

(1973) 03 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2532 of 1972

Prem Chand Ram Lal

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 13-03-1973

Acts Referred:

Punjab Agricultural Produce Markets (General) Rules, 1962 — Rule 31(13), 31(8), 31(9)
Punjab Agricultural Produce Markets Act, 1961 — Section 10

Citation : AIR 1974 P&H 92

Hon'ble Judges : Prem Chand Jain, J

Bench : Single Bench

Judgement

1. M/s. Prem Chand Ram Lal through Mela Ram partner have filed this petition under Articles 226/227 of the Constitution of India for the issuance of an appropriate writ, order or direction quashing the resolution of the Market Committee, Sangrur, respondent No. 2, dated 4th February 1972 levying market fee and penalty on the petitioners amounting to Rs. 6,538,76. The facts of this case may briefly be stated thus:

2. The petitioners are running their business and are licensees u/s 10 of the Punjab Agricultural Produce Markets Act, 1961, hereinafter referred to as the Act. The petitioners are commission agents and Pacca Arhtias and bring Gur, Shakkar and Khandsari from outside Mandis in packed condition at their shops which are situated outside the market yard at Sangrur. The Market Committee, respondent No. 2, wished to levy market fee on the sale of Gur, Shakar and Khandsari purchased by the petitioners from outside Mandis and sold at their shops in the packed condition. The petitioner-firm resisted the illegal levy by the Market Committee. The Administrator of the Market Committee on 30th September, 1968, levied market fee of Rs. 5,014/- and levied an equal amount of penalty, and made a demand of Rs. 10,028/- against the petitioners for the year 1967-68. This act of the Administrator was challenged by the petitioners by way of Civil Writ No. 3324 of 1968. The petitioners partially succeeded in their

petition. As full relief was not given to the petitioners, they filed a Letters Patent Appeal against the judgment and order of the learned Single Judge but the same was dismissed. The matter did not rest there as the petitioners filed an application for grant of a certificate for filing appeal before the Supreme Court of India and necessary certificate was granted to them. On the basis of this certificate, the petitioners filed an appeal before the Supreme Court and moved a stay application on which the stay was granted subject to their furnishing a bank guarantee to the satisfaction of the Market Committee.

3. It is further stated that in spite of the fact that the Market Committee knew that the appeal of the petitioners was pending before the Supreme Court, still a resolution was passed on the 4th February, 1972 levying market fee on the sale of Gur. Shaker, Khandsari, cereals and rice for the years 1968-69 and 1969-70, to the tune of Rs. 3269.38 and also imposed penalty in the same amount. It is the legality and propriety of this resolution of the Market Committee which have been challenged by way of this writ petition.

4. Written statement has been filed on behalf of the Market Committee by Shri Brij Lal, its Secretary, in which the material allegations made in the writ petition have been controverted.

5. Although various grounds have been taken in the writ petition, but the only ground urged by the learned counsel for the petitioners was that the Market Committee exceeded its jurisdiction in imposing the penalty of Rs. 3,269.38, without first laying a foundation for the levy of penalty. According to the learned counsel, the onus was on the Market Committee to show that there was a mens rea and that non-furnishing of the returns by the petitioners for the years 1968-69 and 1969-70 was deliberate with a view to avoid payment of the market fee. After hearing the learned counsel for the parties. I find that there is considerable force in the contention of the learned counsel for the petitioners.

6. From the perusal of the records which were made available at the time of arguments, I find that the Committee, after calculating the market fee that could be levied on the petitioners for the years 1968-69 and 1969-70, imposed the penalty equal to the amount of the market-fee. In the resolution that was passed for imposing penalty, no ground has been set out as to why an equal amount of penalty was being imposed. Rule 31, sub-rule (9) of the Punjab Agricultural Produce Markets (General) Rules, 1962, hereinafter referred to as the Rules, is in the following terms:--

"31. (9) In addition to the fee or additional fee levied under sub-rule (8) the Committee may recover from the defaulter penalty equal to the fee or additional fee so levied."

From the bare reading of the above said provision, it is clear that it is the discretion of the Market Committee to impose penalty. Under the said provision, the imposition of penalty is not a must. In certain circumstances, the amount can be less while in another case, it can be more. Though there is no direct case on

the point that was debated before me under the provisions of the Act and the Rules made thereunder, but under the General Sales Tax Act, there is a similar provision of imposing penalty and while interpreting that provision, their Lordships of the Supreme Court in *Hindustan Steel Ltd. Vs. State of Orissa*, , observed thus:--

"Under the Act penalty may be imposed for failure to register as a dealer: Sec 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

A similar matter came up before a Division Bench of this Court also in *Khosla Mills Vs. The State of Punjab and Others*, wherein it was observed:--

"Thus in the light of the Supreme Court decision, the impugned order imposing the penalty on the appellant without any material on the record to show that there was a deliberate concealment with a view to avoid payment of the tax and without there being any clear finding in that respect, cannot be sustained and has to be set aside."

7. From the above-mentioned decisions, it is clear that the proceedings for the imposition of penalty are quasi-criminal proceedings and that before a penalty could be imposed, it was incumbent on the department to prove that the party acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. It is clear from the decision of their Lordships of the Supreme Court that a penalty cannot be imposed merely on the ground that it is lawful to do so. The authority has a discretion to impose penalty and that discretion is to be exercised not in an arbitrary manner but judiciously. The authority before imposing the penalty has to apply its mind to all the circumstances of the case and the evidence that may be produced in that respect and then only pass an order with regard to the imposition of penalty. In the instant case, there is no gainsaying that the Market Committee did not advert to this aspect of the matter and after calculation of the market fee, straightway imposed the penalty equal to the amount of the market fee. This could not legally be done. In this view of the matter, I have no other alternative but to quash the resolution of the Market Committee dated 4th

February, 1972, to the extent it levies the penalty of an amount of Rs. 3,269.38. It may be observed that the committee may, if so advised, proceed to impose penalty on the petitioners in accordance with law.

8. Before parting with the judgment, a preliminary objection raised by Mr. G. C. Garg, learned counsel for the respondent No. 2, may be noticed. It was contended by him that the petitioners should have availed of the remedy of appeal under Rule 31(13) of the Rules and that the petitioners having approached this Court without exhausting that remedy are not entitled to the relief as prayed for. I am afraid. I am unable to agree with this contention of the learned counsel. I have already found that the Market Committee has exceeded its jurisdiction in imposing penalty on the petitioners. In the view that I have taken, I do not propose to dismiss this writ petition on this preliminary objection.

9. No other point was urged.

10. For the reasons recorded above, I allow this petition and quash the impugned resolution dated 4th February, to the extent it has resulted in imposing the penalty of Rs. 3,269.38 on the petitioners. As the petitioners have partially succeeded. I make no order as to costs.

11. Petition allowed.