-laws only on 19-8-1963 and forwarded them on 7-9-1963. In the case of the

Market Committee Patti alone therefore it is possible to hold that the bye-laws were adopted before 30-8-1963 as desired and intimation set to the Chairman who confirmed them in accordance with law. No other Committee appears to have approved or adopted the bye-laws and forwarded them to the Chairman for confirmation and enforcement in accordance with law before 9-8-1963 the date of the notification. I regard to that there was no compliance with S. 44(3)(b) with the result that the bye-laws in regard to accordance with law decelerating the power so as OT be of binding effect.

(14) It may here be pointed out that Government under the Rule of law demands proper legal limits on the exercise of power and such power must be approved by the elected representatives of the people in regard to the delegation of legislative power to the administrative wing of Government it further demands that the delegated power must be exercise strictly in accordance with and within the four corners of the limits laid down by the delegating instrument for even the Legislature as not empowered to abdicate it constitutional obligation. The Constitution it must never be forgotten is supreme to all wings of the Government Material deviation in this respect therefore cannot be overlooked in our parliamentary democracy where every legislative measure must ultimately be traced to the nations 's representatives elected for the purpose of making laws. The extent to which it is not so traceable may well be argued that in the sphere of delegation of legislative power the manner prescribed for exercising the delegated power can be presumed to be directory and indeed as at present advised-, I am inclined to take the view that such delegated power must be exercised strictly as directed or not at all. It may be remembered that there is close connection between delegated legislation and Rule of law.

(15) The Chairman of the Board in the case in hand appears to have been dominated by the urge of administrative expediency or convenience ignoring that dominance of expediency over Rule of law may tend to degrade it into an uncontrolled power and once an uncontrolled approach is allowed to function it becomes difficult later to limit it or draw a line and the drift may unwittingly be undemocratic with an incline towards authoritarianism.

(16) Before concluding it amy be pointed out that democracy in India appears to some extent to have inherited and to be tempered with the bureaucratic authoritative tendencies assuming supremacy over the Rule of law. With this tendency taking root, there is a constant Rule of law getting unduly pushed in the background and possibly getting drowned in the clamor of real or supposed administrative and bureaucratic convenience or expediency. In order therefore such tendencies it is the solemn duty of all Re-sheet-anchor of our infant democracy ; a duty which will claim at their hands this the best birth right and noblest inheritance of mankind; the duty of the administrator in this respect appears to be greater for not only does he owe his office to the Rule of law but his official duty also enjoins him t act strictly accordance with this Rule and thereby to sustain it. This duty postulates eternal vigilance by everyone if drift

towards authoritarianism is to be arrested and avoided. Eternal vigilance it must never be ignored is the price of freedom under the Rule of law and once this freedom is lost it becomes somewhat difficult to regain it.

The judiciary which in a high sense is the guardian of the conscience of the people as well as the upholder of the Constitution and the law of the land is perhaps in this respect under a still more solemn obligation for an administrator who is made to know that he must ultimately account a more responsible public official. This Court has thus from every point of view a constitutional obligation to enforce the Rule of law and not lightly to ignore its breaches.

(17) For the foregoing reasons except in the case the Market Committee-, Patti-, I would allow the writ petitions in part and quash the order fixing remuneration of the weighmen. In other respects, all the writ petitions fail. In the Patti Market Committee the impugned order must however, be held to be valid. On the and circumstances of the case there would be no order as to costs.

H.R. Khanna, J.

(18) I agree.

(19) Order accordingly.