
(1969) 08 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2606 of 1964

Nathu Ram-Roshan Lal Loona	Vs	APPELLANT
The Punjab State and Others		RESPONDENT

Date of Decision : 29-08-1969

Acts Referred:

Constitution of India, 1950 — Article 19
Punjab Agricultural Produce Markets (General) Rules, 1962 — Rule 2(11)
Punjab Agricultural Produce Markets Act, 1961 — Section 10, 13(3), 13(3), 13(4), 2

Citation : (1971) 1 ILR (P&H) 529

Hon'ble Judges : Prem Chand Jain, J; Bal Raj Tuli, J

Bench : Division Bench

Advocate : R.C. Dogra, for the Appellant; D.S. Tewatia, General for Respondent No. 1 and N.K. Sodhi, for the Respondent

Final Decision : Dismissed

Judgement

Prem Chand Jain, J.—This writ petition came up for hearing before me on February, 3, 1969, when I referred it for decision to a Division Bench, as I was informed that some of the points raised in the writ petition were the subject-matter of Letters Patent Appeal No. 423 of 1961 That appeal was decided by the Hon'ble Chief Justice and P.C. Jain, J. on May 13, 1969, and this writ petition has been placed before us for hearing in pursuance of my order of reference.

2. The facts of this case are that the Petitioner-firm holds a heaters" licence u/s 10 of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter called the Act), and is carrying on business in cotton within the limits of the notified area of the Dabwali Market Committee in the district of Hissar. The Petitioner firm has challenged the levy of market charges as being ultra vires Section 30, of the Act. The submission is that market charges have not been defined in the Act but this expression has been defined in Rule 2(11), of the Punjab Agricultural Produce Markets (General) Rules, 1962, (hereinafter called the Rules). The Rules have been framed by the State Government in exercise of powers conferred on it by

Section 43 of the Act. It is submitted that tile market charges have neither been defined nor enumerated in the Act nor have any principles or criteria been laid down for the guidance of the Government or any other authority to determine the scope and the extent of the market charges. We regret our inability to agree to this submission. Section 2(s), of the Act defines "trade allowance" to include an allowance having the sanction of custom in the notified market area concerned and market charges payable to various functionaries. It is thus evident that the market charges to be prescribed by the Rules must be the charges payable to various functionaries in the market area. These functionaries are mentioned in Section 13(3), and (4), of the Act as brokers, weighmen, measurers, surveyors, godown-keepers and other functionaries. There is thus enough guidance for the particularisation and the prescription of market charges. It has not been shown that the market charges mentioned in Rule 2(11), of the Rules relate to persons other than functionaries in the market area. We are, therefore, of the opinion that Rule 2(11), is not beyond the competence of the State Government and is authorised by Section 30 of the Act.

3. It has then been submitted that the Market Committee, Dabwali, has adopted the model bye-laws framed by the Punjab Agricultural "Marketing Board and while adopting them has not specified the rate of the market charges to be levied in the market area. The maximum limit of the charges has been prescribed but not any definite rate. It is stated that the parties to a transaction are not permitted to bargain with regard to the market charges and they are forced to pay the maximum charges fixed in the bye-laws. The allegation in the petition does not make any such precise allegation. The reply on behalf of Respondents 2 and 3, however, is that the outside limit of the extent of the market charges has been prescribed in the bye-laws and the parties to a transaction are at liberty to make a bargain in any transaction with regard id the market charges provided the market charges agreed to do hot exceed the maximum limit provided in the bye-laws. It has been thus denied inferentially that any restriction has been placed on the free bargaining between parties with regard to the market charges provided as a result of bargain the charges to be levied do not exceed the maximum provided in the bye-laws. There is, therefore, no merit in the submission of the learned Counsel that the-prescription of the market charges in any way hinders the carrying on of the business of the Petitioner-firm. It has to be remembered that in a market all transactions of sale and purchase are the result of .contracts and the parties are free to enter into such contracts within the limits imposed by the Rules which have not been shown to be in any way unreasonable. The object of the Act is to save the agriculturists, who bring their produce to the markets for sale, from unspecified market charges and mal-practices which were prevalent in the markets before the present Act, or its predecessor Act was brought on the statute book. The market charges are payable by the buyer and, therefore, he knows the extent of these charges. He will avail of the services of the market functionaries on tile basis that he has to pay the market charges, the maximum limit of which has been prescribed. It is

his free will to avail of those services or not. If he finds the charges to be heavy, he can make the purchases elsewhere and not go to the market area. Rule 2(11), and bye-law 28, therefore, cannot be struck down on any ground urged before us and we hold the same to be valid.

4. Another point that has been argued by the learned Counsel for the Petitioner-firm is that the Market Committee, Dabwali, has placed an unreasonable restriction on the right of the Petitioner-firm to carry on its business as it has provided that at any auction of agricultural produce the difference between the two bids with regard to cotton shall not be less than twenty paise while ten paise has been prescribed in the case of other agricultural produce. It is submitted that the restriction is beyond the scope of the Act and the Rules and is unreasonable and arbitrary as it imposes an unreasonable and arbitrary restriction on the trade. This provision is made in Sub-clause (2) of Bye-law No. 11. Once again we find ourselves unable to accept this submission. Some rules with regard to the auction sales have to be framed and it is quite reasonable to fix the difference between two bids so that unnecessary time is not wasted in very small bids being made with regard to the quantities sold at the auction. We are informed that the minimum quantity that can be purchased or sold in one transaction is 5 kilograms whereas there is no maximum limit with regard to the quantity of the agricultural produce to be sold. We do not consider that the difference of twenty paise between two bids prescribed in the bye-laws with regard to cotton is in any way unreasonable or has the effect of hampering the trade. It is to be noted that this difference of twenty paise does not relate to a quantity of 5 kilograms but to the bids which are made at any auction whatever the quantity provided it is not less than 5 kilograms. There is, therefore, no force in this argument of the learned Counsel.

5. In the petition, the proviso to Section 30 of the Act was challenged as being void and ultra vires of Article 19 of the Constitution of India. According to this proviso, all market charges are to be paid by the buyers and the validity of this proviso was upheld by a Division Bench of this Court in *Piara Ram v. The State of Punjab and Ors.* *Falshaw, C.J., and Harbans Singh, J.* C.W. 308 of 1963 decided on 5th November, 1963, which was followed by another Division Bench *Mehar Singh, C.J. and Mahajan, J., in Murari Lal Sharma v. The State of Punjab and Ors.* C.W. 1444 of 1963 decided on 24th August, 1966. This matter was again raised before the Division Bench in *Ch. Surja Ram and Sons Ginning and Pressing Factory v. The Punjab State and Ors.* ILR 1971 (1) P&H 172, and the learned Judges observed:

We see no reason to accept the contention of the learned Counsel that the decision in *Piara Ram's* case does not lay down correct law.

The learned Counsel for the Petitioner-firm has not argued before us the other points which have been decided by the Division Benches earlier but has stated that he does not want to give up those points and that it should be noted in the judgment that those points are stressed. We, however, see no force in the

submission of the learned Counsel that proviso to Section 30 of the Act is void and ultra vires of Article 19 of the Constitution of India.

6. Similar is the position with regard to the vires of Section 23 of the Act and sub-rule (2) of Rule 29 of the Rules. The validity of these provisions has also been upheld by the Division Bench of this Court in M/s. Ch. Surja Ram and Sons case ILR 1971 (1) P&H 172, (supra).

7. There is thus no force in this writ petition which is dismissed with costs. Counsel's fee Rs. 100.

Prem Chand Jain, J.

8. I agree.